COMMERCIAL WARRANTIES

ARE THEY WORTH THE MONEY?



Legal guarantees and commercial warranties on consumer goods in the EU, Iceland and Norway

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Help and advice for consumers in Europe

ECC-Net

European Consumer Centres Network

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Introduction

The European Consumer Centres Network

The European Consumer Centre Network (ECC-Net) consists of **30 centres** (one in each European Union (EU) Member State, Norway and Iceland). It is co-financed by the EU and by each of the participating states.

The aim of the Network is to **increase consumer confidence** in the European Internal Market by providing consumers with **information** on their rights under European consumer legislation, and by giving them **advice** on, and **assistance with the resolution of their cross-border complaints**. As the ECC-Net deals with cross-border consumer complaints and disputes, it is in a unique position to document the problems consumers face when shopping within the EU.

Background

The ECC-Net deals with a large number of cross-border consumer complaints each year. Out of the 80 272 contacts from consumers received by the ECC-Net in 2013, 32 522 were actual complaints[1] (an increase of 9% compared to 2012[2]). **Between 1/4 and 1/3 of these complaints concerned guarantee issues** (the product or service turned out to be defective, did not conform to the order or caused damage).

Although a substantial number of guarantee- and non-conformity-related complaints reported by the ECCs involve service contracts, especially in the transport sector (36% of all complaints are in this sector with 80% of those related to passenger transport by air), this report only covers guarantees for goods as the main legal rules for guarantees do not cover service contracts which are regulated by specific legislation[3]. Hence, this report deals exclusively with business-to-consumer situations and focuses on consumer goods (there is however limited reference to real estate, which in most countries is covered by specific or supplementary legal guarantees).

[1] Annual report of the ECC-Net : http://ec.europa.eu/consumers/ecc/docs/report_ecc-net_2013_en.pdf ● [2] Press release, 19 February 2014, http://europa.eu/rapid/press-release_IP-14-162_en.htm - All statistical data are based on data gathered by the local ECC offices and registered in the ECC-Net database, the IT-Tool. The IT-Tool is used to collect and handle the necessary data and cases. It is operated by the European Commission ● [3] The problems that arise in the case of contracts for air travel services are the focus of the ECC-Net reports on air passenger rights and are covered by Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, Regulation (EC) no 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), case law of the Court of Justice of the European Union, etc.

Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees ("the Consumer Sales and Guarantees Directive")[4] defines **consumer goods** as "any tangible movable item, 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"[5].

The consumer movement would define consumer goods as all end products of a production cycle, also called final products, which a consumer can find in a store to purchase. Consumer products cover a wide range of items including food, clothing, electronic items and household appliances, cars, to a certain extent pets[6], etc., but not real estate.[7]

About 1/5 of complaints registered by the ECC-Net relate to products for recreation and culture, as well as information processing equipment and equipment for the reception, recording and reproduction of sound and pictures, as such products account for a large share of cross-border online purchases of goods.
A product is considered faulty if it does not comply with the given description or if it cannot be used for normal purposes or the specific purposes requested by the consumer. The product is also faulty if it is not of normal quality and does not perform as can be reasonably expected.

Consumers all over the EU, Iceland and Norway enjoy several levels of protection against the delivery of goods which are not in conformity with requirements: along with mandatory protection by law prohibiting the sale of goods which do not conform to their description, legal guarantees apply to faulty products and private initiatives from business such as commercial warranties have become more and more frequent.

The European Consumer Centre France has led this project in close cooperation with the ECCs of Belgium, Denmark and Germany which formed the working group for this project. All 30 ECCs participated in the compilation of this report.

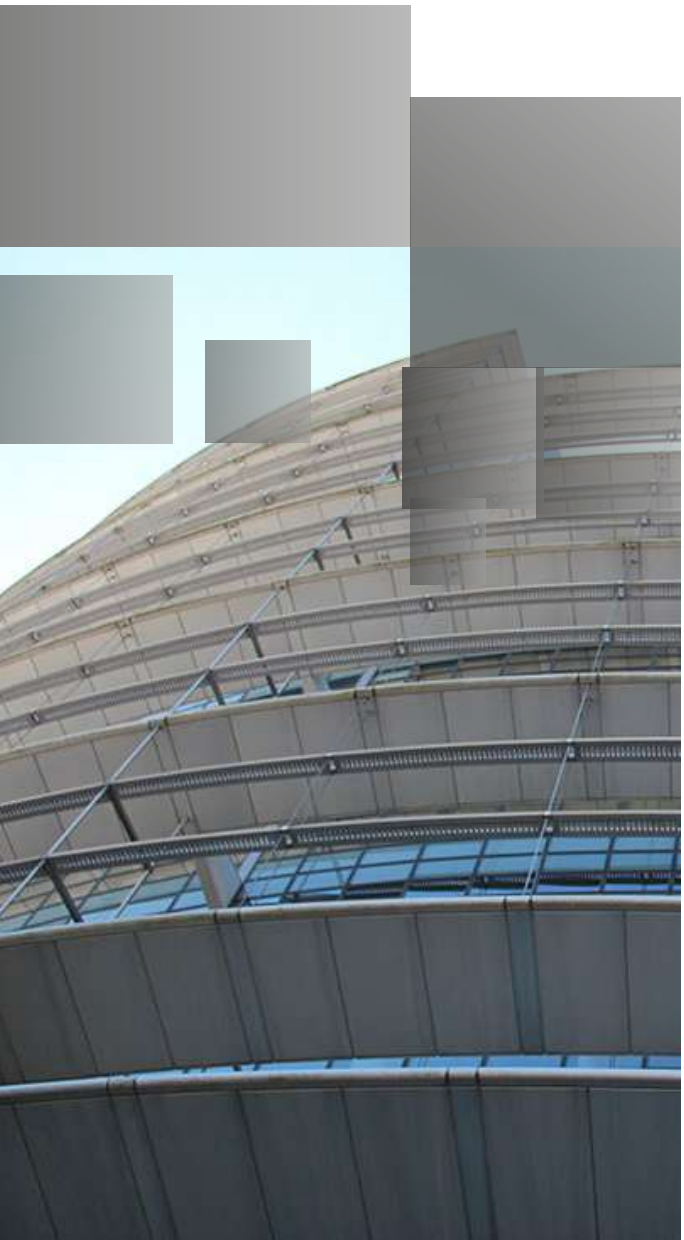
The views and interpretations reflected in this report are not those of the European Commission or the national funding bodies. They are solely those of the working group based on conclusions in the reports cited and on the data and questionnaire answers submitted to the working group by all project participants. This document is intended to present the legislation and situation regarding legal guarantees and commercial warranties in the various European countries at the moment of publication and in the most user-friendly manner possible. It has no legal value however and the working group will not be held liable for any loss or cost incurred by reason of any person using or relying on the information in this publication.



● 4 Official Journal L 171, 07/07/1999 P. 0012 – 0016 ● 5 According to Article 1.2 (b) of the Consumer Sales and Guarantee Directive, Member States may exclude from this definition second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person. http://europa.eu/legislation_summaries/consumers/protection_of_consumers/l32022_en.htm ● 6 See the special focus on the purchase of animals/pets on page 92 ● 7 However, the Directive applies to contracts for the supply of consumer goods to be manufactured or produced.

When purchasing an item, it is usual for the seller to propose a specific commercial warranty, sometimes referred to as an extension of the legal guarantee. This is particularly the case for fragile or valuable items (e.g. watches, cars, fridges or washing machines). It can be included in the price of the goods (and in such cases it is often referred to as a specific producer's or seller's warranty) but in many Member states the consumer will have to pay an extra cost depending on the coverage and duration of the additional service proposed. But are commercial warranties worth the money? Do they really add anything to the protection already offered by law in the EU, Iceland and Norway?

Objective of the joint project



The main objective of this report was to compare the legal guarantee and commercial warranty schemes in the EU Member States, Iceland and Norway and to analyse whether commercial warranties really keep their promises and are worth the additional cost.

ECCs carried out checks online and on sellers' premises[8] and studied accounts from consumers to get an insight into how well consumers are protected by EU law and/or commercial warranties when they discover that goods they have purchased are not in conformity to their expectations or have defects.

From 29 October to 14 November 2014, the ECC-Net conducted a total of 342 checks in 25 countries **(Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Norway, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden)** for 3 product categories (photo camera, TV, washing machine) for a total of 79 product references from 9 brands. 104 websites were screened and 127 shops contacted (covering 151 trading names, some of which were present in several EU Member States). During these checks the ECCs looked into:

- The after-sales service of 72 shops: During "check n° 1" the investigation focused on whether the seller would accept having the defective goods returned to him/her or redirect the consumer to the producer.
- The possibility of having easy access to an independent expert opinion: "check n° 2"
- The importance of commercial warranties in the sales process: "check n° 3"
- Whether and how consumers are informed about the legal guarantee and the commercial warranty and if there are any geographical restrictions: "check n° 4"
- The names given to commercial warranties in the Member States: "check n° 5"
- The duration of commercial warranties: "check n° 6"
- The costs involved: "check n° 7"

The checks by the ECC-Net were supplemented by a survey led by ECC Belgium from 15 July to 5 October 2014, to which 543 consumers responded[9].

● 8 The details of the ECC-Net checks can be seen on page 109. ● 9 The details of the study let by ECC Belgium can be seen on page 119.

Vocabulary: why differentiate between the legal guarantee and a commercial warranty?

The **legal guarantee**[10] is **mandatory** under EU consumer law:

"The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered[11]*"*.

The **commercial warranty** is a **voluntary** service offered by the **seller or the producer, sometimes even by a third party**. It can be included in the price of the goods (and in such cases it is often referred to as a specific producer's or seller's warranty) but **in many Member States the consumer will have to pay an extra cost** depending on the coverage and duration of the additional service proposed. This extra service can be called an "extended guarantee". More information on commercial warranties in Europe is provided in the second part of this report.

It is important to note that a commercial warranty cannot affect the consumer's rights under the EU legal guarantee[12]**.** The warranty, as a sort of additional service, should upgrade the consumer's rights, for example, for a longer time period or situations not covered by the legal guarantee, e.g. warranties offering additional services such as repair at home.

Practical example: case received by the ECC-Net

In September 2012, a Slovenian consumer bought a notebook from an Austrian online store. After 3 months, problems with the screen occurred. Following the instructions in the documentation provided, the consumer sent the notebook to the authorised service centre in Slovenia 5 times, but the problem was never solved. The consumer contacted the seller in Austria and was informed that the notebook was covered by an end-user-direct repair service under which the warranty process is applied directly between the customer and the producer (or their service centre). The seller claimed that he was only responsible during the first 6-12 months, after which time the application of the warranty process was only possible by using the producer's services, whereas in fact, the seller was still responsible for providing a remedy under the legal guarantee.

When contacted by the ECC-Net, the seller agreed to repair the notebook as required under the legal guarantee.

● 10 The concept of the legal guarantee of conformity exists in all EU Member States, Iceland and Norway. Although in the national languages of Denmark and Iceland for example, the term "LEGAL GUARANTEE of conformity" does not exist as such, consumers in those countries have a legal right to complain. ● 11 Article 3 (1) of Directive 99/44/EC on Consumer Sales and Guarantees. ● 12 Article 6 (2) of Directive 99/44/EC on Consumer Sales and Guarantees and Article 2 (14) of Directive 2011/83/EU on Consumer Rights.



Legal guarantees

What is a «directive»?

A directive is a legal text which applies to the countries of the European Union (EU) and of the European Economic Area (the EU plus Norway, Iceland and Lichtenstein). It is proposed by the European Commission for adoption by the European Parliament and the Council of the European Union. It is published in the Official Journal of the European Union[15].

A directive sets out harmonisation rules, which EU Member States will have to transpose in their national legislation. According to Article 288 of the Treaty on the Functioning of the European Union, "*A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.*" So it is up to each Member State to decide on how to reach the goals set in the directive. It may be necessary to create new dispositions, change existing ones and/or abrogate others according to the countries' specific situations. A directive usually contains a transposition period between 6 months and 2 years from its publication. **Certain directives may permit EU Member States to go beyond its provisions** (they must never stop short of the provisions). They are referred to as providing **«minimum harmonisation».**

*The legal guarantee of conformity to which every European consumer is entitled was introduced by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees of 25 May 1999 ("the Consumer Sales and Guarantees Directive")[13]. **Directive 2011/83/EU** on Consumer Rights ("the Consumer Rights Directive"), which Member States had to transpose by 13 December 2013 and which entered into application on 13 June 2014[14], also introduced some specific rules relating to the pre-contractual information of consumers on the existence of the legal guarantee.*

Aim of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

The Consumer Sales and Guarantees Directive aims at providing an effective legal guarantee-scheme for the benefit of consumers by:

- Ensuring that the different national legal traditions encompass the principle of conformity with the contract and in a common manner across the EU[16]: The legislator indicated that the main source of disputes between consumers and sellers was non-conformity of goods with contracts and therefore stated that goods purchased by a consumer must, above all, meet the contractual specifications.

- Facilitating the application of the principle of conformity through a presumption of conformity with the contract under certain conditions[17].

● 13 Official Journal L 171, 07/07/1999 P. 0012 – 0016 ● 14 See the table of transposition measures on page 106. ● 15 In most cases both Institutions have to agree jointly on EU Directives. For more information: http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html ● 16 7th recital in the preamble of the Consumer Sales and Guarantees Directive ● 17 8th recital in the preamble of the Consumer Sales and Guarantees Directive

■ Providing a common definition of conformity: The criteria set by the text are the quality and performance consumers can reasonably expect from the goods. The Directive allows it to be taken into account whether the goods are new or second-hand[18].

■ Explaining the responsibility of the seller: The Directive provides for direct liability of the seller for conformity of the goods. It also gives the seller the possibility to pursue remedies against the producer, a previous seller in the sale chain or any other intermediary[19].

■ Providing remedies for consumers: If the goods are not in conformity with the contract, consumers should be entitled to have the goods restored to conformity free of charge, by either repair or replacement, or, failing this, to have the price reduced or the contract cancelled[20]. The text of the Directive considers the proportionality of the solution to the problem encountered[21].

■ Setting a period of responsibility and deadline for action: One of the main aims of the Directive is to set a common minimum period of 2 years during which the seller is responsible for any lack of conformity which exists at the time the goods are delivered.[22] Member States may choose a longer period but cannot opt for a shorter one. Unless proven otherwise, any lack of conformity which becomes apparent within 6 months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity. During this period it will be up to the seller to demonstrate that the defect was not present at the time of delivery (this period can be longer in national legislation but not shorter).

■ Regulating commercial warranties: For certain categories of goods, it is current practice for sellers and producers to offer commercial warranties against any defect which becomes apparent within a certain period. This practice can stimulate competition and be a legitimate marketing tool, but should never mislead consumers. Therefore, commercial warranties should contain certain information, including a statement that the warranty does not affect the consumer's rights under the legal guarante[24].

● 18 8th recital in the preamble of the Consumer Sales and Guarantees Directive ● 19 9th recital in the preamble of the Consumer Sales and Guarantees Directive ● 20 10th recital in the preamble of the Consumer Sales and Guarantees Directive ● 21 11th recital in the preamble of the Consumer Sales and Guarantees Directive ● 22 17th recital in the preamble and Article 5 of the Consumer Sales and Guarantees Directive ● 23 21st and 22nd recital in the preamble of the Consumer Sales and Guarantees Directive ● 24 Article 6 (2) of the Consumer Sales and Guarantee Directive and Articles 5 (1) (e) and 6 (1) (l) of the Consumer Rights Directive.

Scope of Directive 1999/44/EC on sale of consumer goods and associated guarantees

According to Article 2 of the Consumer Sales and Guarantees Directive, the legal guarantee is applicable wherever a lack of conformity with the contract of sale becomes apparent within **2** years of delivery of the goods. Article 2 of the Directive lists a number of situations in which consumer goods are presumed to be in conformity with the contract. From this Article it can be deduced that the legal guarantee will apply, inter alia, in the following situations: The goods

- **do not correspond to the description** given by the seller and **do not have the qualities** of the sample or model which the seller presented to the consumer;
- **are not fit for the specific purpose** required by the consumer, of which he/she informed the seller at the moment of conclusion of the contract, and which the seller accepted;
- **are not fit for the usual purpose** of goods of the same type;
- **do not have the qualities and attributes of other goods of the same type which the consumer can reasonably expect** regarding their nature and any public declarations made about the characteristics of the goods by the seller, the producer or his/her representative, especially in publicity or labelling.

Particular exceptions to the application of the legal guarantee provisions

The goods conform (in accordance with the text of the Directive[25]), if at the moment of conclusion of the contract, the **consumer was informed of any defect or could not reasonably have been unaware of it**[26]. This is also the case if the defect is caused by **materials supplied by the consumer.**

The Member States transposed this provision into their national law and the legal guarantee cannot be invoked in the following cases:

- If the consumer knew about the default before purchasing the goods **(Belgium, Czech Republic, Germany, Estonia, Ireland, Spain, France, Italy, Cyprus, Luxembourg, Latvia, Hungary, Netherlands, Poland, Portugal, Slovenia and Slovakia).**
- If the defect is due to the consumer **(Czech Republic, Denmark, Germany, Spain, Netherlands and Slovakia)** or materials the consumer provided **(Belgium, Denmark, Spain, France, Netherlands, Poland, Portugal and Slovakia);**
- If the defect is due to wear and tear **(Czech Republic, Denmark, Germany and Slovakia).**

In some Member States, recourse under non-conformity rules might be limited in the event of damage during transport.

- In **France**, the seller is responsible for execution of the contract which also includes operations performed by all intermediaries. Transport is thus also the seller's responsibility. However, a specific rule exists with regard

● 25 Article 2 paragraph3 indicates that *"There shall be deemed not to be a lack of conformity (…) if, at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer."* ● 26 For further information on national guarantee regimes for hidden defects, see page 47.

to damage during transport; the seller has to inform the transport company of any damage within 3 days[27]. As the consumer is in a position to identify such damage upon delivery he/she has the same obligation. It is therefore very common to see in the general terms and conditions of distance selling contracts that **the consumer has to check the item upon delivery and inform the transport company right away and at the latest within 3 days of any transport damage**. It is also recommended to inform the seller in writing. **If the consumer is not able to check the item upon receipt, the deadline is extended to 10 days** (by the "consumer" law of 17 March 2014)[28]. If the consumer does not fulfil this obligation, the seller will lose his/her action against the transport company. A seller will therefore not usually be inclined to satisfy any complaint from a consumer regarding transport damage after this deadline, even though the legal guarantee of conformity remains applicable.

- In **Italy,** to be on the safe side, the consumer should accept the delivery but specify that the goods are unchecked. If transport damage has occurred, **the consumer should report the damage within 8 days of delivery** if it is not immediately visible.

- If the consumer accepts the item on delivery, **without making any remarks** (this exclusion is applicable only for visible defects), the **application of the legal guarantee** for damages due to transport **is excluded in Romania.**

Even in Member States where no such rules exist, it can become difficult for a consumer to make a claim under the legal guarantee if transport damage occurs.

Checks carried out by the ECCs participating in this report revealed that a Swedish webshop informed customers that they needed to report visible defects to the delivery person or to the cashier at the post office within 3 days and refused the package as it was returned without the consumer having made these notifications.

Practical example: case received by the ECC-Net

A Hungarian consumer ordered a TV from a Slovak web shop. Upon delivery, the consumer checked - in the presence of the representative of the transport company - that the parcel and protective foil were intact and no damage to the TV was visible. However, when the consumer switched on the TV he noticed a crack in one corner of the screen. As the TV had been delivered on a public holiday, the seller could not be reached by phone. The following day the consumer informed the seller who instructed the consumer to take the TV to one of the producer's service centres. The service centre concluded that the TV was unrepairable and that replacement of the screen would be uneconomical. The seller finally rejected the consumers claim, stating that upon delivery the consumer signed a declaration to the effect that he had received the TV without any damage.

In spite of the intervention of the ECC-Net, it was not possible to reach an amicable solution and the consumer was therefore advised to take legal action based on the applicable Hungarian law. According to this legislation, a consumer can make a claim under the legal guarantee within reasonable time of the discovery of the defect. Reporting the damage within 2 months is considered reasonable and since the consumer notified the seller the day after delivery, this condition was met.

● 27 Article L. 133-3 of the French commercial code ● 28 Article L121-105 of the French consumer code

A minimum harmonisation directive

Article 8 shows that the Consumer Sales and Guarantees Directive is a minimum harmonisation directive which takes into account pre-existing rules in several Member States providing a higher level of protection for consumers with regard to the non-conformity of goods.
In 2007, the European Commission published a Communication[29] on the transposition of the Directive which highlighted which **Member States have more stringent provisions**. Understanding these differences is **important when it comes to cross-border trade** as sellers will tend to apply the legislation of their country, unless they target specific countries through online sales or other distance-selling means and have developed country-specific after-sales services.

This report summarises the main differences in the application of Directive 1999/44/EC in the various EU between the Member States, Iceland and Norway which mainly concern:

- The direct liability of the seller,
- The duration of the legal guarantee,
- Deadline for the consumer to notify the seller of a defect or non-conformity
- The burden of proof of the existence of a defect,
- The duration of the legal guarantee after repair or replacement,
- The hierarchy of remedies to which the consumer is entitled,
- The possibility for the seller to claim compensation

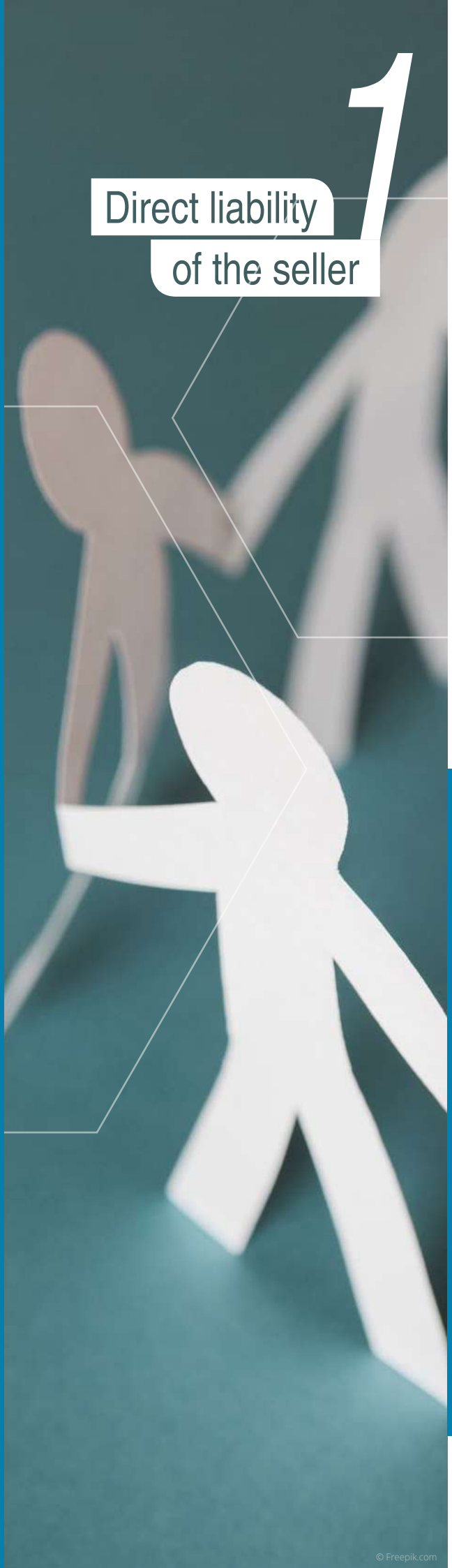
*While updating this report, the **IMCO Committee of the European Parliament** approved new rules to strengthen consumer rights and facilitate cross-border trade in the EU. The new laws harmonise key contractual rights, such as the remedies available to consumers and the ways to use those remedies.*

***The two directives - on digital content and on the sales of goods** - are part of **the Digital Single Market strategy,** which aims to ensure better access for consumers and businesses to online goods and services across Europe.*

***Both directives** will have a direct influence on guarantee rules throughout the EU on the duration of the legal guarantee, the reversal of burden of proof duration etc.*
The Council and the Parliament have agreed on the new rules but both texts still have to be officially adopted.



29 Communication from the Commission to the Council and the European Parliament of 24 April 2007 on the implementation of Directive 1999/44/CE of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability COM(2007) 210



1 Direct liability of the seller

According to Article 2.1 of the Consumer Sales and Guarantees Directive,

«The seller must deliver goods to the consumer which are in conformity with the contract of sale.»

According to Article 3.1,

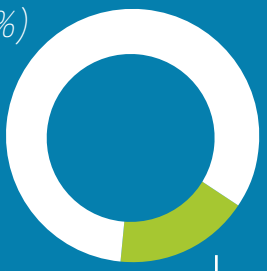
«The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered.»

However, the ECC-Net, when conducting check n° 1 [30] found that on many occasions the seller redirected the consumer to the producer, even for application of the legal guarantee.[31] The investigation carried out in the after-sales services of 72 shops in 21 countries (the total number of checks amounted to 97[32]) focused on **whether the seller would accept having the defective good returned to him/her or would redirect the consumer to the producer.**

In the 1st scenario, ECCs enquired how the seller would react if a consumer contacted him/her about an item alleged to be defective which was purchased a little less than 6 months ago[33] and without a commercial warranty.

1st scenario:

In 44 out of the 53 cases (83%) the seller would accept having the item returned to him/her.



In 9 out of the 53 cases (17%) the consumer would be referred to the producer or one of the brand's official repair centres.

Nevertheless, many of the sellers strongly suggested that consumers should contact the producer directly as this would be faster (the seller would, in any case, send the defective item to the producer for repair).

● 30 See page 110 for further details ● 31 One ECC contacted a repair shop not a reseller. Therefore this check has not been taken into consideration for the analysis as the repair centre correctly indicated that the consumer should contact the seller first. ● 32 53 for the 1st scenario and 44 for the 2nd scenario ● 33 The deadline of 6 months has been chosen in order to verify whether consumers really benefit from the reversal of burden of proof during the first 6 months after delivery, see also page 22.

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In one instance, the seller informed the consumer that he/she could only return an item (TV) within 2 weeks of purchase[34]. After these 2 weeks, the consumer would need to contact the manufacturer.

When consumers asserted their rights under the legal guarantee only 3 sellers changed their attitude:

- After insisting on and referring to the terms of the legal guarantee, the seller asked for the product to be brought to the shop and **an email to be sent to him explaining the rights under the legal guarantee.**

- The seller admitted that the item could be returned to him. At the same time he insisted that the item would **only be sent to a repair centre if many other similarly defective goods were returned.** He thus took no account of the reasonable time frame within which a repair must be carried out or a replacement provided.

- The seller admitted the existence of a legal guarantee but still encouraged the consumer to use the commercial warranty instead of the legal guarantee, stating that under the legal guarantee the consumer has to prove that the defect has been there since the date of purchase[35]. The **salesperson insisted that it is always the consumer who has to prove this fact and never the seller.**

In several cases it was obvious that, even though the seller knew about the legal guarantee, he/she would make enquiries with the producer and follow the producer's procedure and opinion stating for example: "The producer is the one to decide whether to agree to meet the consumer's claim or not. The producer has the last word".

In the 2nd scenario, ECCs enquired about what would happen if an item which had been purchased without a commercial warranty a little less than 16 months ago turned out to be defective. In this scenario the consumer would still be within the 2-year minimum duration of the EU legal guarantee[36], but in most countries would no longer be able to benefit from the period during which there is a presumption of conformity (6 months from delivery as a minimum). The burden of proof would thus be on the consumer[37].

2nd scenario:

In 32 out of the 44 cases (73%) the seller would accept having the item returned to him/her. In 12 out of the 44 cases (27%) they would not.

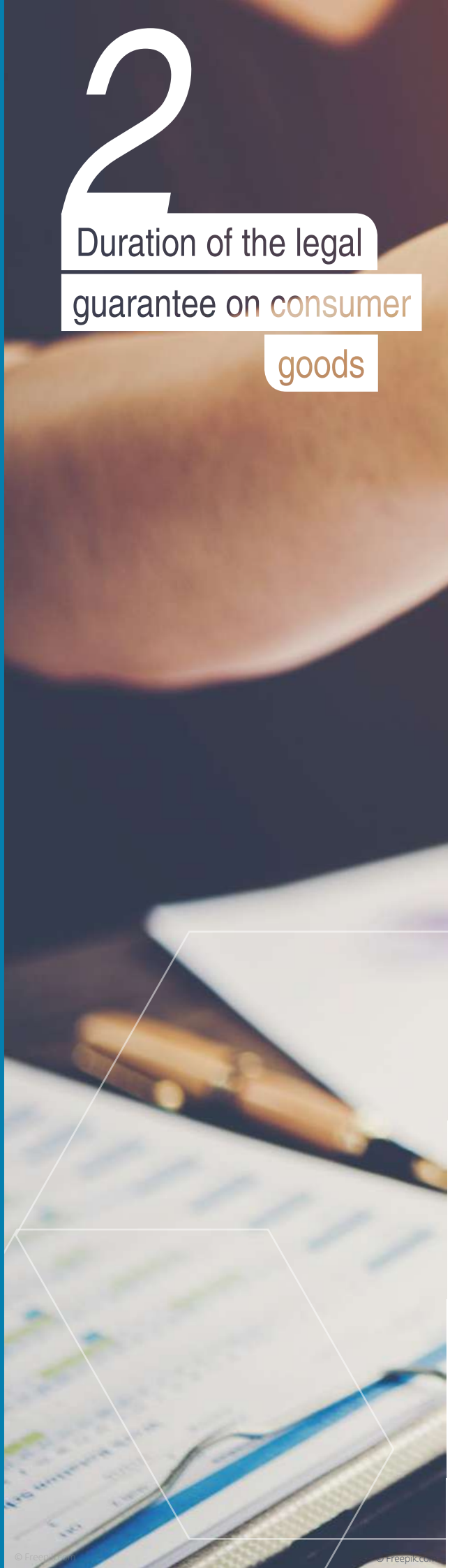


● 34 The seller seems to be trying to confuse the consumer by offering a cooling off period during which the consumer can withdraw from a contract. ● 35 In Germany, the rule on the reversal of burden of proof has been implemented and all defects occurring during the first 6 months after delivery are presumed to have existed upon delivery. The seller would have to prove that the item was not defective, see also page 17. ● 36 The deadline of 16 months has been chosen as, in most of the countries, the duration of the legal guarantee is 2 years, see also page 23. ● 37 Only in Portugal would the reversal of burden of proof still be applicable, as it applies for the 2 years of the legal guarantee, see also page 22.

Practical example: case received by the ECC-Net

In May 2013 an Irish consumer purchased a laptop from a UK-based online retailer. The item had developed a fault on a number of occasions and each time the seller insisted on the repair being carried out by the manufacturer. After two unsuccessful repairs, the consumer said he had lost confidence in the product and asked the seller to refund the amount paid. The seller insisted on having the manufacturer repair the item. The consumer contacted his local ECC-Net office and the case was shared with UK ECC.

The trader was contacted and eventually replied asking for copies of technical reports issued by the manufacturer after each unsuccessful repair attempt. Once those were provided, the trader agreed that the consumer could send the item back to them for a full refund.



2 Duration of the legal guarantee on consumer goods

The Consumer Sales and Guarantees Directive provides for **a 2-year legal guarantee of conformity**[38], from the date of delivery of the item to the consumer[39]. As Directive 1999/44/EC is a minimum harmonisation directive, Member States were allowed to apply longer time periods **than the 2 years foreseen by the Directive.**

The majority of countries have implemented a 2-years guaranty of conformity

The **2-year duration** for common consumer goods has been transposed into national law in the **majority of EU Member States** (**Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France**[40]**, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Spain**) as well as in **Iceland and Norway.**

The product is faulty if its lifespan is shorter than could reasonably be expected. On the other hand, 2 countries provide for a shorter legal guarantee period for goods with a shorter expected lifespan.

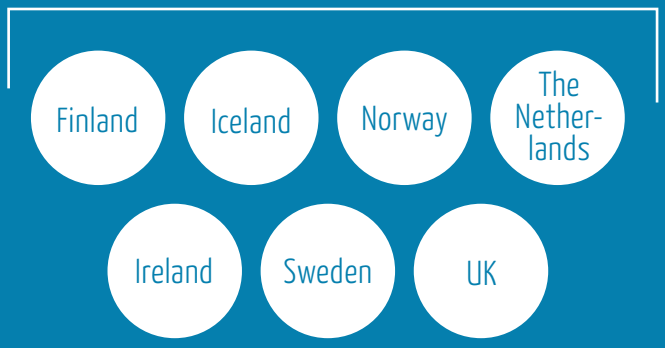
Countries with a longer legal guarantee duration on all consumer goods

- **Sweden** has extended its legal guarantee period for all types of goods to **3 years.**
- **Ireland** did not introduce this particular provision. Instead the general limitation period for taking legal action for breach of contract is **6 years** as per the Statute of Limitations 1957. This 6-year period is not a legal guarantee period or a duration requirement but the time limit in which consumers may be able to exercise their rights.

● 38 Article 5 of the Consumer Sales and Guarantees Directive ● 39 **Delivery should be understood as receipt of the item by the consumer (or at least the possibility the consumer would have had to take possession of the item if he/she had been in the shop or at home, in cases where an item is collected on behalf of the consumer).** ● 40 In France, in the course of the preparatory phase for the recent consumer law (loi « consommation » du 17 mars 2014) an amendment was proposed to progressively extend the current LEGAL guarantee of 2 years to 3 years by 1 January 2014, to 4 years by 1 January 2015 and to 5 years by 1 January 2016. This amendment has not been retained in the final text. But the recent roadmap for a circular economy clearly set as a goal to increase on EU level the period of the legal guarantee of conformity for household appliance.

Countries with a longer duration taking into account a longer expected lifespan of certain goods

7 countries apply a longer duration and 4 of them take into account the expected lifespan of the product.



■ **The United Kingdom** decided to apply the existing limitation periods, i.e. 6 years (5 years in Scotland). The application of this is similar to that in Ireland: these are the time limits for making claims for non-conformity and such claims need to be assessed on their individual merits.

■ In **Norway and Iceland**, consumers benefit from a 5-year legal guarantee **for goods meant to last longer than 2 years.**

■ In Iceland, goods such as expensive furniture, cars, some household appliances, etc. are estimated to last considerably longer than most other items. Consumers therefore have a legal right to complain about a faulty item within 5 years of delivery.

■ Even though **Finland** has not adopted any specific time limits, according to the "Consumer Protection Act", a **product is defective if it does not last as long as can ordinarily be expected**. So the seller is considered responsible in the event of lack of conformity even if the defect appears more than 2 years after delivery (depending on the type of goods).
The assessment of the lifespan of the goods must take into account the **expected lifespan for goods of the same category**. It may also take into account the price of the goods and the usual frequency of use. These are general standards, not based on individual expectations that consumers may have. The national legislator does not have an exhaustive list of goods' expected lifespans for each category. It is up to the Finnish Consumer Disputes Board, when a claim is raised, to indicate the expected lifespan of a product as is necessary to determine the duration of the seller's liability. The Board makes non-binding decisions but through its decision-making, provides guidance on application of consumer legislation and publishes decisions that are important for the interpretation of the law. Most products have a lifespan of between 2.5 and 3.5 years but for vehicles, for example, the lifespan is longer.

■ In **the Netherlands,** Article 7:17 of paragraph 1 of the Civil Code states that a consumer has the right to take delivery of goods which are in conformity with the agreement. It does not mention any time limit for claiming application of the legal guarantee. This means a defect or non-conformity detected more than 2 years after delivery is covered. As in Finland, the **expected lifespan** of the goods must be taken into account, as must the price, the type of store selling the product, statements from the seller and information from the producer. So the legal guarantee might be longer for vehicles, washing-machines, boats, etc. For example, the Dutch trade association for installers and electrical contractors, UNETO-VNI, issued guidelines[41] for white goods[42] and electronic goods and a code of conduct in accordance with the applicable consumer laws. A chart gives the expected lifespan for 7 product categories. A distinction is made on grounds of quality (high, average and low quality). These guidelines can help to determine whether a consumer can still claim for application of the legal guarantee from the seller, but the final decision rests with a judge or an Alternative Dispute Resolution (ADR) body.

● 41 http://www.uneto-vni.nl/consumenten/over-uneto-vni/garantie-en-kwaliteit/gebruiksduurverwachting-uneto-vni (in Dutch) ● 42 Major household appliances such as refrigerators, cookers, washing machines, air conditioners, etc., which used to be painted only in white enamel finish are considered white goods. Televisions, radios and video players were often categorised as brown goods. IT and computer equipment are known as grey goods.

Countries with a shorter duration for specific goods

All countries have specific durations for perishable goods such as flowers and food, or goods with a marked "use by" date such as canned or packaged food or drugs, etc.[43].

Also, **Romania** for example adopted the 2-year duration, but explicitly foresees that for goods with a shorter expected lifespan, the compulsory liability period may be reduced to be equal to that expected lifespan.

Duration for second-hand goods

The Consumer Sales and Guarantees Directive foresees a possibility to reduce the duration of the legal guarantee period for second-hand goods. Article 7 of this Directive stipulates that "Member States may provide that, in the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter time period for the liability of the seller than that set down in Article 5(1). Such period may **not be less than one year."**

Not all countries have implemented this and the duration is the same for new and second-hand goods in 14 countries (**Bulgaria, Denmark, Estonia, Finland, France, Greece, Iceland, Ireland, Latvia, Lithuania, Malta, Netherlands, Norway, Sweden and United Kingdom**). However, the assessment of what is to be considered a lack of conformity will differ between second-hand goods and brand new products.

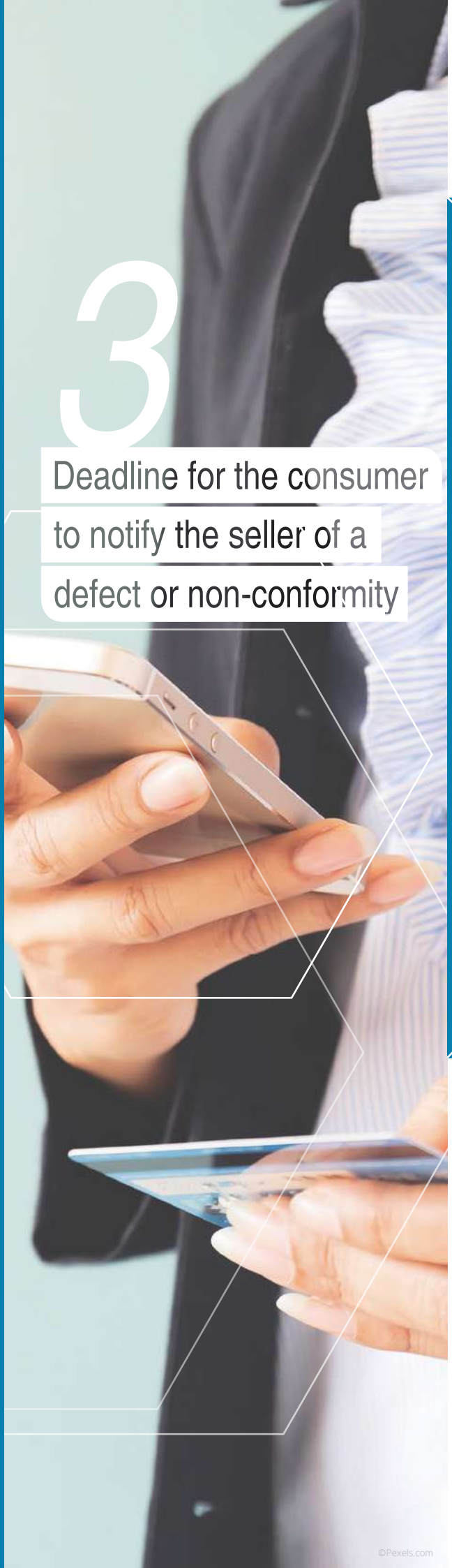
in 14 countries

(Austria, Belgium, Croatia, Cyprus, Czech Republic, Germany, Hungary, Italy, Luxembourg, Poland, Portugal, Romania, Slovenia and Slovakia) *the time limit can be reduced but not to less than 1 year and requires agreement by the consumer according to Article 7 of the Directive. In most cases, this reduction is foreseen by the seller in the contract or general terms and conditions. However in Austria and Portugal, for example, the limitation of the duration to 1 year for second-hand goods needs to be specifically negotiated on a case-by-case basis. Whereas in Spain the duration of the legal guarantee for second hand goods is minimum 12 months.*

In Germany, *the trader's responsibility for second-hand goods can be reduced to 1 year but previously the German legislator had assimilated this to a prescription period of one year. The CJEU ruled that this legal provision is not in compliance with directive 1999/44/EC (decision from 13/07/2017, C 133/16) and needs to be corrected in the German civil law. The prescription period cannot be shorter than 2 years even if the trader's responsibility is reduced to one year.*

Ireland *has not introduced any particular provision regarding the duration of the so-called 'legal guarantee' . Instead, a six-year limitation period applies, during which consumers may be able to exercise their rights, whether in relation to new or second-hand goods.*

43 This does not arise from the transposition laws concerning legal guarantees but from compulsory labeling rules.



3

Deadline for the consumer to notify the seller of a defect or non-conformity

When a defect or non-conformity is discovered by the consumer, according to Article 5.2 of the Consumer Sales and Guarantees Directive, the seller must be notified within **at least 2 months**[44].

11 *countries* ***(Bulgaria, Croatia, Cyprus, Estonia, Italy, Latvia, Malta, Portugal, Romania, Slovenia and Spain)*** *have transposed this provision into their national law.*

19 *countries decided not to adopt a firm time limit of 2 months.*

in 15 *countries the consumer should act within a reasonable time frame of noticing the lack of conformity* ***(Austria, Belgium, Czech Republic[45], Denmark, Finland, Greece, Iceland, Ireland, Lithuania, Luxembourg, Netherlands, Norway, Slovakia, Sweden and United Kingdom).*** *In Belgium, the seller may impose a 2-month deadline for notification of the existence of any defect.*

● 44 See also the 19th recital of the preamble of the Directive *"Whereas Member States should be allowed to set a period within which the consumer must inform the seller of any lack of conformity; whereas Member States may ensure a higher level of protection for the consumer by not introducing such an obligation; whereas in any case consumers throughout the Community should have at least two months in which to inform the seller that a lack of conformity exists;"* ● 45 The Czech law indicates "the consumer has to contact the trader without undue delay after discovery of the defect". In such cases, only a judge or an ADR body can clarify what is an "undue" or "reasonable" delay.

In **Finland, Iceland and Norway**, the reasonable deadline within which to notify the seller of a defect can never be shorter than 2 months. In **Denmark, Netherlands and Sweden**, a complaint made within 2 months is always considered to have been made within reasonable time.

In **France and Germany**, no deadline for notifying the seller of a defect other than the legal prescription period of 2 years has been set.

It is recommended that the consumer contacts the seller as soon as possible after noticing the defect – for example, in **Slovakia**, this is compulsory – as continuing to use a product after discovering a defect might worsen its condition and lead the seller to reject the claim.

In **Hungary**, the consumer must inform the seller about the defect without delay. 2 months after detection is acceptable. The consumer is liable for any damage originating from a delay in informing the seller.

Practical example: case received by the ECC-Net

In December 2012 a consumer from Slovakia purchased a digital camera from a UK-based trader. The item developed a fault and the consumer tried resolving the problem by taking it for repair to the local representative of the manufacturer. They advised her that as the warranty card was not date stamped and signed by the seller, the warranty would not be honoured. When the consumer asked the seller to endorse the warranty, he asked the consumer to send the item back for repair which the consumer was reluctant to do. The consumer contacted her local ECC-Net office and the case was shared with UK ECC.

The trader was contacted, but as their attempts to endorse the warranty card were not satisfactory for the manufacturer, they insisted on arranging the camera repair themselves, which the consumer eventually accepted.

Practical example: case received by the ECC-Net

A Croatian consumer bought a pair of swimming trunks in Italy. After having returned to Croatia the consumer discovered that they could not be machine washed and he hand-washed them in warm water with hand wash laundry detergent. The printed design lost its colour and he complained to the seller but didn't receive an answer. The consumer returned to the seller's store and was informed that the seller would only accept claims for replacement or refund within 3 days of purchase[46].

When contacted by the ECC-Net, the seller agreed to refund the consumer.



● 46 The seller seems to be trying to confuse the consumer with a commercial practice allowing cancellation of the contract only within 3 days. See also footnote 34.



4 Administration of proof of non-conformity

Reversal of burden of proof: the seller is presumed responsible

In principle, in any legal dispute, the party who claims the application of a right must prove its case. Exceptionally, this burden of proof can be reversed. According to Article 5.3 of the Consumer Sales and Guarantees Directive,

«Unless proved otherwise, any lack of conformity which becomes apparent ***within six months of delivery*** *of the goods shall be presumed to have existed at the time of delivery.»*

So **the seller**[47] **is automatically considered liable**, unless he/she can produce proof that the item was not defective at the time of delivery[48]. **All Member States** introduced this reversal of burden of proof in favour of the consumer in their national law. **5 of them went further by extending the normal 6-months** duration of this reversal.

In **Portugal**, the reversal of burden of proof is applicable throughout the legal guarantee period of **2 years.** This will also be the case in **France** from 2016. The new consumer law[49], effective from 18 March 2016, extends the period of presumption of non-conformity to **24 months** from delivery of the goods[50]. Only for second-hand goods will the reversal of burden of proof period remain 6 months.

In **Slovakia,** the Consumer Protection Act 250/2007 Z.z. extends the reversal of burden of proof period to **12 months** and within that period, proof that the item was not defective must be **provided by an expert at the seller's expense. Polish law** provides for a 1-year period of reversal of burden of proof.
In **Sweden**, the period of reversal of burden of proof is generally 6 months, with one exception: For building elements intended to constitute a major part of a single or dual family dwelling, the provisions of reversal of burden of proof apply to any defect which manifests itself within 2 years of delivery.

● 47 See page 13 on the direct liability of the seller. ● 48 See also page 24. ● 49 The "loi « consommation » du 17 mars 2014" transposes the Consumer Rights Directive into French law, but as a horizontal instrument it also contains many other dispositions. ● 50 Article L211-7 of the French consumer code

Reversal of burden of proof in Spanish law after repair or replacement

In **Spain**, once an item is repaired, the guarantee period continues until its original expiry date. In the first **6 months** from the moment the **repaired product** is delivered to the consumer, the reversal of burden of proof is applicable.
In the case of a **replacement, a new 2-year guarantee** period starts from delivery of the replacement item. During the first **6 months from delivery** of the replacement, the reversal of burden of proof in favour of the consumer is also applicable.

In some cases, however, the reversal of burden of proof period might be shorter. Even though in **Belgium, Finland, Germany, Hungary, Sweden and United Kingdom, for example,** the reversal of burden of proof lasts for 6 months, this time limit is not applied **if** it is **incompatible with the nature of the goods** or the nature of the defect (for example, the goods have an expected lifespan of less than 6 months)[51].

During check n° 1[52] ECCs also investigated if consumers can really benefit from the reversal of burden of proof. In the 1st scenario, ECCs enquired how the seller would react if a consumer were to contact him/her about an item purchased a little under 6 months previously (without a commercial warranty) which turned out to be defective. The deadline of 6 months was chosen in order to verify whether consumers really benefit from the reversal of burden of proof during the first 6 months from delivery. Only 3 countries provide for a longer reversal of burden of proof. For example, in Slovakia the duration is 1 year, in Portugal it is 2 years[53]. In 9 out of the 53 cases (16.98%) the seller would refuse the returned item. The consumer would be redirected to the producer or one of the brand's official repair centres, and his/her complaint based on the legal guarantee would be refused.

When asked if the seller's answer was in accordance with the law in terms of reversal of burden of proof, hierarchies of remedies, etc., in 18 out of 53 cases (33.96%) ECCs considered the seller's answer not to be in line with consumer law.



This was due to:

- *Ignorance by the sellers of the legal guarantee provisions and/or insistence on using the commercial warranty rules;*
- *Redirection of the consumer to the manufacturer even though the seller is responsible for the application of the legal guarantee;*
- *Failure to adhere to specific national provisions[54];*
- *In one case the consumer would be charged EUR 40 to have the item inspected first[55] .*

● 51 For further information on this point see also page 16. ● 52 See page 13 ● 53 See page22 ● 54 See also page 49 ● 55 The application of the legal guarantee must be free for the consumer, see also page 34.

Possibilities for the seller to reverse the presumption of a defect

According to Article 5.3 of the Consumer Sales and Guarantees Directive, the seller shall be automatically held liable

"unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity."

This rule has also been transposed in countries with a longer reversal of burden of proof period, such as **Portugal**[56].

As the Consumer Sales and Guarantees Directive is a minimum harmonisation directive not all Member States have implemented this rule and **Estonia, Ireland, Poland and Slovenia do not provide any specific possibility for the seller to reverse the burden of proof onto the consumer.** Several countries include provisions related to misuse by the consumer (i.e. negligence, abnormal use or handling). In the **Czech Republic, Denmark, Spain, Luxembourg, Romania and Sweden**, the seller may try to prove that the consumer misused the goods. Whilst the legislation applicable in many other European countries such as in the **United Kingdom** do not have outright provisions for this, it is not unreasonable for the seller to argue that the consumer has misused the goods if this can be reasonably ascertained. It is considered to be good practice to inform consumers about the possibility of such an argument being made in some cases.

Means of proof of existence of a defect or non-conformity

Knowing who bears the burden of proof is the first step in the application of the legal guarantee, especially considering the imbalance between professional **sellers who have easy access to means of proof such as expert opinions and consumers who do not. Once the period of reversal of burden of proof is over, the consumer will have to prove that the defect existed upon delivery** and, in most countries, this makes making a claim problematic if a defect appears more than 6 months after delivery.

It is the ECC-Net's experience that practices in the Member States vary considerably and the actual possibility for a consumer to prove the existence of a defect depends on the availability of independent expert opinions and on their acceptance by the sellers concerned.

Big retailers can often easily provide an expert opinion from a technical service with which they work stating that the defect is due to misuse by the consumer. The consumer might question the independence and objectivity of such a statement, but it will be **difficult for a consumer to find an independent repairer willing to give a counter expertise and even if he/she finds one, the costs involved are often disproportionate** to the price of the item. Also, while this counter expertise might corroborate the consumer's story, unless it is requested by a judge, it has no legal value as such and the trader may simply disregard it. So when advising consumers, ECCs inform them of the possibility of proving non-conformity, while stressing that if possible they should try to reach agreement with the seller first. This is likely to allow consumers to avoid incurring significant costs which traders may be reluctant to reimburse, unless ordered to do so in court.



56 See also page 22.

In check n° 2[57] ECCs investigated a total of 42 (repair) shops in 17 countries to see whether consumers have **easy access to independent expert opinions. 43% of the requests were rejected** for the following reasons:

- For 2 repair shops it was the first time that they had been confronted with such a request and they did not know how to handle it (camera).
- 1 repair shop said that they did not have the necessary technical expertise for the specific product (camera).
- 1 repair shop redirected the ECC to the **producer's after-sales service** (camera).
- 3 other repair shops refused, arguing that the product was under warranty: 2 answered that the consumer had to **call the producer if the seller refused** a repair, the other did not want to open the product because it **could invalidate the existing warranty.**
- 1 repair shop refused, arguing that a repair by them would **invalidate the legal guarantee as they were not a brand representative** (TV).
- 2 repair shops informed the consumer that **only licensed experts can make repairs** (TV and washing machine).
- In 4 instances, the shops would only agree to analyse the defect if the product had been bought in their shop (camera and TV).
- In 1 case, the repair shop refused because they were afraid of being "prosecuted" in the future (washing machine).

Practical example: case received by the ECC-Net

A Czech consumer purchased a waterproof camera from a French seller in July 2012. Shortly after the first use, the camera stopped working and the consumer immediately complained to the seller. The seller's inspection revealed oxidation but the camera passed the waterproofing test. The seller concluded that the consumer did not properly close the camera when using it under water. The consumer disagreed strongly stating that he is a long time user of under-water photographic equipment. Also, the defect appeared within six months of purchase so the reversal of burden of proof was still applicable.

When the ECC-Net contacted the seller, they provided the original quote, which clearly stated that the item was waterproof when correctly used. They also added a photo.

The consumer agreed to have a counter expertise performed in the Czech Republic and needed the seller to return the camera. They were willing to do so but wanted to charge him for shipping costs of 700 CZK, whereas normal shipping costs would amount to 282 CZK. It turned out that the 700 CZK covered shipping and the issuing of the quote by their technical service. The seller indicated they would provide a refund if the counter expertise proved the item to be unfit for purpose. The seller was informed that this was illegal under Czech case law as handling **a product liability claim is a legal obligation** under §19 of the Consumer Protection Act. Also, the application of the legal guarantee is **free of charge** for the consumer (see also page 24). The seller finally agreed to return the item free of charge so that it could undergo the counter expertise.

57 For details see page 111.

Many consumers shy away given the costs, especially as they are not technical experts themselves and so are not sure of the outcome and whether the seller will foot the bill[58] and apply the legal guarantee. In this regard, countries with third party testing bodies to assist consumers with providing proof are interesting.



The Consumer Sales and Guarantees Directive does not impose any **form of proof** on the consumer or on the seller. The relevant country's **national rules apply**:

In **Slovakia,** during the 12 months of reversal of burden of proof, the seller can reject a claim with an expert opinion showing that the defect was caused by the consumer. The **expert opinion must be provided to the consumer at the seller's expense.** It is then up to the consumer to prove that he/she did not misuse the item. In most countries, the consumer can prove the existence of a defect by "any legal means", but as soon as the seller has provided an expert opinion, the consumer may need a counter expertise. In some Member States, such as **Greece, Slovakia or Finland**, it is **quite easy to get an expert opinion, but the fees are relatively high.**

Many **Danish** ADRs have their own experts who can provide an opinion where necessary. In cases where the ADR covers the expenses for third party testing, the ADR will assess if they find a need to use experts in the specific dispute.

In **Poland**, consumers can get assistance from regional trade inspectorates which provide lists of experts. Courts also have such lists.

In **Malta**, an expert can be appointed by the Consumer Claims Tribunal.

In the **Czech Republic, Hungary and Slovenia** the Ministries of Justice have an official list of independent experts whom consumers and sellers can contact.

In **Bulgaria**, in the event of a court procedure, an expert is appointed by the judge from a list.

In **Latvia**, if the dispute is handled by the Consumer Dispute Resolution Committee (established by the Consumer Rights Protection Centre of Latvia) parties can at any time provide the expert opinion or other proof, however there is no special regulation.

In **Lithuania**, national institutions might assist with providing proof (ex. State Consumer Rights Protection Authority).

In the **United Kingdom** there is a limited number of sector-specific ADR bodies (e.g. The Furniture Ombudsman) with the expertise to produce such reports. These can be fairly costly and consumers may be required to pay upfront, although in most cases the 'loser' in the argument is meant to end up paying. That said, consumers seem to struggle to find an appropriate source of expertise for electronic goods, etc.

● 58 Article 3.2 states that "*In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement,*" but "*The terms «free of charge» in paragraphs 2 and 3 refer to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.*" So there is no reference to any prior action to establish the existence of the defect.



5 Solutions and remedies to the lack of conformity

In the event of non-conformity of the purchased goods, Article 3.3 of the Consumer Sales and Guarantees Directive provides a clear indication of the remedies from which the consumer can choose. The same article indicates a hierarchy of remedies:

"In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case free of charge[59], unless this is impossible or disproportionate. A remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account:

- *the value the goods would have if there were no lack of conformity,*
- *the significance of the lack of conformity, and*
- *whether the alternative remedy could be completed without significant inconvenience to the consumer."*

"Any repair or replacement shall be completed within a ***reasonable time*** *and* ***without any significant inconvenience*** *to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods."*

"The consumer may require an ***appropriate reduction of the price*** *or have the* ***contract rescinded:*** *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."*

● 59 See also page 34

Practical example: case received by the ECC-Net

In October 2012 a Danish consumer purchased a lamp from a UK-based trader. Upon delivery, the consumer asked a local electrician to fit the lamp at her house. At that point, it became apparent that the item was incorrectly wired, which caused the whole circuit to malfunction. The consumer wrote to the trader in December 2012 asking them to cover the cost of re-wiring the lamp locally but to no avail.

The consumer contacted her local ECC-Net office in the second half of 2014 who contacted the trader to point out their legal obligations to them. The trader agreed to pay the cost of re-wiring the item locally.

Who has the choice of remedies: the consumer or the seller?

According to the Consumer Sales and Guarantees Directive, at the first stage **the consumer** has the choice between repair and replacement. However, the seller may object if the solution chosen by the consumer is impossible to provide or disproportionate and so the final choice is usually with the seller.

The Consumer Sales and Guarantees Directive foresees a hierarchy of remedies, and **most countries follow this ranking:**

- **Repair of the goods or replacement,** and only if impossible or not possible within a certain time frame or without significant inconvenience to the consumer,
- **Adequate price reduction or cancellation of the contract (and refund).**

There are some exceptions to this rule.
In **Greece, Poland, Portugal and Slovenia, national law does not provide for a hierarchy of remedies**. It is up to the consumer to choose the remedy unless it is disproportionate. In Greece, the body (Court or ADR) before which the consumer brings the claim decides on the best solution, on a case-by-case basis. In **Poland,** the consumer chooses the remedy however the seller may refuse to satisfy the buyer's demand under specific conditions and offer another solution.

A hierarchy of remedies



In **Ireland**, a dual policy exists. The national legislation (which pre-dated the Directive) foresees a **"right to reject"** which means that the consumer can refuse an item which turns out to be faulty when used for the first time. He/she can then ask for a refund and the contract is terminated.
When this right is lost because the consumer accepts the item, uses it for some time, and it then turns out to be faulty, the consumer may claim repair, replacement or price reduction. Most often, the seller will offer repair first. The defect should not then reoccur, otherwise the consumer is entitled to replacement or refund. The dispositions transposing the Consumer Sales and Guarantees Directive thus give priority to repair or replacement and allow the termination of a contract only if the consumer is not entitled to these remedies or if the seller cannot perform them within a reasonable time or without significant inconvenience to the consumer.

In the **United Kingdom,** the Consumer Rights Act 2015 provides for short term right to reject the item within the first 30 days from delivery. This has effectively specified the time limit for doing this, as opposed to 'lapse of a reasonable time' previously applicable under the concept of acceptance. If the consumer wishes to argue this, reversed burden of proof does not apply. This means that the consumer may be expected to prove that fault existed at the point of delivery, unlike when asking for a remedy in the standard way (repair/replacement/price reduction up to full refund).
Generally speaking, however, the law states that the buyer should expect the seller to repair or replace the item in the first instance in most cases. The exceptions are when these cannot be provided without causing the consumer significant inconvenience, etc. (consumer detriment) or when they are considered disproportionate to the value of goods or impossible (trader detriment).

In **Denmark,** the consumer may claim a **refund right away,** if the defect is significant. However, the consumer cannot ask for a refund if the seller offers to repair or replace the product.

In **Latvia**[60]**,** the consumer is, in the first instance, only entitled to request repair or replacement. Only if this is not possible or cannot be done within a reasonable time frame, consumer can request partial or full refund.

Lithuania has an interesting approach focusing on the quality of the replacement item. Where the things sold do not correspond to the quality requirements the buyer (consumer) shall be entitled to demand, at his own choice;

1) to eliminate the defects without any payment within a reasonable time,
2) to replace the thing of improper quality with a thing of satisfactory quality,
3) to reduce the price accordingly,
4) to cancel the contract and ask for full refund.

The consumer has no right to cancel the contract if the defect is minor.

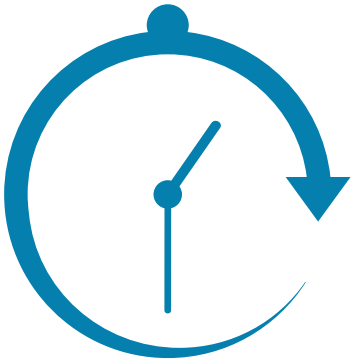
● 60 In Latvia, the hierarchy of remedies foreseen by the Directive should be applicable from Summer 2015, with the entry into force of the new consumer law.

Practical example: case received by the ECC-Net

A Slovak consumer bought a children's bicycle from a Hungarian web shop. After using it for just over a year, the plastic bearing began to get worn out and the chain started coming off. Based on an expert's opinion the bicycle was unrepairable. Nevertheless, the seller rejected the consumer's claim under the legal guarantee. Under the applicable Slovak law, if a product is unrepairable the consumer has two options: ***replacement or withdrawal*** *from the contract.* ***The final decision belongs to the consumer.***

Thanks to the intervention of the ECC-Net, the seller reimbursed the total purchase price.

Within what time frame must the seller provide a remedy?



In the event of non-conformity of the purchased goods, Article 3.3 of the Consumer Sales and Guarantees Directive states,

"Any repair or replacement shall be completed within a ***reasonable time*** *and* ***without any significant inconvenience*** *to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods."*

The Consumer Sales and Guarantees Directive does not set any specific deadline which the seller has to respect, but **several Member States do lay down precise deadlines** within which the seller must comply with the legal guarantee obligations.

As indicated previously, in most of the countries, the first remedy to be provided is repair or replacement. This must be done free of charge and **within a reasonable time frame in 19 countries (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Iceland, Italy, Lithuania, Malta, Netherlands, Norway, Poland, Romania, Spain, Sweden and United Kingdom).**
What constitutes a reasonable time frame usually depends on each case. Therefore, it is important that the consumer sets the seller a deadline for providing a remedy[61].

In **Bulgaria, France and Luxembourg**, the deadline for providing a remedy is 1 month. In Hungary, the seller must make an effort to perform the repair or replacement within 15 days. In Romania, the seller or repairer has to bring the goods into line with requirements within no longer than **15 calendar days** of the moment when the consumer notifies them of the lack of conformity or hands over the product to the seller or their representative. The national law specifies that if the period required for the repair exceeds 15 calendar days, the consumer is entitled to cancel the contract and get a refund. For long term use products (e.g. electronic devices) when the combined non-functioning period due to defects during the guarantee period is more than 10% of this period, the consumer can ask for a replacement or a refund.. A seller operating in **Estonia** is obliged to accept a written complaint and answer the consumer within **15 days.**

In **Poland,** if a consumer demands an item to be exchanged or a defect to be removed or submits a statement on price reduction and specifies the amount by which the price is to be reduced and if the seller does not take a position on the demand within fourteen days, it is deemed that the seller recognizes the demand. There is no deadline for implementing a solution, only the requirement that it should happen within a reasonable time and without undue inconvenience for the consumer.

If repair or replacement is impossible within the set deadline, the seller must provide a partial or total refund. This has to be done within **1 month** in **Bulgaria**, and within a **reasonable time frame** in **Germany, Iceland, Lithuania, Malta, Norway and Sweden**.

No deadline for this is set in **Austria, Belgium, Croatia, Estonia, Finland, France, Hungary, Ireland, Italy, Netherlands, Poland** (however the trader has to answer the complaint within 14 days)**, Spain and United Kingdom**.

In **Slovenia**, a specific deadline of 8 days is fixed by law within which the seller must satisfy the consumer's request or reply to the consumer contesting the existence of the defect. If the deadline is not met by the seller and the existence of the defect is not contested, the Market Inspectorate can issue an administrative decision. If the trader does not respond to the consumer's request, the Market Inspectorate can impose a fine. In the framework of the 1-year obligatory guarantee on specific technical products[62], the "Consumer Protection Act" also includes provisions regulating situations where the producer does not replace or repair goods within the prescribed time frame. In such a situation, the consumer may rescind the contract or ask for a price reduction.



● 61 In Denmark, the repair must take place within reasonable time and if not the consumer can ask for a refund. ● 62 See also page 49

In the **Czech Republic, Latvia, Portugal and Slovakia**, a deadline of **30 days** is set for applying the legal guarantee. In Latvia, if the seller does not meet this deadline, the consumer is entitled to claim compensation for the losses incurred due to the delay. In Slovakia, once the deadline passes, the item is considered unrepairable and the consumer has a right to a replacement or a refund.

In **Greece,** the seller or repairer has to bring the goods into line with requirements within **a justifiable period** and without significant inconvenience to the consumer. In **Germany,** it is **up to the consumer to set a reasonable deadline** when he/she contacts the seller to ask for the application of the legal guarantee. It is therefore recommended to contact the seller in writing, as the deadline fixed by the consumer is binding on the seller. If the seller does not apply the legal guarantee within the set deadline, the consumer can ask for cancellation of the sale, refund and, if applicable, damages.

In **Lithuania**, while the seller must remove the defects within a **reasonable time frame,** the legislation does not define a specific period. Rather, it depends on the nature of the item, the complexity of the defects and other factors. If a deadline is established in the guarantee document or by the repair service the consumer uses, the seller or his/her representative must comply. If the consumer claims a refund, the money has to be returned as soon as possible but not later than **15 days** after the return of the item, unless the consumer and the seller have agreed otherwise.

Necessary spare parts for repair and their availability

In some countries, sellers have argued that the deadlines for repair are difficult to meet as they often rely on spare parts to be delivered to them or to the repairer.
Several countries have laid down obligations with regard to spare parts, either for their provision, or for information on their availability. Often, this question is linked to the commercial warranty which a seller or producer may provide on the product purchased by the consumer.

The **French** consumer code requires, in Article L 111-1 II, the producer to **inform** the seller of the period in which the spare parts necessary for the use of the goods are available on the market. The seller has to pass this information on to the consumer before the conclusion of a contract. The recent French consumer law[63] goes further by imposing – during the period of availability of spare parts – an obligation on the producer or importer to **provide** the seller or repairer with the necessary parts, within a deadline of **2 months**.

In **Italy**, there is no obligation of information but the seller should **inform** the consumer if the goods are out of production on the legal basis of fairness, transparency and equity in contractual relations, as these are recognised as fundamental consumer rights.

● 63 loi « consommation » du 17 mars 2014, article L 111-3 of the consumer code, applicable since 1st March 2015

In **Slovenia**, when concluding the sales contract the seller has to provide the consumer with an obligatory guarantee for specific technical goods granted by the producer. This guarantee must include **information** on the period following the expiry of the guarantee and during which the entity issuing the guarantee must provide maintenance, spare parts and coupling devices. The period in which **maintenance and spare parts need to be available** is **at least 3 years from expiry of the guarantee.**

In **Malta**, the Consumer Affairs Act (Article 93 sub article 1) states that if the goods purchased by the consumer are such that they may require maintenance or replacement of parts, **replacement parts and an appropriate repair service** must be made available **for a reasonable period** from the date of delivery of the goods by the seller to the consumer. The seller or the producer may release themselves from this obligation by expressly notifying the consumer in writing, before the contract is concluded, that they do not supply replacement parts or repair services.

In **Portugal,** since the transposition of the Consumer Rights Directive on 14th February 2014 "The consumer has the right to after-sales assistance, namely **provision of spare parts, for the average expected lifespan** of the products supplied".

In **Cyprus,** national law indicates that availability of spare parts is an aspect of product quality, but it does not specify any duration of availability.

In the **Irish** law transposing the Directive, there is no obligation for a seller to inform a consumer about spare parts. However, the Sale of Goods and Supply of Services Act 1980, section 12 includes a guarantee that spare parts and an adequate after-sales service will be made available by the seller in such circumstances and for such period as are stated in an offer, description or advertisement by the seller on behalf of the producer or on his/her own behalf.

In **Greece and Romania**, national provisions state that the seller (Greece) or the producer (Romania) should ensure provision of spare parts for the entire expected lifespan of the product.



The availability of spare parts is clearly linked to the durability of goods and their obsolescence[64].

Circular economy and reparability of appliances

Thanks to the revised EU Ecodesign and Energy Labelling legislation entering into force on March 1st 2021, new requirements on the reparability and recyclability of appliances should apply: availability of spare parts, easy replace ability and access to repair and maintenance information for professional repairers for refrigerating appliances, household dishwashers, household washing machines and household washer-dryers, electronic displays and refrigerating appliances with a direct sales function. The text is supposed to be published summer/autumn 2019.

● 64 See also in French http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/etudes_et_rapports/Etude-Obsolescence-Web.pdf

Costs of replacement, repair or cancellation of the contract

According to Article 3.2 of the Consumer Sales and Guarantees Directive in the event of lack of conformity, the goods must be brought into conformity **free of charge**. According to Article 3.4.

"The terms free of charge in paragraphs 2 and 3 refer to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials."

This means that, in as far as the repair or replacement of the goods are provided for under the legal guarantee, the seller cannot ask for a fee or impose any costs on the consumer. This includes **transport/shipping costs**, as well as any **other cost linked to repair** (spare parts, labour, etc.). Usually it also includes expert opinions, even if this is not clearly foreseen by the Directive[65], and **administrative fees.**

During check n° 1 on after sales practices carried out by the ECC-Net[66], in Austria, one of the sellers indicated that in order to decide if he/she would take back the defective item, which was still covered by the legal guarantee and the 6-months reversal of burden of proof, the consumer "would have to come to the shop so that he/she could have a look at the camera. And in any case, to have the camera inspected, the consumer would have to pay EUR 40, even if the seller agreed to repair it."

The question of communication costs that the consumer must incur in order to convince the seller to apply the legal guarantee (and the commercial warranty) i.e. phone costs, postage for letters or registered mail, etc. also needs to be considered.
Bank or telephone communication fees may also be an issue.



● 65 See also page 24 ● 66 See also page 110

Practical example: case received by the ECC-Net

A Hungarian consumer bought a pair of football boots from a German seller. After 1 month of use, one of the studs came off. The consumer returned the boots and paid the return costs. The seller was willing to replace the boots with the same model if the consumer paid the shipping costs, or to refund the price of the boots.

The ECC-Net, taking into account the nature of the complaint and the fact that the company was in its territory of jurisdiction, transferred the case to the German Online Dispute Resolution (ODR) body[67] to settle the complaint. The ODR was able to reach an agreement and the seller finally reimbursed the total purchase price and the shipping costs.

In another Hungarian case the consumer was not so lucky.

He ordered 2 fishing rods from an Austrian web shop. The consumer received the package without noticing any damage; it was wrapped properly with bubble wrap. However, when he opened the bubble wrap he noticed that one rod was damaged. The consumer complained to the seller who refused the claim and stated that the consumer should have opened the box and checked the products upon delivery.

When contacted by the ECC-Net the seller asked the consumer to send the rod back. The consumer did so, but the postage fees were equal to the purchase price. Even though the seller refunded the price of the faulty rod, he/she declined to reimburse the consumer for the postage fees.

67 www.online-schlichter.de

Practical example: case received by the ECC-Net

In March 2014, a Belgian consumer ordered a bicycle from a major UK online sporting goods retailer. The consumer discovered that the item was defective upon delivery. The trader agreed for the bike to be sent back and to provide a full refund. The original purchase price was credited to the consumer's card, but the reimbursement of the return postage was sent to the consumer by cheque, cashing of which would incur significant processing fees. The consumer contacted his local ECC-Net office and the case was shared within the ECC-Net.

The trader was contacted and asked to consider an alternative method of payment, but they refused to accommodate this request.

Hotlines used for after sales services cannot be overpriced (e.g. through premium services) and in cases of requests for application of the legal guarantee, the consumer should receive reimbursement for the communication costs, as the remedy should be provided free of charge.

In addition, Article 21 of the Consumer Rights Directive states,

"Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate."

However, this point still seems to be regulated differently in different Member States.

Hotlines enabling consumers to ask for application of the legal guarantee must be ***accessible at a usual rate in 24 countries (Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Estonia[68], Finland, France, Germany[69], Greece, Hungary[70], Ireland[71], Italy, Latvia, Luxembourg, Netherlands[72], Poland, Portugal[73], Romania, Slovenia, Slovakia, Spain, Sweden[74] and United Kingdom). In the Netherlands,*** *the basic tariff which can be applied is indicated in a ministerial regulation.*

A consumer who is overcharged is entitled to claim for reimbursement of the expenses. In **Lithuania and Poland,** consumers may be charged expensive rates for telephone communication but the price has to be indicated.

If the contract is cancelled, even though every Member State has transposed the need to provide the legal guarantee free of charge into their national legislation, a question remains regarding the possibility for the seller to claim compensation for the time during which the consumer had use of the item before the defect arose[75].

● 68 In Estonia, the consumer must be offered several alternative means of communication with the seller. ● 69, 70, 71, 72, 73, 74 Since transposition of the Consumer Rights Directive ● 75 See page 39.

The duration of the legal guarantee after repair or replacement

6

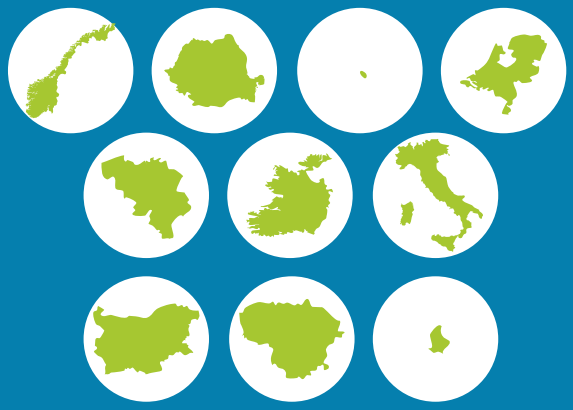


Once the defective item is repaired or replaced, for how long is it covered by the legal guarantee? **Does a new period start, or does the guarantee of the item initially purchased continue?** For a camera purchased in January 2013 and repaired in December2013, is there only one year left (2014) or does a new period start, to run until December 2015?
According to the 18th recital in the preamble of the Consumer Sales and Guarantees Directive

"Member States may provide for suspension or interruption of the period during which any lack of conformity must become apparent and of the limitation period, where applicable and in accordance with their national law, in the event of repair, replacement or negotiations between seller and consumer with a view to an amicable settlement"

So Member States may decide to interrupt or suspend the legal guarantee period

10 countries ***(Belgium, Bulgaria, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway and Romania)*** *decided that during repair or replacement the 2-year duration of the legal guarantee is suspended and resumes as soon as the consumer receives the repaired or replacement item.*





In **Austria, Croatia, Greece and Iceland** a **new 2-year period** starts when the repaired or replaced item is delivered to the consumer.

In **Denmark,** once the **replacement item** is delivered to the consumer, a **new 2-year legal guarantee** period starts. In the event of a repair, the consumer can make a claim **within 3 years** if the same defect occurs again.

In **Norway**, in the case of replacement or a repair which is so extensive that it can be compared to a replacement, the legal guarantee period is extended to an additional 2 or 5 years. However, when considering whether the product is defective this will be based on when the product was originally purchased. If a new defect occurs, the seller must be notified in reasonable time, and certainly within the legal prescription period.

In **Poland and Slovakia**, a **new guarantee period** starts in the case of **a replacement**. This is also the case in **Slovenia**, for the **replaced item** or the major components which have been replaced, unless otherwise agreed in the contract.

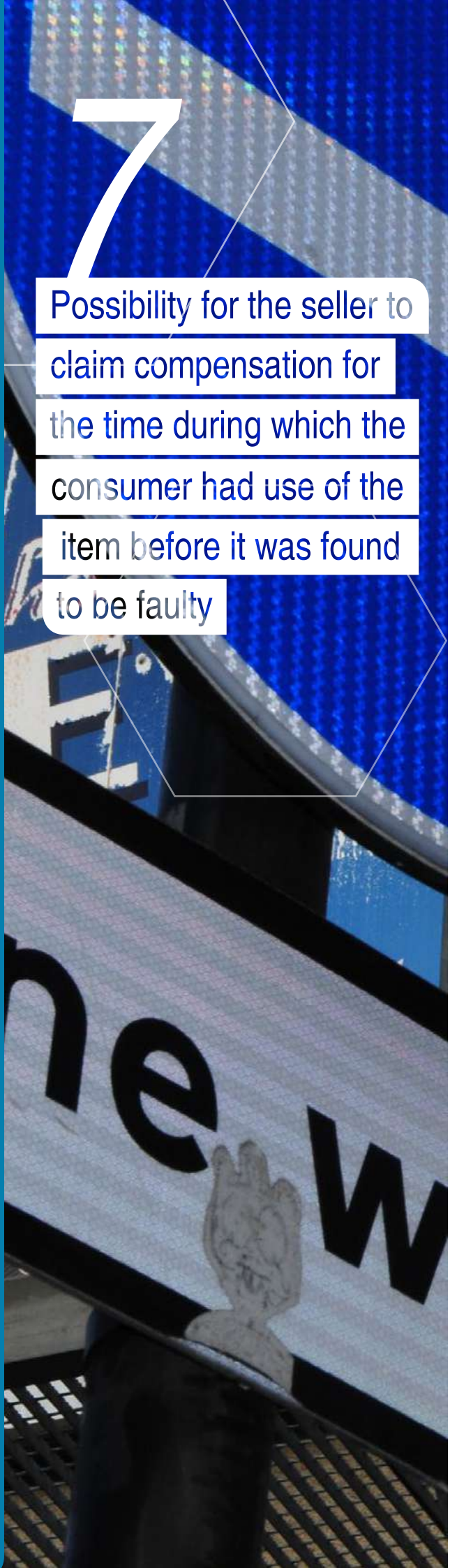
In **Spain**, the law distinguishes between repair and replacement. In the case of **repair**, the legal guarantee is **suspended.** Once the item is repaired, the legal guarantee period continues. In the case of a **replacement**, the guarantee **period restarts for 2 years** from delivery of the replacement product.

A similar situation exists in **Hungary** where the Civil Code states that: "The legal guarantee period shall be **suspended** for the time during which the goods are being **repaired** and the consumer cannot use them. If the goods or any major component of the goods are **replaced** or repaired, the guarantee **period shall recommence** for the goods or major components that have been replaced or repaired as well as for any defect resulting from the repair."

In **Germany and Sweden**, the law is not explicit on this point. In **Germany,** the courts may rule that the legal guarantee starts anew for any exchanged parts. To prevent this, sellers usually do not accept the existence a defect covered by the legal guarantee but repair the item, claiming that this is a goodwill gesture and without acknowledging any legal obligation. In **Sweden**, in the event of a repair: Not the product itself, but the replaced part gets an extended warranty, if the same error that has been remedied returns. The consumer can make a claim within 3 years, if the same defect occurs again.

In **Bulgaria**, there is no special provision for this. The Bulgarian enforcement authority considers that legal guarantee lasts two years from the time of the original purchase. A replacement is not a new purchase and the original terms of the guarantee continue to apply.

In **France,** the law doesn't expressly say for the legal guarantee but the general approach is that the repair or replacement does not benefit from a new guarantee; the guarantee rights of the first item remain applicable. The law only clarifies this point for commercial warranties. Any period of immobilisation of 7 days or more extends the remaining warranty by the time needed for repair.



7 Possibility for the seller to claim compensation for the time during which the consumer had use of the item before it was found to be faulty

Quite often a defect does not occur right away but only after the consumer has used the item for some time. **If the item is replaced, the consumer receives a new item which is to his/her advantage.** Even though the Consumer Sales and Guarantees Directive provides for the remedy to be free of charge[76], the seller may consider that this entitles him/her to compensation.

This is not covered by the Consumer Sales and Guarantees Directive and **Member States are therefore free to impose national rules**. In civil law, in the event of a cancellation of a sale, the seller may in principle claim compensation for the time during which the other party had use of the item. However, it should be pointed out that the **Court of Justice of the European Union in Case C-404/06 concluded** that

"the Directive precludes national legislation under which a seller who has sold consumer goods which are not in conformity may require the consumer to pay compensation for the use of those defective goods until their replacement with new goods."

In **Hungary for example**, in the event of replacement (or withdrawal from contract), the consumer is not liable to compensate the seller for loss in value if the defect occurrs as a consequence of proper use[77].

In the following **8 countries, the seller is allowed to ask the consumer for compensation for the time he/she had use of an item** that later turned out to be defective:

- In **Belgium**, in the event of cancellation, the seller can take into account the period during which the consumer used the item before it broke down, and deduct it from the amount to be refunded to the consumer.

- In the **Czech Republic**, if the contract is cancelled (or the consumer demands a replacement) and the goods cannot be returned in good condition or complete, compensation can be requested by the seller to the amount corresponding to the benefit the consumer gained from the use of the goods[78]. The amount or calculation method is not specified by law.

- In **Iceland, Finland and Sweden**, if the contract is cancelled, the seller is entitled to claim compensation for the time during which the consumer had use of the item before it turned out to be defective. In Sweden, the consumer must pay reasonable compensation if he/she has derived profit or any other benefit from the goods.

● 76 See page 34 ● 77 See also page 35 ● 78 Article 2110 of the new Czech Civil Code

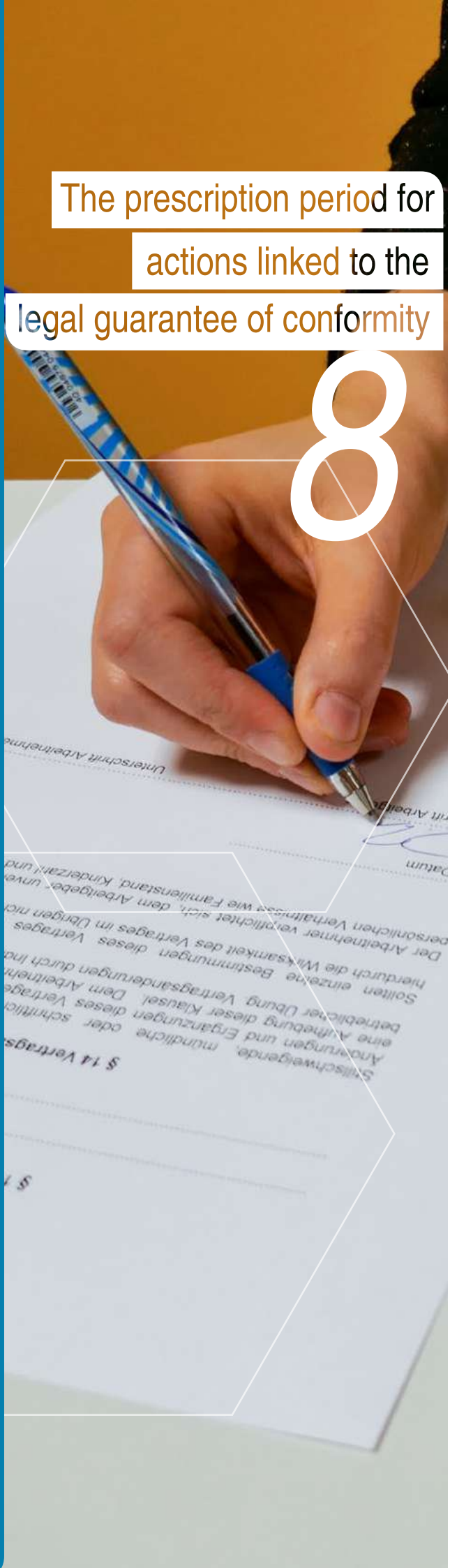
In **Denmark**, the possibility of claiming compensation depends on the product. According to case law from the ADR body and the Supreme Court, the seller can, in some cases, claim compensation for items such as TVs and cars.

In **Latvia,** when rembursing the consumer, the amount of money paid for the goods, the depreciation of the goods or benefit acquired by the consumer using the goods may be taken into account based on whatthe contracting parties have agreed[79].

In **Ireland,** there is no specific provision for the seller to retain a portion of the purchase price due to 'beneficial use'. However, in practice in assessing a claim, account is taken of all circumstances in order to secure a proportionate and reasonable outcome.

In the **United Kingdom,** the legislation allows the seller to retain a proportion of the price paid by the consumer 'to take account of the use he has had of the goods since they were delivered to him'. The amount of the reduction may, where appropriate, be the full amount of the price or whatever the consumer is required to transfer.

79 For more details on how the Latvian expert examination is regulated see page 26.



The prescription period for actions linked to the legal guarantee of conformity

8

The prescription period is the period during which the consumer can take **legal action against the seller.** The **starting point** of the prescription period is in principle the time of **delivery of the item**, but may be the **moment of discovery of the defect or non-conformity.** But can the prescription period be shorter than the total duration of the legal guarantee, which is usually 2 years but can be longer in some countries[80]?

According to Article 5.1 of the Consumer Sales and Guarantees Directive,

"The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. If, under national legislation, the rights laid down in Article 3(2) are subject to a limitation period, that period shall not expire within a period of two years from the time of delivery.[81]"

The prescription period can never be shorter than the legal guarantee period. Only in **Belgium and Poland**, is the prescription period given as 1 year from discovery of the defect, but it cannot expire before the end of the 2-year legal guarantee. In Poland, the maximum prescription period is therefore 3 years. In Belgium, if the consumer discovers the problem within 2 months of purchase, as the goods are covered by the legal guarantee rules, he/she has the possibility to take legal action within 22 months of the discovery instead of only 12.

In the following Member States, the prescription period in the event of non-conformity of goods is based on the legal guarantee period and is therefore **2 years from delivery of the goods** to the consumer: **Austria, Bulgaria, Croatia, France, Germany, Greece, Latvia, Lithuania, and Malta.**
The prescription period is 2 years **from date of notification of the existence of a defect by the consumer to the seller in the Luxembourg, Netherlands, Portugal and Slovenia.**

In **Hungary,** the prescription period is limited to 2 years from delivery of the goods, but if the consumer is unable to enforce a claim for a legitimate reason, the prescription period is suspended. In such cases, the claim remains enforceable for 1 year from the time when the impediment is eliminated, even if the 2-year limitation period has already elapsed or has less than 1 year to run.

● 80 See also page 16 ● 81 See also recital 17 in the preamble of the Consumer Sales and Guarantees Directive "Whereas it is appropriate to limit in time the period during which the seller is liable for any lack of conformity which exists at the time of delivery of the goods; whereas Member States may also provide for a limitation on the period during which consumers can exercise their rights, provided such a period does not expire within two years from the time of delivery; whereas where, under national legislation, the time when a limitation period starts is not the time of delivery of the goods, the total duration of the limitation period provided for by national law may not be shorter than two years from the time of delivery."

In **Italy**, the prescription period for enforcing claims In **Italy,** the prescription period for enforcing claim of non-conformity expires **26 months** after delivery of the goods. In **Cyprus, Estonia and Spain**, the prescription period is limited to 3 years from delivery of the goods. In **Denmark, Finland and Romania**, it is also limited to **3 years**, but from the moment the consumer notices or should have noticed the defect. In the **Czech Republic and Slovakia,** the prescription period is also **3 years**, but from the date of notification of the existence of a defect by the consumer to the seller.

Sweden foresees a **10-year** general prescription period. The consumer can take legal action within 10 years of delivery of the goods, if he/she makes a complaint to the seller within the legal guarantee period of **3 years.**

Ireland applies a **6-year** limitation period during which consumers may be able to exercise their rights, whether in relation to new or second-hand goods.

In the **United Kingdom**, there are two different limitation periods: **6 years** from delivery of the goods in England, Wales and Northern Ireland and **5 years in Scotland**. Consumers can make claims for non-conformity within these periods, but this obviously does not mean that all items are effectively guaranteed for this length of time. Each case is considered on its merits.

In **Norway**, the prescription period is **3 years** from delivery of the item, or **5 years** based on the legal guarantee for longer-lasting items[82], unless there is a suspension of the statutory limitation period. In cases of gross negligence or conduct contrary to good faith, the deadline can be extended. To these 3 years, 1 year can be added for each year in which the consumer was unaware of the defect up to a **maximum of 10 years** (13 in total).



82 See page 17



According to the 9th recital in the preamble of the Consumer Sales and Guarantees Directive,

"Whereas the seller should be directly liable to the consumer for the conformity of the goods with the contract; whereas this is the traditional solution enshrined in the legal orders of the Member States; whereas nevertheless the seller should be free, as provided for by national law, to pursue remedies against the producer, a previous seller in the same chain of contracts or any other intermediary, unless he has renounced that entitlement; whereas this Directive does not affect the principle of freedom of contract between the seller, the producer, a previous seller or any other intermediary; whereas the rules governing against whom and how the seller may pursue such remedies are to be determined by national law;"



9

Possibility for the seller applying the legal guarantee to take action against the importer, or any other intermediary in the sale chain up to and including the producer

So the final seller is responsible to the consumer[83] but he/she may make a claim against the producer, the transport company or any other intermediary in the contractual chain[84]. **A seller** therefore **cannot redirect a consumer claiming application of the legal guarantee to the producer or any other intermediary in the supply chain.** However, this is often observed or reported by consumers; see also the results of the checks made by the ECCs[85].

In **Austria**, the final seller can contact his/her supplier within 2 months of fulfilling the legal guarantee obligations to the consumer. In **France**, the seller can seek recourse against intermediaries in the sale chain up to and including the producer based on the dispositions of the Civil Code.

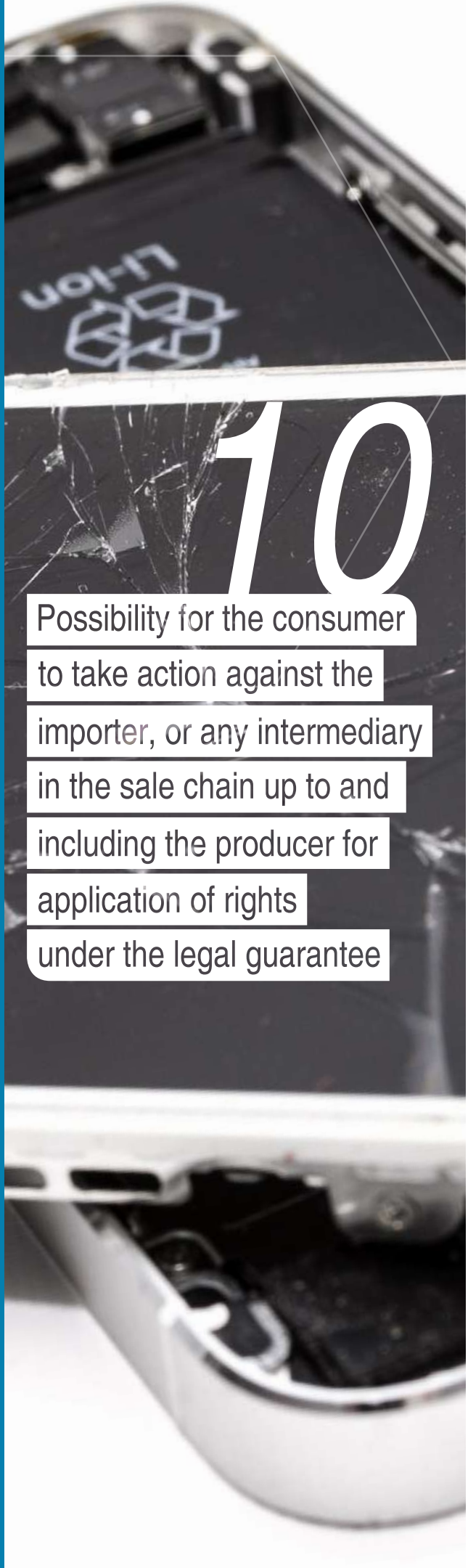
According to **Spanish** law, the consumer can make a claim directly to the producer for the purpose of obtaining replacement or repair of a product when contacting the seller is impossible or causes excessive inconvenience to the consumer. On the other hand, those who are liable to the consumer have the possibility to seek redress from the party responsible for the lack of conformity within 1 year of the moment in which they provide the remedy to the consumer.

Finnish law recognises the producer's responsibility for products sold ("previous sales level's responsibility").

In **Germany,** recourse under product liability rules or general contract law may be possible.

In the **Czech Republic, Ireland, Slovakia and United Kingdom**, it depends on the terms of the contracts between the intermediaries in the supply chain.

● 83 See also page 13 on direct liability of the seller. ● 84 See also Communication from the Commission to the Council and the European Parliament of 24 April 2007 on the implementation of Directive 1999/44/CE of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability COM(2007) 210 final - Not published in the Official Journal]. ● 85 See page 110.



10

Possibility for the consumer to take action against the importer, or any intermediary in the sale chain up to and including the producer for application of rights under the legal guarantee

Although the Consumer Sales and Guarantees Directive does not provide for the consumer to claim application of the legal guarantee of conformity from any other party in the sale chain, **national law of some Member States does foresee such a possibility and also provides for direct liability of the producer.** In principle the seller is responsible for application of the legal guarantee, but **in some cases it might be in the consumer's interest to take action against another intermediary** in the supply chain, i.e. if the seller goes bankrupt.

According to **Finnish** legislation, the consumer has the right, with certain restrictions, to make a claim related to a defect in a product against a business which supplied the goods for resale at an earlier point in the supply chain.
This is also the case in **Sweden** if the seller is insolvent, has ceased trading or cannot be located.

In **Norway,** an option exists to forward a claim to an importer, a national producer or previous seller in the chain.

In **Iceland**, if the seller has a claim against another intermediary the supply chain, the consumer can also make a claim against this party.

In **France,** under the legal guarantee against hidden defects[86], the consumer can make a claim against an intermediary in the supply chain other than the final seller.

The same situation exists in **Spain**, where the consumer can also make a direct claim against the producer for replacement or repair when contacting the seller is impossible or excessively inconvenient to the consumer. For this purpose, manufacturers, importers or other intermediaries are considered producers.

Under the **Hungarian** product guarantee[87], which covers movable goods only, the consumer can make a claim against the producer. The manufacturer, the importer and distributor are considered as producers for this purpose. A producer can be held liable for two years from the date on which they distributed the product. In the event of a fault in a product, the consumer must inform the producer without delay. Informing a producer within 2 months is considered to be without delay. The consumer is liable for any damage resulting from late notification. The consumer can ask the producer to repair the product or – if this cannot be done within a reasonable time frame and without prejudice to the consumers interests – to replace it. The producer is exempted from liability if it can be proven that

- they did not manufacture or distribute the product,
- the defect could not have been detected, taking into account existing scientific and technical knowledge,
- the defect was caused by the application of legal or mandatory provisions.

● 86 See page 47 ● 87 See page 49

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In **Slovenia**, under the 1-year obligatory guarantee on specific technical products[88] the consumer can make a claim against any intermediary in the supply chain.

In **Ireland**, although it relates to commercial warranties rather than the legal guarantee, section 19(1) of the Sale of Goods and Supply of Services Act 1980 refers to a right of action for consumers against others in the supply chain. "The buyer of goods may maintain an action against a producer or other supplier who fails to observe any of the terms of the guarantee as if that producer or supplier had sold the goods to the buyer and had committed a breach of warranty, and the court may order the producer or supplier to take such action as may be necessary to observe the terms of the guarantee, or to pay damages to the buyer. In this subsection, "buyer" includes all persons who acquire title to the goods within the duration of the guarantee and, where goods are imported, "producer" includes the importer."

In the **United Kingdom** it is normally only possible to make a claim for damages (including personal injury claims) caused by a faulty or unsafe product, but not for remedies under the legal guarantee. In some isolated cases, it may be possible to make such claims against third parties, but this is normally prevented by inserting appropriate clauses into contracts made higher up the supply chain.
In **Portuguese** law, the consumer is allowed to claim repair or replacement from the producer or the representative of the producer in his/her area of residence.

In **Latvian** law, in the event of non-conformity of goods, a consumer is entitled to submit a claim to the trader. A trader is understood as a natural or legal person (including an importer) who within the scope of his/her economic or professional activity offers or sells goods to consumers, including by intermediary of other persons acting in his/her name.

Recourse against the producer may also exist if the defective product causes economic or bodily harm, based on product liability.

Practical example: case received by the ECC-Net

In March 2013, a Belgian consumer bought a pair of leather trousers in a Belgian shop for EUR 1050. 3 months later they were washed in accordance with the washing instructions, but took on the texture of cardboard 2 days after. The consumer complained to the seller who referred the consumer to the French producer. The producer replied that the consumer had not followed the washing instructions.

Thanks to the intervention of the ECC-Net, the consumer was offered a voucher for EUR 1050.

88 See page 49



Other legal guarantee foreseen by the EU: Liability for defective products causing economic or bodily harm

Apart from the Consumer Sales and Guarantees Directive, and without prejudice to it, another EU Directive provides protection for consumers if a defective product causes them economic or bodily harm: **Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.**

As no direct remedy scheme is foreseen by this Directive and a legal action might be necessary to determine the damage caused and the appropriate compensation, including moral damages, the ECC-Net is not suited to intervene in most such complaints. The following only includes basic information on the regime established by the EU, which provides maximum harmonisation, and therefore should be implemented in the same way in all EU countries[89].

Council Directive 85/374/EEC establishes the **direct liability of the producer towards the injured person:**

> *"Whereas, in situations where several persons are liable for the same damage, the protection of the consumer requires that the injured person should be able to claim full compensation for the damage from any one of them[90];"*

Bodily and economic harm are covered by the scope of the Directive:

> *"Whereas the protection of the consumer requires compensation for death and personal injury as well as compensation for damage to property;"*

According to Articles 10 and 11 of Directive 85/374/EEC, *"1. Member States shall provide in their legislation that a **limitation period of three years** shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run **from the day on which the plaintiff became aware**, or should reasonably have become aware, of the damage, the defect and the identity of the producer. 2. The laws of Member States regulating suspension or interruption of the limitation period shall not be affected by this Directive. Member States shall provide in their legislation that the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the **expiry of a period of 10 years from the date on which the producer put into circulation the actual product** which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer."*

So the consumer has 3 years from the date on which he/she suffers damages to take legal action. The producer's liability ends 10 years after the product is put into circulation, unless legal action is started by the injured party. The **burden of proof is on the plaintiff** according to Article 4 of the Directive *"The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage."*

The national transposition measures can be consulted here[91].

● 89 See Court of Justice of the European Union, Case C-154/00 ● 90 Also Article 5 of Directive 85/374/EEC: "Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse." ● 91 http://eur-lex.europa.eu/search.html?type=advanced&qid=1402653413957&or0=DN%3D71985L0374*,DN-old%3D71985L0374*


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Other legal guarantees foreseen by national law coexisting with the legal guarantee of non-conformity introduced by the Consumer Sales and Guarantees Directive

The Consumer Sales and Guarantees Directive, which is a minimum harmonisation directive, coexists in several Member States with other legal guarantees or provisions for recourse which pre-dated it or which were created to complete the legislative framework foreseen by the Directive.

Cancellation of a sale based on lack of consent or "error"

The national legal systems usually provide a possibility to cancel a contract due to lack of consent, in cases of an error.

In the **Netherlands for example**, the consumer can make a claim for "error" on the basis of Article 6:228 of the Dutch Civil Code. An agreement made on the basis of error which would not have been concluded if the terms had been presented accurately, is voidable if: 1) the error is due to information provided by the other party, unless this party can assume that the agreement would have been concluded even without this information, 2) at the time when the other party should have given the consumer the information, the other party knew or must have known about the error, 3) at the time of concluding the agreement, the other party was under the same incorrect assumption as the consumer, unless the other party could not have understood that the consumer would not conclude the agreement if the facts were presented correctly.
The consumer can choose to claim on the basis of this article or of non-conformity of the item, but an **action based on error will cancel the agreement but not lead to repair or replacement. The consumer also bears the burden of proof** as no reversal of burden of proof exists. However, the **prescription period is 3 years** from discovery of the defect (whereas it is 2 years for non-conformity).

Legal guarantee against hidden defects

This presupposes that the lack of conformity is not obvious or apparent. The **main advantage** of this guarantee for the consumer is the **starting point of the prescription** period for legal action against a seller.
Whereas under non-conformity rules the starting point is delivery of the item, under hidden defect rules it is the **date on which the consumer discovers the hidden defect.** The prescription period is thus longer which may be of advantage to the consumer if he/she discovers a defect more than 2 years after purchase.

Luxembourgish civil law (Article 1648) establishes that the prescription period for action starts when the buyer notices or should have noticed the defect. Once he/she notices the defect, it is necessary to inform the seller within a short period. The prescription period is 1 year from when the seller is notified of the defect.
According to **French** civil law, the consumer has 2 years from discovering the defect to take the case to court (foreclosure of the action under general contract law is 5 years after the sale).

In some countries, an action based on hidden defects allows the consumer to make a claim against any intermediary in the sale chain up to and including the producer.

As the guarantee against hidden defects is generally established in civil law and not specific consumer law, there is **no reversal of burden of proof and the consumer has to prove the existence of the defect**[95].

Depending on the case, it might be in the consumer's interest to be able to choose between non-conformity and hidden defect rules. This is possible, for example, in **Belgium, Spain, France, Italy**[96]**, Luxembourg and Romania**[97]**.**

In **Spain**, a guarantee against hidden defects exists in the Civil Code. The consumer may choose between the rules on hidden defects in the Civil Code or the non-conformity rules in consumer law, but may not use both simultaneously unless seeking compensation for damages under the Civil Code. It should also be noted that the Civil Code only provides for termination of a contract and compensation for damages, whereas the non-conformity rules also provide for repair or replacement.

Legal guarantee for immovable property or construction work

Concerning immovable property, several Member States have specific legal rules governing defects in real estate transactions. In **Austria and Slovakia**, the legal guarantee is 3 years, it is 5 years in **Czech Republic, Germany, Greece, Hungary, Poland and Portugal**, and 10 years in **Belgium, Spain, France, Croatia, Italy, Slovenia and Sweden.**

For construction work, in **Bulgaria** the guarantee is 5-10 years, in **Luxembourg** it is 2-10 years, depending on the type of construction. In **Sweden**, for work on land, buildings or other structures on land, in water or on other fixtures, the trader has to be put on notice no more than 10 years after completion of the service.



● 95 For further information on this point see page 22 ● 96 In Italy, the time frame for complaining about hidden defects is 8 years from delivery (with a prescription deadline of 1 year from discovery of the defect). This rule applies exclusively to business-to-business purchases. ● 97 A guarantee for hidden defects has been introduced in the new Civil Code. This guarantee applies after the legal guarantee of conformity or the commercial warranty have expired. Action based on this disposition is not limited by a guarantee period, but a prescription period of 1 year from when the legal guarantee or commercial warranty ends. The defect must be reported within two working days. The remedies are the same as those under the legal guarantee of conformity.

Mandatory legal guarantees in Hungary

Hungarian law foresees two additional legal guarantees[98]:

- **Legislation covering new durable consumer goods**
  This guarantee covers specific[99] new durable consumer goods, such as mobile phones, furniture, electronic consumer goods and cars, and has a duration of 1 year. It has no effect on the consumer's rights under the legal guarantee of conformity. The burden of proof is on the seller for the whole year. The seller must give the consumer a guarantee document with specific content set by law.
- **The Hungarian guarantee for movable products allows a consumer to request any intermediary in the supply chain to make repairs or, if this is impossible or cannot be done within a reasonable time frame, to replace the product[100].**

Mandatory Slovenian legal guarantee for specific technical products

As explained, the Slovenian Consumer Protection Act includes a 1-year obligatory guarantee for specific technical products (as defined by Regulation by the Ministry of Economic Development and Technology). This guarantee must be issued by the producer[101]. It allows the consumer to make a claim against any intermediary in the sale chain, up to and including the producer. Within the 1-year guarantee period, the consumer is entitled to free elimination of faults within 45 days. If this requirement is not met, the legal guarantee of conformity is applicable[102].

● 98 Hungarian Government Decree No. 151/2003 on the mandatory guarantee on certain consumer goods designated for long-term use ● 99 See list in the appendix of the decree ● 100 See also page 44 ● 101 See also page 24 ● 102 See also page 31



Commercial warranties

Commercial warranties have become an integral part of marketing. Both the Consumer Sales and Guarantees Directive and the Consumer Rights Directive include specific rules related to commercial warranties. The term used for commercial warranties in the Consumer Rights Directive is "commercial guarantee" [103] and in the Consumer Sales and Guarantees Directive the term is "guarantee"[104].
During check n° 3 conducted by the ECC-Net, it became clear that the **majority of items in the product categories checked are offered for sale with a commercial warranty**. In about 60% of the online offers checked, a reference to a commercial guarantee was made.

The survey led by ECC Belgium[105], revealed that 56% of respondents had purchased an extended warranty. **The products for which commercial warranties had been purchased most often were household products (40.5% of respondents), electronic devices (36.6%) and vehicles (12.5%)**.

In all Member States, Iceland and Norway, commercial warranties are regulated by law, either in specific consumer legislation, such as the **French** consumer code, in civil law such as in **Germany** and Hungary, in law on obligations such as in **Croatia** or in general contract law such as in **Denmark**. Whereas some countries already had legislation in place, others have adopted new rules with the transposition of the Consumer Rights Directive into their national law which had to be done by 13 December 2013 and which should **apply since 13 June 2014.**

This report is based on the information available at the time of writing. Some Member States had not yet transposed the Consumer Rights Directive[106], and in some, transposition laws had not entered into force. A table of transposition measures for the Consumer Rights Directive can be found in the appendix of this report.

Definition of a commercial warranty[107]

Whereas the legal guarantee is mandatory and free of charge, **the commercial warranty is a voluntary** [108] **service offered by the seller**[109]**, the producer**[110] **or a third party which should be complementary to the legal guarantee provisions**[111]. According to the Consumer Sales and Guarantees Directive, commercial warranties cannot affect the legal guarantee[112] . Sometimes seen by consumers as a sort of insurance [113], the warranty, as a sort of additional service, should upgrade the consumer's rights, for example, for a longer time period or situations not covered by the legal guarantee, such as accidental damage to an item by

● 103 Article 2 (14) of the Consumer Rights Directive. ● 104 Article 6 of the Consumer Sales and Guarantees Directive. ● 105 See also page 121. ● 106 Implementation of Directive 2011/83/CE: http://eur-lex.europa.eu/search.html?type=advanced&qid=1402580848046&or0=DN%3D72011L0083*,DN-old%3D72011L0083*, see also page 106. ● 107 For an explanation of the difference between a legal guarantee and a commercial warranty, see also page 7. ● 108 Although Lithuanian law states that a commercial warranty has to be provided, if necessary. ● 109 Except in Ireland where a commercial warranty has to be given by the producer or the supplier, not the retailer. ● 110 The French consumer code makes a clear distinction between a commercial warranty (articles L211-15ff) and an after-sales service (articles L 211-19 ff). The latter covers auxiliary services such as delivery, installation and verification of functionality. If an after-sales service is provided, the consumer must receive a specific written contract indicating the price of the service. Upon delivery, the consumer must receive a document in which he/she can make any comments with regard to delivery and installation. The consumer must also be given a manual and a guarantee certificate. In the event of a repair for which the consumer has to pay a lump sum, he/she must be informed in writing of the origin of the defect, the nature of the intervention and the spare parts exchanged. ● 111 See the definition of «commercial guarantee» in Article 2 (14) of the Consumer Rights Directive. ● 112 Article 6 (2) of the Consumer Sales and Guarantees Directive. ● 113 For further details on the differences between commercial warranties and insurance, see page 82.

the consumer. Commercial warranties can be **free of charge** [114](this **is a requirement in Finland**[115]**, Latvia**[116] **and Slovenia**[117]) or included in the final price of the goods, but in many Member States the consumer will have to pay a premium. Sometimes, an extra service, also called "extended warranty", is proposed. Article 2 (14) of the Consumer Rights Directive defines it as follows:

*" 'commercial guarantee' means any undertaking by the trader or a producer (the guarantor) to the consumer, **in addition to his legal obligation relating to the guarantee of conformity**, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract".*

The Consumer Rights Directive explicitly states, in its definition of commercial warranties, that they must provide services to the consumer in addition to the legal obligations relating to the legal guarantee[118]. This is set down in law in **Denmark, Estonia, France, Iceland, Norway and Portugal.**

Minimum or maximum harmonisation?

The text of the Consumer Rights Directive clearly targets maximum harmonisation based on Article 4[119]:

"Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive Member States may adopt or maintain additional pre-contractual information requirements for contracts to which this Article applies".

● 114 Even if the consumer does not specifically pay for a commercial warranty, it might reasonably be assumed that the price for this service is included in the price of the product. ● 115 In Finland, if such arrangements involve additional costs, they cannot be called warranties. ● 116 "a guarantee is a free of charge promise by the producer or trader to reimburse payment, exchange or repair a product or perform other activities if goods fail to comply with the description provided in the guarantee or advertisement." ● 117 In Slovenia, if the seller charges the consumer for a warranty of longer than 2 years, it should not be called a commercial warranty, but should be advertised under another name, such as insurance. ● 118 See also page 56 ● 119 The Consumer Rights Directive does not foresee an absolute maximum harmonisation as it allows Member States to impose additional pre-contractual information requirements and to fix the consequences of a breach of such requirements.

Binding force of the commercial warranty

According to the Consumer Sales and Guarantees Directive, a commercial warranty is legally binding on the party offering it[120]. The guarantor is bound by the commitments made in the warranty declaration in **Belgium, Czech Republic, Denmark, Germany, Ireland, Croatia, Cyprus, Hungary, Malta, Austria, Poland, Romania, Slovenia, Finland and Sweden.**

Although a warranty declaration might not reflect the formal obligations or content requirements, the consumer is still entitled to request its application in **Belgium, France, Portugal, Slovenia, Finland and Sweden.** Warranty information on advertisements, packaging, etc. is also binding in some Member States, such as the **Czech Republic or Slovakia.**

Information obligation

According to Article 5 (1) (e) of the Consumer Rights Directive,

"Before the consumer is bound by a contract other than a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner (if that information is not already apparent from the context): (...) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;"

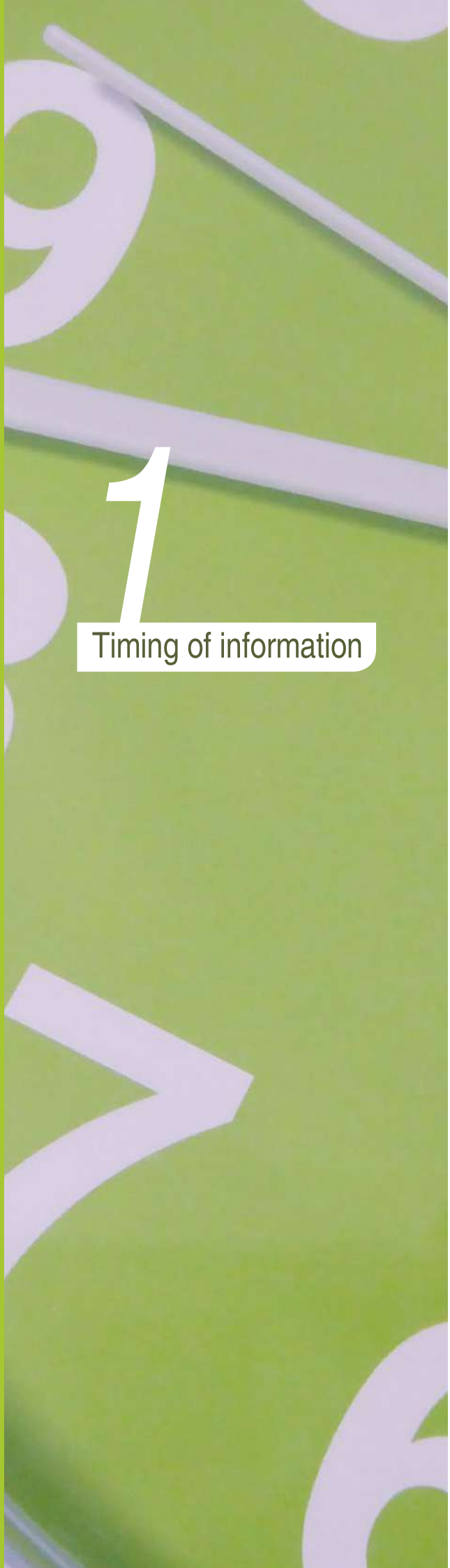
Similarly, according to Article 6 (1) (l) and (m) of the Consumer Rights Directive,

"Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner: (...) a reminder of the existence of a legal guarantee of conformity for goods» and «where applicable, the existence and the conditions of after sales customer assistance, after-sales services and commercial guarantees".

The seller therefore has several obligations with regard to the timing of provision of information, the form to be respected and the content of the commercial warranty.



120 Cf. Article 6 (1) of the Consumer Sales and Guarantees Directive.



1 Timing of information

According to the Consumer Rights Directive, the consumer needs to be informed **before "being bound by the contract"**[121]. Member States have implemented this rule so far as follows:

- The consumer needs to be informed before conclusion of a contract in **Austria, Belgium, Denmark, Finland, Hungary**[122], **Italy, Latvia, Lithuania, Romania, Spain, Slovenia and Sweden**. This can be done at the latest upon delivery of the item which is then considered as the moment of conclusion of the contract if there is no pre-contractual phase in **Croatia, Czech Republic, France, Germany, Italy, Netherlands, Poland, Portugal and Slovakia**. In **Luxembourg**, the information has to be provided at the latest at the moment of conclusion of a contract. In **France**, a commercial warranty can also be offered upon repair of an item, so the information must then be provided before conclusion of a repair contract.

- No specific rules are laid down in **Bulgaria, Iceland, Ireland and Hungary** (for on-premises contracts) but general rules on pre-contractual information apply.

- In the **United Kingdom**, the consumer can expect to be made aware that the purchase of the commercial warranty is optional, that any such warranty can be provided by other parties, of their statutory rights, etc. The pre-contractual information should be given in accordance with the general rules on this.

- In **Poland,** the seller is not obliged to specifically inform the consumer about the existence of a commercial warranty, but must hand over all documentation concerning the purchased item, including on a commercial warranty, if it exists.

● 121 See the European Commission DG Justice guidance document to Directive 2011/83/EU of June 2014 ● 122 In Hungary, the consumer must be informed about the commercial warranty before making a statement creating a contractual obligation.



2 Formal requirements

According to Article 7 (1) of the Consumer Rights Directive,

«With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.[123] *»*

According to Article 8 (1) of the Consumer Rights Directive,

«With respect to distance contracts, the trader shall give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.»

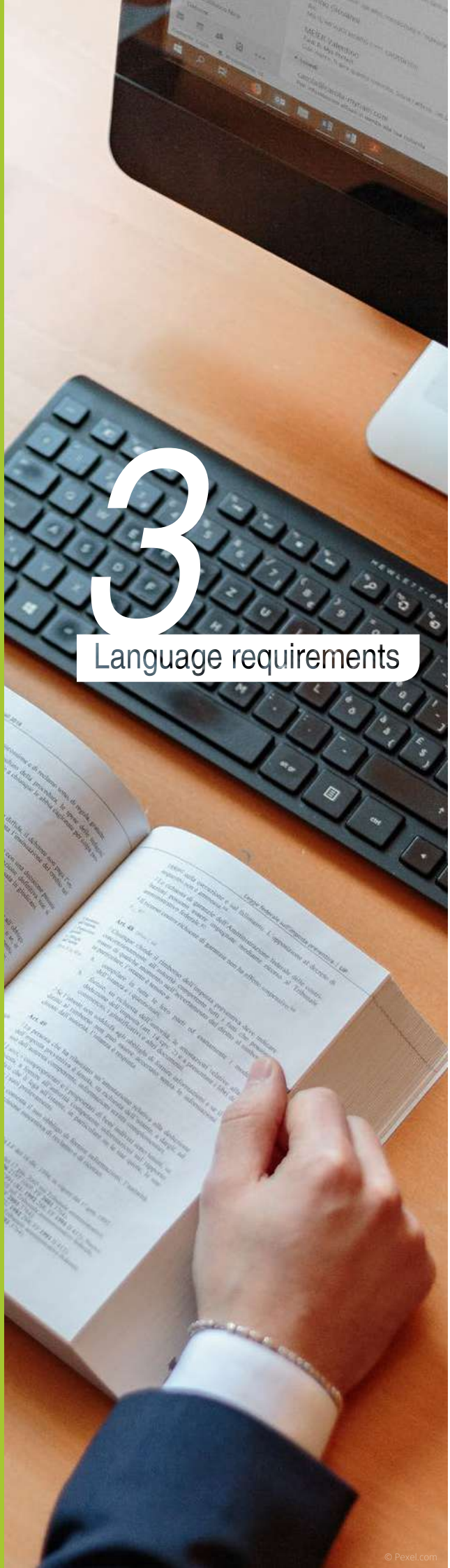
21countries normally require a written warranty document for off- and on-premises contracts: **Austria, Belgium, Bulgaria, Czech Republic, Estonia, France, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania** (the seller must provide the commercial warranty in writing at the request of the consumer. For long term use products the commercial guarantee must always been given in written form)**, Slovakia, Slovenia, Spain and Sweden.**

A durable format is accepted at the consumer's request in 20 countries: **Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Netherlands, Portugal, Slovenia, Slovakia, Spain and Sweden** (for off-premises contracts; for on-premises and distance contracts a readable and durable format is accepted) and **United Kingdom.**

In **Germany and Hungary** an obligation to provide a written document only exists for off-premises and distance contracts[124].

In 7 countries, a written document needs to be provided only at the consumer's request: **Cyprus** (or another durable format accessible to the consumer), **Czech Republic, Estonia, Finland**[125] **Iceland and Lithuania.** In **Cyprus, Norway and Poland** the law does not oblige the seller to confirm the legal guarantee in writing.

● 123 Also according to Article 5 of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts "In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. (…)." ● 124 In Germany, for distance contracts, the information provided can be adapted to the medium used for conclusion of the contract. ● 125 "At the request of the buyer, the warranty shall be given in writing or in electronic form so that the information cannot be unilaterally altered and remains accessible to the buyer."



In **Poland** there is no legal obligation to provide the commercial warranty in writing. The warranty statement may be made in an advertisement- however,the guarantor is obliged to provide a written document upon the consumer's request. If the commercial warranty is given on paper or in other durable format it shall be handed over to the consumer at the latest upon the delivery of the item.

In 16 Member States, it is a legal requirement that the commercial warranty be explained in **plain, simple, clear, comprehensive and understandable** terms: **Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Italy, Luxembourg, Malta, Netherlands[126], Poland, Romania, Slovenia, Sweden and United Kingdom.**

According to Article 6 (7) of the Consumer Rights Directive, for distance and off-premises contracts,

Some countries require use of the consumer's language in contractual documents.

The **use of the national language** is requested in **France, Greece, Lithuania, Luxembourg** (where the consumer can choose between French and German),

"Member States may maintain or introduce in their national law language requirements regarding the contractual information, so as to ensure that such information is easily understood by the consumer[126]".

Malta (where a commercial warranty must be written in at least one of the official languages, i.e. English or Maltese), **Portugal, Slovenia and the United Kingdom.** In **Belgium**, the commercial warranty must be written in at least one of the official languages of the region in which the product is offered for sale.

If the item is introduced to trading in the Republic of Poland,the warranty statement is made in Polish. The requirement to use the Polish language does not apply to names, trademarks, trade names, designation of the origin of goods and customary scientific and technological terminology.

● 126 See also recital (15) "This Directive should not harmonise language requirements applicable to consumer contracts. Therefore, Member States may maintain or introduce in their national law language requirements regarding contractual information and contractual terms and if the type of information so allows, in a generally comprehensible graphic form."



Content of the warranty 4

The Consumer Rights Directive indicates that all contracts should give a **reminder of the legal guarantee**[127] when offering a commercial warranty. The seller should specify that, under EU law, he/she is liable for any lack of conformity that becomes apparent within a minimum of 2 years of delivery of the goods and that national laws may give the consumer additional rights[128]. **The seller may not present the legal guarantee as a service he/she is offering**[129].

In 27 countries (**Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France**[130]**, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom**) it is clearly stated that the commercial warranty has to give a reminder of the existence of the legal guarantee and explain that the commercial warranty has no influence on the rights of the consumer under the legal guarantee provisions.

As well as the reminder of the existence of the legal guarantee, in most of the countries, there is an obligation to explain, in accordance with the language requirements:

- The cover or content of the warranty, the duration, geographical coverage and price (Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Spain and United Kingdom);

- The details of the guarantor, how the consumer can exercise their rights (complaint procedure and after-sales service) (Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia and United Kingdom).

- In Portugal, in addition to cover, duration and price, the name and address, post code or, if applicable, the e-mail address of the guarantor has to be given, along with information on transport or labour costs. Geographical coverage is not expressly mentioned.

- In Sweden, information on the content of the warranty and all information necessary for the consumer to make use of the warranty has to be given. However the law does not detail what specific information is to be given.

- In Romania the warranty must include the content of the warranty, all essential elements such as duration, product identification details, the medium period for which the product can be used, if it is the case, how the warranty will be applied – maintenance, repair, replacement and the time limits for each measure, details of the company offering it and of the service and a reminder of the legal guarantee.

● 127 Article 5.1 (e) "Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context: (…) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;"Article 6.1 (l) and (m) "Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner: (…)a reminder of the existence of a legal guarantee of conformity for goods; (m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;" ● 128 See the European Commission DG Justice guidance document to Directive 2011/83/EU of June 2014 ● 129 Directive 2005/29/EC of 11 May 2005 concerns unfair business-to-consumer commercial practices in the internal market. Annex I of this Directive contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same list applies in all Member States. According to point 10 of the annex the fact of "Presenting rights given to consumers in law as a distinctive feature of the trader's offer." is a misleading commercial practice. ● 130 The French consumer code (article L211-15) imposes an obligation to provide the text of the dispositions of the consumer code on the guarantee of conformity and of the civil code on guarantee against hidden defects: "Les articles L. 211-4, L. 211-5 et L. 211-12 du présent code ainsi que l'article 1641 et le premier alinéa de l'article 1648 du code civil sont intégralement reproduits".

4

ECCs (Bulgaria, Cyprus, Romania and Slovenia) indicate that their national legislation takes the Consumer Sales and Guarantees Directive as the basis for requirements for the content of the commercial warranty; the information obligation is therefore the same as for the legal guarantee.

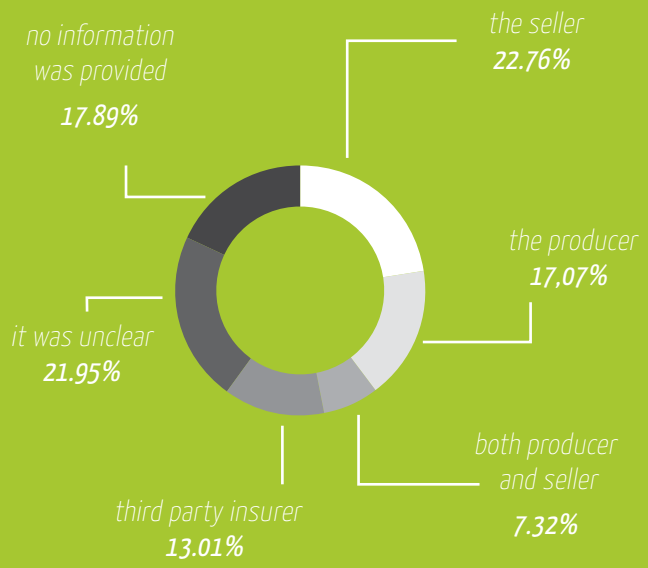
During check n° 4[131] the ECCs investigated whether and how consumers are informed about the legal guarantee and the commercial warranty. They found a rather poor level of information, with unclear or incomplete information often given, especially on the legal guarantee.

In total, 3/4 of the online checks and 2/3 of the checks on premises revealed unsatisfactory descriptions with regard to information on the legal guarantee.

Only in 50 out of 202 cases (24.57%) was a reference to the legal guarantee included in the product description. Online, in 21.14% of cases, the information was directly accessible at the specific product page and **not hidden in the terms and conditions.** In the shops, only in 30.38% of cases was a reference to the legal guarantee visibly included in the product description.

The ECCs therefore had to look more deeply into the information available and question the sales agents in order to get more information.

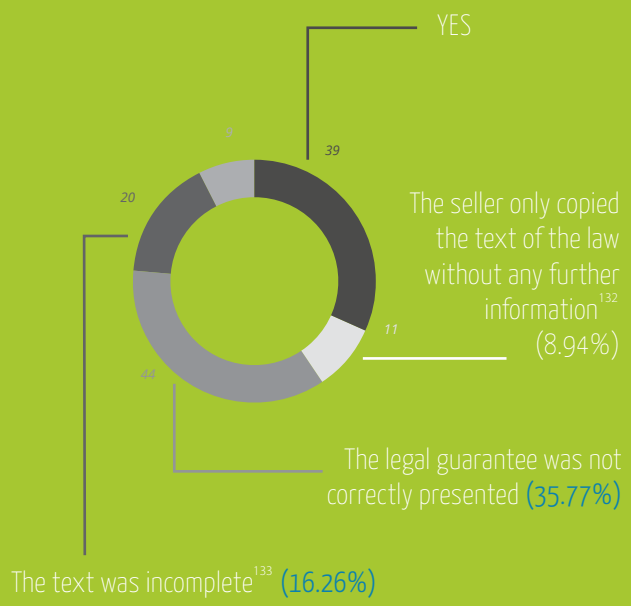
When searching for the provider of the advertised commercial warranty, in only 60.16% of cases online was it possible to find this out.



131 See page 113

In shops, the commercial warranty was usually advertised as a seller's warranty without any specific reference to the legal guarantee (10 out of the 24 checks - 41.67%), only in 4 cases was a reference to the legal guarantee made. In 8 cases, the commercial warranty was offered by the producer (33.33%) and in 1 case by both seller and producer. In 1 case it was offered by an insurance company and in 1 case the identity of the provider could not be determined.

When asked if the legal guarantee was presented correctly online with regard to the legal requirements, in only 39 out of 123 cases (31.71%) did the ECCs answer in the affirmative.



A total of 52.03% of the references made to the legal guarantee were unsatisfactory.

Provisions for return of defective goods under the legal guarantee were clearly explained in only 27 out of 123 cases (21.95%). In 7 cases, the consumer was advised to contact the seller for further information on the returns policy.
In 75 cases (60.98%), the returns policy was not clearly explained, while in 7 cases (5.69%) the information was incomplete. So in 66.67% of cases, consumers were not clearly informed about how to return a defective item to the seller.

In 33 out of 79 checks in shops (41.77%), the **duration of the legal guarantee** was given or could be determined by the ECC. **In 25 cases, correct information** (2 years or 3 years) was provided. In one case the duration was indicated incorrectly as "maybe 12 months", in another as 5 years.

● 132 It should be noted that copying the text of the law concerning legal guarantees is obligatory under French law, for example. ● 133 In 9 cases no answer was provided by the ECC.

Names given to commercial warranties in the Member States



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When it comes to the names given to commercial warranties, sellers in the Member States are quite creative. During check n° 5 the ECCs saw the following tendencies:

- Hinting at "added value" by adding words such as "Extra", "Plus", "Super", or even "Maxi" or "Mega" or by differentiating between "Extra Guarantee Standard and Extra Guarantee Premium", or "basic, economy class, business class and first class";

- Indicating duration: "1-year guarantee", "2-year guarantee", "24-month guarantee", "+ three years", "Langzeitgarantie" (long term warranty for up to 48 months), or just "extended guarantee". In some cases the ECCs felt that, for the sake of transparency, the terms used should be changed, for example a 5-year guarantee is in reality an extended warranty of 3 years as it starts only at the end of the 2-year legal guarantee;

- Including a reference to the party providing the commercial warranty: "producer's guarantee", "manufacturers guarantee", insurance;

- Using the concept of protection: "Schutzbrief", "Contrato de Compra Tranquila", « Contrat Achat Tranquille », "safety agreement";

- Indicating the seller's name in the name of the commercial warranty;

- Hinting at a right to return.

Duration of commercial warranties in the Member States



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The duration of commercial warranties in the Member States is usually between 1 and 5 years, and in most cases is 2 years as is the case for the legal guarantee. More expensive items usually have a longer warranty which often applies to specific parts of the product.

The **average durations of the commercial warranties examined** during the ECCs' checks were for:

- Electronic goods

1 year in Ireland
2 years in Bulgaria and Greece
3 years in Slovenia
1 to 3 years in Sweden

- White goods

2 years in Bulgaria, for a small fee an extension to 3 years can usually be obtained
3 to 5 years in Ireland and Slovenia
1 to 5 years in Sweden

- Cars

6 months to 12 years in Sweden
2 years in Bulgaria, but can be 5 or 7 years
2 to 5 years in Greece
3 to 5 years in Ireland
5 years in Slovenia on specific parts

When looking more closely at the 3 product categories checked:

- The most common duration of commercial warranty offered for TVs was 2 years[136], coinciding with the duration of the legal guarantee in most cases. **Considering the average life time of a TV, the duration seems short**. According to several producers' online information, the average life time of a flat screen TV (LCD/LED or plasma) is 40 000 hours, giving an average of 4 to 10 years[137] depending on usage, maintenance, location, etc.. In the countries with a legal guarantee which takes into consideration the expected lifespan of an item (**Iceland, Norway and the Netherlands**[138]), the average expected lifespan of a TV would generally be estimated at between 5 and 7 years.

- The most common duration of commercial warranty for washing machines was of more than 2 years in 17 checks and of a maximum of 2 years in 26 checks[139]. There is no official average expected lifespan of washing machines. According to a study by GIFAM and TNS Sofres, consumers have reported their washing machines lasting up to 10 years. This should be set against issues such as usage, maintenance, etc. Also, most consumers would apparently like their washing machine to last a little bit longer (11 years)[140]. According to the **French** Agency for Environment and Energy Control, the average life time could be between 5 and 11 years, whereas a French insurer would generally expect a washing machine to have an 8-year lifespan. In the **Netherlands**, the expectancy is 5 to 7 years[141] and in **Iceland,** more often than not, the ADR decided that washing machines fall under the 5 year rule[142]. 24 months were also regularly on offer, and even 4 to 6 years[143] for higher value cameras. As a camera is a fragile and portable item, a commercial warranty of 12 months covering shocks might seem attractive to consumers[144].

● 136 6 months: 2, 1/2/3 years: 1, 1 year: 1, Guarantees can vary from 1-5 years and can even cover the lifetime of the product, 24 months: 16, 2 years for free, 5 years against payment: 3, 2 years offered by the manufacturer, but can be extended to 3 or 5 years: 2, Up to 48 months: 1, 3 years: 2, 3 or 5 years: 1, 4 years: 1, Up to 5 years: 2, 5 years: 2 ● 137 See also the study by the French Agency for Environment Energy Control http://ademe.typepad.fr/files/dur%C3%A9e-de-vie-des-eee.pdf ● 138 See also page 16 ● 139 12 months: 13, 24 months: 13, 3 years: 7, 2 years for free, 5 years against payment: 2, 4 years: 6, 5 years: 9, More than 5 years: 3, 6 years: 1 ● 140 http://www.gifam.fr/images/stories/dossiers-de-presse/2011_06_21_GIFAM_CP_Durabilite_Vfinale1.pdf ● 141 https://www.technieknederland.nl/stream/richtlijnenafschrijvingsmethoden



For cameras, the most common commercial warranty duration was 12 months, less than the legal guarantee duration.

During the study led by ECC Belgium[145] and carried out from 15 July to 5 October 2014, several consumers commented that they suspect planned obsolescence of consumer goods as in most cases, defects appeared after the end of the commercial warranty. They thus felt that the producer/seller offered a commercial warranty without any risk. Some consumers wondered why the duration of the commercial warranty is not aligned more closely with the expected lifetime of each product and offered free of charge. Other consumers answered that, taking into account the price of the product and that of the commercial warranty, if the warranty is applied, the item lasts longer and is therefore less expensive per year. Others indicated that they have seen products with commercial warranties of only 1 year (and which thus do not give a reminder of the legal guarantee period). Others still did not see any advantage in a 2-year commercial warranty if the legal guarantee lasts as long, or a 5-year warranty if the average lifetime of the product is also 5 years.

The most usual starting point of the duration of the commercial warranty is delivery of the item. Some producers ask the consumer to register the product on their website, otherwise they refuse to provide warranty cover.
But what happens to the initial commercial warranty period in the event of repair or replacement? Does a new period start or does the original one continue?

In principle, the commercial warranty follows the same rules as the legal guarantee[146]. As the warranty is an accessory to the item initially purchased, the initial warranty period continues. In **France** however, the consumer code[147] clearly states that every "immobilisation period" (i.e. time in which the item is out of use) of at least 7 days which is necessary for the application of the warranty extends the warranty period, with the immobilisation period being added to the remaining warranty period. The starting point of the immobilisation period is the date on which the consumer requests intervention, or the date on which the consumer makes the item available to the guarantor, whichever is later.

In some cases however, a commercial warranty is offered as an accessory to every item. In **Greece** for example, if a spare part of a car with a 5-year commercial warranty is changed, the new spare part is covered for another 5 years.

In **Poland,** if, in performance of the warrantor's obligations, he/she delivers a defect-free item to replace a defective item or carries out significant repairs to the item covered by the warranty, the warranty period starts running anew from the moment the defect-free item is delivered or the repaired item is returned. If the warrantor replaces part of the item, the above provision applies accordingly to the replaced parts.

In other instances, the warranty period is extended by the time during which, as a result of a defect in an item covered by a warranty, the beneficiary under the warranty cannot use it.

It is therefore very important for consumers to read the conditions of the advertised commercial warranty carefully.

● 142 See page 116 ● 143 12 months: 13, 24 months: 11, 3 years: 7, 2 years for free, 5 years against payment: 2, 4 years: 6, 5 years: 8, 6 years: 1 ● 144 See page 75 for an analysis of the advantages of commercial warranties and instances where they offer added value. ● 145 See also page 119 ● 146 see page 37 ● 147 Article L211-16 of the French consumer code

Costs involved



Commercial warranties vary between countries. In some Member States it is more common for commercial warranties to be offered against payment than in others. In some, they must be offered free of charge[148].

For warranties offered against payment, the costs vary considerably and, especially given the duration of the contract and depreciation in value, the benefit of a commercial warranty varies considerably.



Commercial guarantees in the United Kingdom: *A lot of retailers offer 'extended warranties' on household goods (white and electronic) at additional cost. Taking into account the 6-year limitation period applicable in the United Kingdom (5 years in Scotland), one needs to question whether paying an amount usually close to the value of the item covered is value for money.*

During check n° 7[149] the ECCs found out that warranties offered online cost:

- For cameras, from EUR 3.29 to 99.90
- For washing machines, from EUR 17 to 129.99
- For TVs, up to EUR 39 for 48 months)and cover for accidental breakage could cost EUR 29.

Only in 25 cases was the offer free of charge. In 35 cases out of 123, information on the price of the service was not available online without ordering. The ECCs therefore also checked in the shops.

In the shops, 25 out of 79 checks (32.05%) revealed warranties offered against payment. In 44 cases (56.41%) they were free of charge.
The costs vary considerably but are quite similar to those found during the online checks.

Information provided, albeit never exhaustively, in commercial warranties:

- Duration, coverage, geographical scope;
- Payment modalities;
- Burden of proof: For example, during the whole period of the commercial warranty (i.e. 3 or 5 years) the seller foots the bill for identifying the reasons for any defects. This also includes free transport of large items from the consumer to the repair workshop and repair of all kinds of defective items. In other cases, the consumer can only ask for repair or replacement of the faulty product and has to pay for sending the product to the repair service;
- A list of possible defects may be provided, along with details of defects covered by each type of commercial warranty/guarantee. The more expensive the warranty, the more defects it covers;
- Exclusions: Depending on the commercial warranty type, only defects in the product or parts of the product appearing due to normal usage of the item or having existed since delivery are covered. One warranty covers

● 148 See page 51 ● 149 See page 117

Several ECCs indicated that the information provided includes more or less the same coverage as the legal guarantee. Sometimes only the duration is extended.



all defects, regardless of their cause, which arise within 30 days, another indicates a right to replace the product within 3 days of the day of purchase;

- Complaint procedure, return policy and repair process: the consumer's rights in the event of major/minor repairs, information regarding the authorised service where the product can be repaired, duration of intervention, replacement product, new guarantee on the repair;
- Costs covered: labour and delivery expenses, components and spare parts;
- If offered by a third party contractor, information about the insurance company and policy;
- Information on available ADR schemes[150].

The study led by ECC Belgium[151] from 15 July to 5 October 2014 found that, even though 44.6% of the participants made use of the commercial warranty and 65.3% of these were satisfied with it, only 32.5% of participants would consider paying for a commercial warranty in the future (as the costs seemed to outweigh the benefits.

● 150 This information is interesting to the ECCs with regard to the recent legal developments on ADR and ODR in Europe. By July 2015 all consumer sectors in Europe should be covered by ADR schemes allowing consumers easy access to out-of-court procedures for settling their disputes. http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/adr-odr/index_en.htm

● 151 See also page 119

Information or misinformation



Commercial warranties have become a marketing tool especially for white goods and audio-visual equipment. However, many consumers express confusion with regard to the guarantees and warranties to which they are entitled.

The ECC-Net regularly handles complaints from consumers who have requested application of the legal guarantee of conformity, but were refused by the seller on the grounds that the time limit had expired. When looking into the cases more closely, it becomes obvious that the seller is referring to a commercial warranty, not the legal guarantee.
Cases have also been reported in which consumers were informed that no guarantee existed for the item purchased.

Case story:

"Hello, I bought a laptop in April 2013 with a 1-year commercial warranty without seeking the warranty extension. After a year and 4 months (August 2014) the computer failed, it did not start up at all. After asking a friend (who knows about computers), it turns out that the sensors of the computer screen do not detect the starting up of the computer anymore. The power button does not light up because the computer thinks that the screen is still off. I went back to the shop where I bought the computer where they said that I hadn't taken out the warranty extension so they couldn't do anything for me. I later heard of the European Legal guarantee of 2 years so I went back to the shop and was informed that this guarantee applies in the EU EXCEPT for in France. I do not know what to think."

Practical example: case received by the ECC-Net

A Belgian consumer purchased a video game controller from a French seller who offered to customise the controller by applying a decorative and protective film. The film did not stick to the controller and the consumer complained to the seller who informed him that a commercial warranty of three months was provided. The consumer was still within this deadline so the seller satisfied his claim, but just in case, the consumer asked why the seller did not apply the legal guarantee. The seller answered that this guarantee only applies to the producer. The seller only provides customisation and this is therefore only covered for 3 months. The seller repaired the controller and informed the consumer that

with the after sales service they offer, in the event of repair a new 3-month period starts. However, the producer warranty had been void since the first day. In order to customise the controller they open it, but the producer warranty lists opening the controller as an exclusion criteria.

ECC-Net explained both the legal guarantee and the commercial warranty to the consumer, as well as the burden of proof and legal arguments he could make. Given that the seller wouldn't apply the consumer's legal rights, he decided to launch a European small claims procedure and obtained a favourable judgement. Finally the trader applied the legal guarantee.
It should be mentioned that this same seller, during the purchase process, offers a paid commercial warranty of 1 year.

During check n°4[152] in shops where the seller did not mention the legal guarantee, when prompted by a specific request:

- 6 sellers described the legal guarantee correctly.
- 9 sellers did not know of the legal guarantee or how it differs from the commercial warranty.
- 9 sellers said it was a matter for the producer.
- 11 sellers were aware of the legal guarantee but would not explain in more detail how the consumer should proceed. In order to receive information on the legal guarantee, the consumer would have to specifically ask for it.

During the checks, if staff from the ECCs were not interested in the commercial warranty, the sellers did not usually try to mislead them or push them into it, and were never aggressive. **However, several ECCs reported that sellers were well trained in setting out the advantages of a commercial warranty without making any reference to the legal guarantee.** Indeed, the ECC-Net often receives complaints from consumers who have been misled about their rights under the legal guarantee and also sometimes under commercial warranties.

● 152 See page 113

Case story:

A German consumer who purchased a shower column in a shop in France returned it 1.5 years after purchase as one of the inlets was defective and the shower no longer supplied hot water. The consumer was informed that there was no warranty on the item. When she insisted on her rights under the legal guarantee the shop assistant told her that, in 10 years of working there, no information had been provided to the staff on the legal guarantee.

The consumer received a full refund.

Practical example: case received by the ECC-Net

A French consumer was enquiring about buying a new kitchen from both a German and a French seller. When comparing the offers, the German shop seemed less expensive. The consumer confronted the French seller with the price difference and was informed that kitchens in Germany are less expensive because German sellers do not give any guarantee or warranty on products.

Fortunately the ECC-Net was able to reassure the consumer that a legal guarantee exists all over Europe.

Dear Sir,

Thank you for contacting our services.

You are looking for information about guarantees in Belgium.
There is no strictly compulsory 2-year guarantee on items sold in France or in Belgium.
The guarantee that you mention is probably the one described in the European Directive 99/44/EC. This stipulates that the seller is liable for non-conformity defects existing on delivery and that are likely to occur over a period of two years.
This aspect, often overlooked, is important because if a defect appearing within six months of delivery is presumed to have existed at the time of delivery, it is not the case later, and it must be proved (via an expert opinion, for example) that the defect arose from a problem that was indeed present from the start. So this is not a 2-year guarantee, but a text ensuring product compliance upon delivery, with a possibility of legal recourse within 2 years.
If the warranty period is an important element in the choice of your computer, we recommend that you opt for a computer with a direct producer warranty of 2 years (this is the case, for example for [brand] laptops), or opt for a guarantee extension. These commercial warranties cover the item even in the case of breakdown related to a defect which might not have been present upon delivery. They therefore cover a wider field, while being easier to apply.

I remain at your disposal for any further information.

Best Regards,

Customer Service

Some traders add to the consumer's confusion between the commercial warranty and the legal guarantee by stating that an item is covered only by a producer warranty of 1 year, as the legislation does not require that a producer warranty give coverage for 2 years.



Date:
09/10/2013

Ticket numéro:
1-1425580621

Cher Monsieur

Nous accusons réception de votre courriel relatif à votre .

Nous vous informons que la garantie constructeur est d'une année, la législation française n'imposant aucunement l'obligation de 2 années de garantie constructeur.

Nous vous prions d'agréer, Cher Monsieur l'expression de nos salutations distinguées.

If the commercial warranty puts the consumer in a better position than the legal guarantee, such as by providing a longer reversal of burden of proof, it might be of interest to the consumer to claim under the warranty, rather than the legal guarantee. However, the warranty is not always more beneficial to the consumer.
Also, the seller is responsible for applying the legal guarantee, whereas under the commercial warranty he/she is often able to redirect the consumer somewhere else, such as to a repair centre or the producer, without giving any further assistance.

Case story:

A French consumer studying in Germany subscribed to a mobile phone contract with a German operator, which included a Smartphone. The phone turned out to be defective and the consumer complained to the seller who refused to do anything and redirected the consumer to the german representative of the producer, who, in turn, redirected her back to the seller, who again refused to help. The producer even sent a document saying that they would cover the replacement and indicating the reason for the defect. Finally, the parents of the consumer took the phone to the french representative of the producer who exchanged the phone and sent all documentation necessary for the adjustment of the contract to the german seller.

Pros and cons of commercial warranties



The Consumer Sales and Guarantees Directive and the national transposition laws provide protection to consumers in cases of defects in or non-conformity of goods which they purchase.

However, as mentioned in the first part of this report, the **duration of the legal guarantee is limited and it is not always easy to prove the existence of a defect.**

Commercial warranties therefore can have benefits for consumers. The ECC-Net, based on its case handling experience and the checks performed online and offline, is able to draw up a list of the main advantages of commercial warranties.

The content varies considerably from one warranty to another and needs to be compared and researched carefully.



Commercial guarantees in the United Kingdom: *Consumers should be strongly advised to familiarise themselves with terms and conditions of such warranties, paying particular attention to the list of exclusions from coverand the issue of burden of proof. The exclusions tend to include parts of item(s) that are most susceptible to wear and tear (e.g. batteries, etc.). Realistically speaking, the only benefit gained from purchasing an extended warranty may be the extended reversal of burden of proof (i.e. for the duration of the warranty rather than for the initial six months under the legal guarantee provided by law).*

The UK consumer protection bodies investigated extended warranties offered with electrical goods a few years ago and this resulted in The Supply of Extended Warranties on Domestic Electrical Goods Order 2005 being issued. This was aimed at improving competition in this particular market. The Order includes the requirement to provide the following information to consumers:

- the relevant statutory rights of a consumer relating to the purchase of domestic electrical goods and where further information may be obtained in relation to such rights,
- that extended warranties may be available from other parties,
- that household insurance may be relevant to the purchase of domestic electrical goods,
- that an extended warranty does not have to be purchased at the same time as domestic electrical goods,
- any cancellation and termination rights as may be required by law,
- the nature of the financial protection provided to a consumer who purchases an extended warranty in the event of the provider going out of business,
- whether or not an extended warranty offered by the supplier will be terminated in the event of a claim being made.

This information is should be made available in the form of leaflets that are clearly visible to consumers. Retailers are also expected to give information on prices of extended warranties next to the price of the product covered so as to make it easier for consumers to make informed decisions. Traders selling large numbers of such warranties are even required to include the price of an extended warranty next to the product in newspaper advertisements or other printed publicity.

The information must be clear and legible and it must be made clear that the purchase of an extended warranty is optional. In addition, an extended warranty deal comparison website (www.compareextendedwarranties.co.uk) has been launched, although only a limited number of retailers participate.

Due to a variety of factors (geographical location, different electrical plugs, etc.), it is not very common for non-UK consumers to buy electrical goods in the UK for use elsewhere. The same applies to motor vehicles due to the position of the steering wheel.

There is some trade of such goods between the UK and the Republic of Ireland thanks to compatibility of sockets and road traffic arrangements. That said, cases where consumers pursued claims under commercial rather than legal guarantees handled by the ECCs in these two countries are virtually non-existent. This is not to say that no such claims exist, but merely to show that it is difficult to present appropriate case studies based on the ECC-Net data.

A commercial warranty can be beneficial

The following main advantages have been identified:

- **Extension of the rights the consumer has under the legal guarantee:** The commercial warranty is beneficial if its duration is longer than that of the legal guarantee[153].

- **Extension of the reversal of burden of proof from 6 months to 2 years[154]:** The commercial warranty is beneficial if consumers do not have to prove the existence of a defect, particularly after the first 6 months. This also allows for a quicker solution as counter expertise might not be necessary.

- **Courtesy replacement product during examination or repair:** The commercial warranty might allow the consumer to get a replacement item during repair.

- **Smooth complaint procedures,** although several shop assistants indicated that only the producer is responsible for application of the commercial warranty, so the item will just be forwarded by the shop and the manufacturer will have the final decision. When the commercial warranty is provided by the producer, quick and efficient complaint mechanisms are usually in place. It is therefore not unusual to see goodwill gestures, even in cases that are not clear cut. Language considerations might be relevant for cross-border purchases. Bigger brands usually have call centres in every country or group of countries so as to ensure customer care in the language of these countries.

- **Procedure for return of items so that consumers do not need to organise shipping:** These are often foreseen by bigger brands. Pick up and return will be organised.

- In some cases the consumer does not have to send back the defective item (depending on its price or nature).

- **Repair at the home of the consumer:** Especially for white goods, the commercial warranty usually foresees a mechanism to ensure that a repairer comes to the consumer's home so that the consumer does not need to return the item. This is particularly interesting for cross-border contracts where organising the return of an item can be an obstacle to application of the guarantee.

● 153 See also page 16 ● 154 See also page 22

Practical example: case received by the ECC-Net

In September 2014 a Maltese consumer purchased a speaker system from a UK-based trader and had it delivered to an address in the United Kingdom. Shortly after the consumer received the item in Malta, it developed a fault. The consumer contacted the seller and was advised to contact the local representative of the producer. The consumer contacted his local ECC-Net office and the case was shared with UK ECC.

Due to the possibility of the retailer claiming that payment of return postage from Malta would be unreasonable and the foreseeable cost of providing the remedy, it was agreed that it could be more practical for the consumer to seek remedy locally. This was eventually arranged by the seller to the consumer's satisfaction.

- All costs for analysing the item, repair or replacement are borne by the guarantor.
- Direct replacement of the item with no attempt to repair, whereas the legal guarantee foresees a hierarchy of remedies and it is usually the seller who decides which option is most convenient[155].
- In some warranties, all issues are covered regardless of the case, including water damage, accidental breakage and oxidation.
- Consumers can usually contact any representative of the producer or reseller (if it is a producer warranty) for application of the warranty, whereas under the legal guarantee only the seller is responsible. If the consumer moves to another country or the seller goes bankrupt, a commercial warranty can therefore be interesting.
- The same applies for cross-border purchases, the consumer may contact the local representative of the producer. However, the conditions of the warranty may be different from those offered in his/her home country[154].
- The commercial warranty is usually an accessory to the item, and can be included in any re-sale.
- A commercial warranty may offer a "cooling off" period. If the consumer is not satisfied with the product, bigger brands often offer a total refund or a voucher to the value of the purchase price.

● 155 See also page 27 ● 156 See also page 88

Practical example: case received by the ECC-Net

On 22 November 2012, a Hungarian consumer living in the UK purchased a phone from an Irish company's store in the UK. After the consumer moved back to Hungary, in November 2013, the phone could no longer be recharged. The consumer contacted the producer's after-sales service in Hungary which replaced the product and provided a warranty of 90 days from the date of replacement in accordance with the producer's 1-year limited warranty. However, the replacement developed the same defect and the consumer asked the Hungarian after-sales service to refund the price of the original phone. His claim was refused and he was advised to go to the nearest store, which was in Germany, where he could exchange the product again. The consumer refused to travel to Munich to get a new phone and he was not willing to accept another replacement given that both phones had had the same problem.

When contacted by the ECC-Net, the Irish producer contacted the Hungarian representative who repaired the phone.

Practical example: case received by the ECC-Net

A Hungarian consumer bought a dishwasher from a Slovak web shop, which turned out to be defective. He tried to contact the seller (by phone, e-mail and registered post) but without response. As the consumer could not use the dishwasher and could not reach the seller, he contacted the producer's after-sales service in Hungary, who repaired it. The consumer asked the seller to reimburse the service charge in accordance with Hungarian law, which states that if a seller fails to repair faulty goods the consumer can get it repaired and claim the costs back from the seller.

During the handling of the case by the ECC-Net another defect occurred. This time the seller organised the repair and reimbursed the consumer for the costs of the first repair.

But not every commercial warranty keeps its promises

During the study led by ECC Belgium[157], the 34.7% of respondents who were not satisfied with the application of the commercial warranty gave reasons including numerous exclusions, inefficiency (long delays, no answer from the seller, etc.), overlaps with other contracts (protection via a credit card, for example), and cost-benefit calculations.

Practical example: case received by the ECC-Net

On a Luxembourgish Internet platform a Belgian consumer purchased a photo camera from a German seller. The consumer subsequently realised that imported cameras are only covered by the producer's commercial warranty for 1 year whereas the same camera purchased in Belgium is covered for 2 years.



Quelle est la période de garantie pour mon matériel ?

- Si le matériel a été acheté en Belgique, vous disposez de deux ans de garantie.
- Si le matériel a été acheté à l'étranger, mais en Europe, vous disposez d'un an de garantie en Belgique. Pour la deuxième année de garantie, vous devez vous informer dans le pays d'origine.
- Si votre matériel a été acheté hors de l'Europe aucune garantie est d'application par nos services à l'exception des optiques où un an de garantie est d'application mondialement.

The commercial warranty was offered by the seller not by the producer, and every seller is free to fix the warranty conditions. The situation would be different if the same seller applied different rules for consumers from different EU Member States. This topic is covered in the section on geographical restrictions.

157 See also page 119

Exclusions from warranty cover

The main advantage of a commercial warranty should be the extension of the rights the consumer has under the legal guarantee. However, commercial warranties usually have a long list of exclusions, and it is sometimes difficult to see the added value especially when damage caused by the consumer or by accidents is not covered. **The following exclusions or restrictions have been found during checks online and in shops:**

- Coverage only for material and production defects, or defects existing at the time of delivery,
- Dead or stuck pixels in screens[158],
- Defects caused by the consumer: accidental damage, intentional breakdown, misuse, failure to follow the instruction manual,
- Damage due to negligence,
- Normal wear and tear,
- Oxidation, especially for mobile phones (Almost all phones show signs of oxidation when used. Oxidation can come from humidity in the air and the phone does not have to fall into water.),
- Breakage caused by a manufacturing fault or defective material,
- Corrosion,
- Battery leakage,
- Sand,
- Dust,
- Vermin,
- Software errors,
- Material or immaterial defects, any defect in the material of the product or production fault that appears during the warranty period,
- Mechanical damage,
- Damage resulting from the intervention of an unauthorised repair service,
- Damage resulting from external factors and natural disasters: accidents, theft, shock, lightening, flood, fire, public gatherings, vandalism, defective ventilation, fluctuation in electrical power or indirect damage of any kind,
- Damages due to improper installation or use not in accordance with instructions and technical or safety standards set out in the handbook,
- Improper storage,
- Force majeure,
- Aesthetic defects which do not affect the functioning of the product,
- Damage resulting from the usage of faulty or unauthorised external accessories,
- Damage caused by pets or children under the age of 14,
- Damage resulting from the fact that the consumer continued using an item he/she knew to be defective,
- Failures occurring during or after alteration of functionality or appearance, such as refurbishment, upgrade or other reconfiguration.

● 158 ISO standard norms determine how many pixels per category of screen can be defective before the item as a whole is to be considered defective, see http://www.iso.org. Some producers offer paid commecial warranties allowing the consumer to exchange his/her screen due to a single dead pixel, regardless of the category of screen and the average dead pixel number.

Other disadvantages of commercial warranties

- The ECC-Net have seen cases where a consumer requested application of the producer's commercial warranty, but after having examined the item, and sometimes even after a repair, the producer refused. The consumer then had to request application of the legal guarantee. In such cases, this is often refused by the seller as an intervention on the item has already been performed. Alternatively, the seller, who would in any case have sent the item back to the producer for repair, refuses application of the legal guarantee because the producer has already refused to apply the warranty.

- The prescription period under the legal guarantee might expire while the consumer is trying to obtain application of the commercial warranty, as this might not cause a suspension of the duration or prescription periods under the legal guarantee.

- Commercial warranties often contain a geographical limitation and therefore might not be useful for cross-border purchases.

- The contents of a commercial warranty might not be the same in different Member States, making it difficult for a consumer to obtain application of a foreign commercial warranty in his/her home country if the warranty offered in that country is more restrictive[159].

- The remedies the guarantor is ready to provide might be limited: repair only, no replacement, numerous repairs prior to replacement/refund, etc.

- If a repair is impossible, the guarantor may only reimburse the residual value of the item and maybe only as a voucher.

- The consumer might have to pay for expenses such as specific spare parts, labour and transport costs, etc.. Many commercial warranties do not offer a refund of transport/shipping costs which can be substantial, especially for heavy or fragile items which need to be secured and cross-border purchases.

- In some cases, excessive evidence is requested from the consumer before applying the commercial warranty (e.g. proving physical injury if a phone was broken during an attempted theft, proof of a manufacturing defect), or the consumer has to meet specific conditions such as provision of an expert opinion regarding a defect at his/her own expense.

Commercial warranties might also overlap with other insurance policies a consumer might have.

2 ECCs reported that sales assistants admitted that they were not convinced by the warranties on offer as the rules were the same as under the legal guarantee. They heard statements such as: «Few consumers ask for repairs under these warranties so the price is clearly too high. One seller stated that most products start to break down after 2 years, when the commercial warranty is over and that only some expensive high-end products last longer. Another said: "We are living in a capitalistic world. What's the point if products last longer than the guarantee? Then no one would need to buy new products."

159 See also page 88

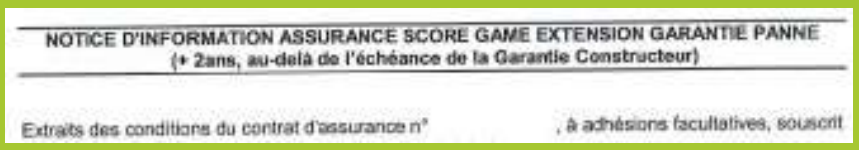
Some commercial warranties and extended warranties are offered by third parties. Some retailers also offer the possibility to take out a service labelled «insurance»[160] which has strong similarities to services that may be offered under commercial warranties. An extended commercial warranty can, in some cases, last until the consumer cancels it.

Given the content of some commercial warranties and the organisations providing them, especially if they are not free, it is tempting to draw a parallel with insurance. It is an open question whether some commercial warranties are not actually insurance policies. Some are even sold as such

Commercial warranties / extended warranties vs. Insurance: a fine line at times

Practical example: case received by the ECC-Net

In March 2010, a Belgian consumer bought a games console in a French store. He subscribed to a guarantee extension of 1 year for which he paid EUR 24.99. This guarantee extension was sold as an insurance contract.


NOTICE D'INFORMATION ASSURANCE SCORE GAME EXTENSION GARANTIE PANNE
(+ 2ans, au-delà de l'échéance de la Garantie Constructeur)

Extraits des conditions du contrat d'assurance n° , à adhésions facultatives, souscrit

In September 2011, the console stopped reading DVDs and Blue-rays. The consumer complained to the French insurance company which rejected the claim due to the consumer being resident in Belgium.

When the ECC-Net contacted the insurance company, they refused the claim based on the geographical restriction in the terms and conditions of the insurance contract and said that the seller should not have sold this product. The ECC-Net contacted the seller who agreed to replace the console and as a goodwill gesture, offered a game to the consumer.

Insurance products may overlap with commercial warranties.

● 160 Products with «affinity insurance» are often proposed to consumers. Affinity insurance based on partnerships with retailers or federations include extended warranties and insurance in various sectors: mobile devices, electronic goods, payment methods, vehicles, travel, etc.. There is no official definition of or typical contract for affinity insurance allowing an easy comparison by the consumer. The French FG2A (Fédération des garanties et assurances affinitaires) defines it as follows, "Any insurance, assistance or accessory service guarantee, linked to a product or service offered by a non-insuring distributor and which is not the main customer's purchase motive."

Differences between commercial warranties and insurance

In most cases a commercial warranty provides for repair or replacement of an item, whereas insurance is generally based on monetary compensation.

Incidents covered may differ. In the mobile phone sector in particular, insurance is sold quite easily as it covers damage and also theft. Some insurance companies also offer to insure all of the consumer's items collectively, rather than each item separately.

Several payment and credit card companies offer a "purchase guarantee" on items paid for with their products. The cards are linked to a guarantee offering compensation for damage or theft of items recently paid for with the card.

Home insurance may cover damage to electronic goods if the consumer is moving, for example. It seems that some sellers have taken this idea on board and offer a purchase guarantee if a consumer subscribes to one of their credit cards and an associated loan.

When purchasing an item linked to this kind of marketing method, as the seller might not be an insurance specialist the consumer must be particularly vigilant in assessing the benefits of any insurance.

When signing up for insurance, the consumer should look out for:

- The exact insurance cover and its exclusions, and if he/she already benefits from the same cover under any other insurance product;
- The duration of the cover and its price, to be compared to the value of the item at the end of the cover period, and the length of time the consumer might keep the item (a student, for example, might resell an item when moving);
- The possibilities for ending the contract;
- The proof to be submitted in order to apply to claim on the insurance (police report for a theft, breaking and entering, etc.);
- The complaints procedure (who to contact, how, deadlines, etc.);
- The deadline for handling complaints.

In cases of damage (or theft) the consumer must contact the call centre responsible for claim management and upon receipt of evidence (invoice, photos), they will decide whether to pay for a repair or reimburse the purchase price.

The insurance cover for such purchases varies between providers, but usually the conditions are quite strict (the purchase must have been made 48h to 7 days before the incident, the damage must be accidental or caused by a robbery or break in, etc.). Insurance and compensation ceilings may be in place.

Even though a purchase guarantee does not cover non-conformity issues as such, it might be an option if a seller refuses a consumer's claim arguing misuse of the item, provided that the claim is handled quickly.

Several Internet platforms connecting buyers and sellers, and also trust marks[161] provide a money back guarantee, sometimes free of charge, sometimes against payment, allowing the consumer to get a refund if an item is not in line with the description given by the seller.

The challenge in assimilating commercial warranties and insurance is to implement certain protective provisions of insurance law in commercial warranty contracts. In **France**, for example, since the adoption of the consumer law of 17 March 2014, a provision has been introduced into the insurance code[162] aimed at preventing consumers from overlapping their coverage. A consumer should not be bound by multiple contracts which insure the same goods or against the same type of incident.
Before concluding an insurance contract, the consumer must be invited, in writing,[163] to check whether he/she already has insurance cover. If the consumer has signed an overlapping contract, he/she has a 14-day withdrawal right from the new contract provided that no incident occurred during this period for which a claim was made under the new insurance policy. The consumer must provide evidence that he/she is already covered.

This new rule is applicable to insurance covering:

- **malfunction**, **loss** including theft, or **damage** of the goods purchased;
- **damage or loss**, including theft, **of luggage and other risks linked to travel**, even if the insurance also covers life or civil liability, if this is an accessory to the main cover linked to travel risks.

Example:



Very often when buying a mobile phone, the seller offers insurance against certain types of damage, theft, etc. which also sets out exclusions from coverage. The legal guarantee is of course applicable, but this is not a typical commercial warranty. Rather, it is an insurance policy supplied by a third party. Consumers should always carefully check the price of the insurance and whether the content is really beneficial in relation to their rights under the legal guarantee in terms of duration, risks covered, exclusions, etc...

At European level, a recent Proposal[164] for a Directive on insurance distribution shows renewed interest in consumer protection as regards small insurances and especially transparency requirements.

● 161 See also the ECC-net report "Can I trust the trust mark?" ● 162 Article L112-10 code des assurances ● 163 The ministerial decree fixing the form or standard information to be given has not yet been published. ● 164 http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014969%202014%20INIT and http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014791%202014%20INIT

Special focus



The new and second hand vehicle sector

In the new and second-hand car sector, consumers are often offered the possibility to sign up for a commercial warranty. For new cars the commercial warranty is usually offered by the producer, for second-hand cars it can also be offered by the seller or an independent guarantor.



Commercial guarantees in the United Kingdom: New motor vehicles usually come with fairly generous commercial warranties (up to 7 years or 150,000 miles on certain parts). Some second-hand car dealers offer additional commercial warranties on cars sold (both free and at a cost), but these are mostly for no longer than a few months and tend to simply replicate the statutory rights with little added benefit.

When a consumer purchases a new or second-hand car, three types of guarantee and warranty may apply:

- **The mandatory legal guarantee for which the seller is responsible** (Consumer Sales and Guarantees Directive). This legal guarantee usually has a duration of 2 years but can be reduced to one year for used cars in several Member States[165];
- **The commercial warranty offered directly by the producer,** often free of charge as part of the overall vehicle price (for example for 3 years or mileage of 100 000 km);
- An **extended commercial warranty** to complement the producer's initial commercial warranty. The consumer usually pays for this.

Consumers can also be offered an extra warranty advertised as covering the whole of the EU. This is generally offered by an independent company and the consumer has to pay. The commercial warranty is complementary to the legal guarantee for which the seller is responsible. When a defect occurs shortly after purchase, the consumer can choose between application of a commercial warranty (producer or guarantor) or the legal guarantee (seller[166]) .

A commercial warranty may be beneficial for the consumer, especially for a second-hand car which breaks down more than six months from delivery, or a car with a high mileage. Under the legal guarantee, in most countries, the consumer must prove that the car does not meet the terms of the contract, which usually requires a technical examination. Even if this is done in the consumer's country, it will often not be taken into account by a seller in another country, unless the consumer provides a certified translation.
It is also often not clear if the car really is defective or if the parts which break down are simply subject to wear and tear due to the mileage of the car, for example. Also, the value which the car will have at the end of the warranty period and whether or not it was regularly inspected and/or repaired by a brand dealer, need to be taken into account.
Extra warranties advertised as covering the whole EU often seem very attractive to consumers comparing prices within the EU[167] and purchasing cars from other Member States, or to those wanting their car repaired in another Member State, when living, for example, in a border region.

What they often do not see is that a producer's commercial warranties and extra warranties are country specific so that the car is covered by the warranty of the country of purchase. Specific offers are thus for specific markets and are not applied all over Europe[168], and the duration of the warranty may also differ from one country to another.
If then, once the car is back in the consumer's home country, defects become apparent, the consumer will request application of the commercial warranty from the repair centre in his/her home country. Although Regulation EU 461/2010 on categories of vertical agreements and concerted practices in the motor vehicle sector allows consumers to have cars repaired by any dealer (brand dealer or otherwise), the seller or producer usually invite their customers to go to an authorised repairer. In a different Member State from the one in which a car was bought, commercial and goodwill gestures depend on the repair centre and national representatives of the producer. Quite often consumers are confronted with restrictive conditions and numerous exclusions. Below are some examples.

- **Geographical limitations,** for example, whereas some commercial warranties allow the consumer to contact the producer's nearest partner, others impose an obligation to contact the guarantor first, usually the producer, to be advised on the repair centre to contact or to wait for the producer to contact the repair centre. Consumers are sometimes unaware of this and directly contact the nearest repair centre. The repairer, eager to secure the contract, may not inform the consumer of the conditions of making the repair and as a result, the costs are not covered.
- In principle **mechanical and electrical spare parts are covered**, but those **subject to wear and tear are usually excluded**, as are parts changed by any service not authorised by the producer.
- **Not all labour costs are covered** and those which are might be calculated according to a reference value per working unit established by the producer.
- The **spare part and labour costs covered often depends on the age of the car, mileage and the value of the car.**

● 165 See also page 16 ● 166 Also, some countries allow for direct responsibility of the producer for warranties (see page 34) ● 167 Until 2011 the European Commission published an annual car prices report. ● 168 ECC Norway has reported cases in which consumers purchased an EU commercial warranty which covers only Member States. Norway not being a Member State of the EU (but of the European Economic Area), consumers can not benefit from an EU warranty. See also page 88 for geographical restrictions.

In the event of a breakdown a specific warranty, sometimes called a **mobility warranty**, may cover, at a daily rate, hotel costs, towing, a rental car, other means of transport, etc. Usually this cover is limited to a certain distance from the place where the car is registered, with different rates, depending on whether the breakdown occurred in the driver's home country or another country. This is of interest to consumers in border regions who travel between countries on a daily basis.



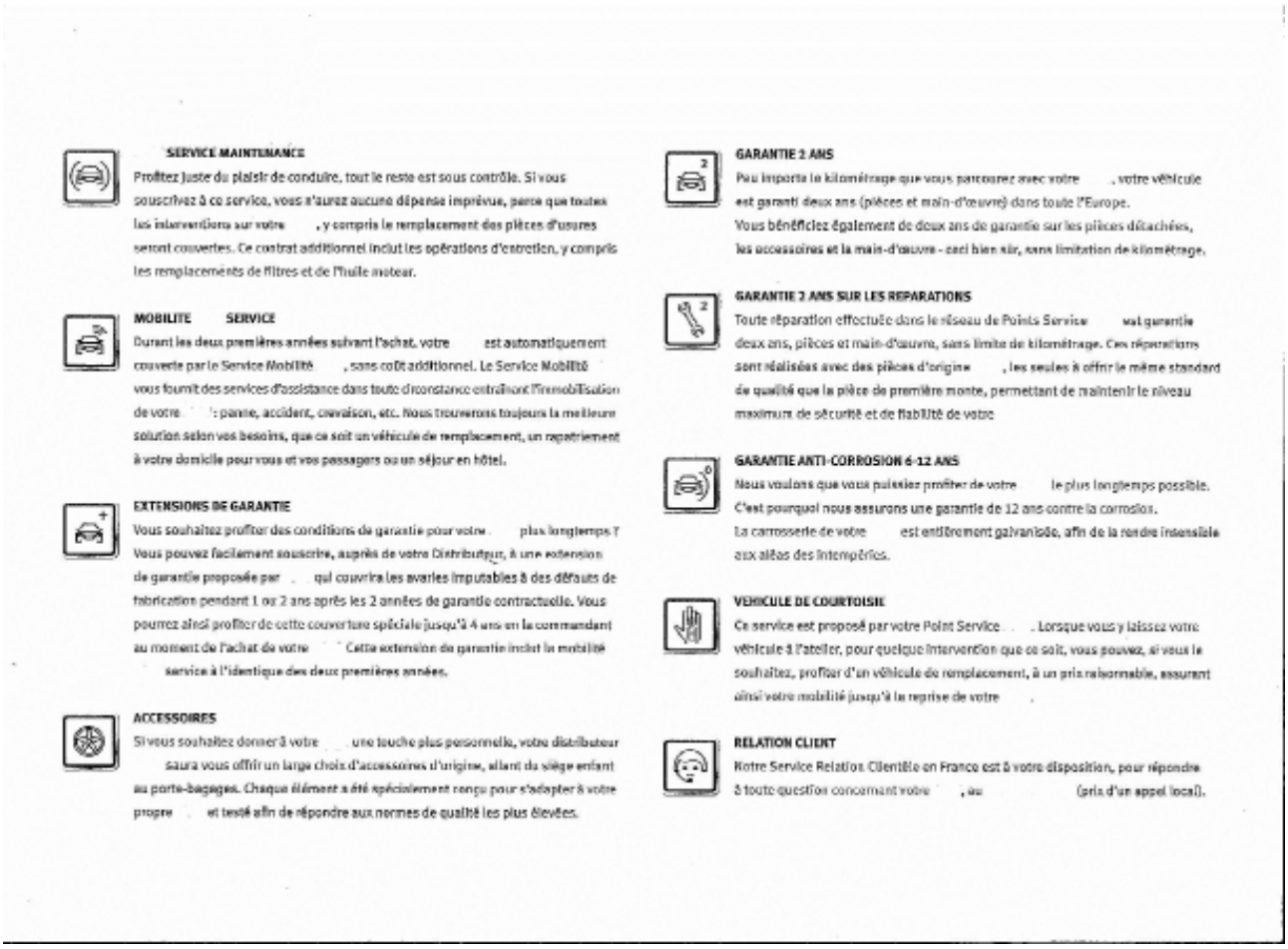
Practical example: case received by the ECC-Net

A French consumer purchased a new car through an official brand dealer based in Luxembourg on 2 October 2008. The car was purchased with a 3-year or 100 000 km commercial warranty from the producer, and the consumer subscribed to an extension of the commercial warranty from 3 to 5 years, and up to 150 000 km from the Belgian brand representative which was proposed to him by the Luxembourgish seller. The car should thus have been covered until October 2013 (unless the consumer drove 150 000 km before that date). The vehicle broke down on 14 January 2013 and the consumer called the seller who organised the transfer of the car to the closest brand dealer in France. The French representative assured the consumer that the repair would be made under the warranty. The local French dealer contacted the seller in Luxembourg, but the consumer was asked to pay for the whole repair (EUR 1100).

When the consumer complained to the seller, he was redirected to the guarantor, the Belgian brand representative.

The Belgian representative refused cover, stating that the extended commercial warranty was only valid in Belgium or Luxembourg, even though the warranty notice specified "you can contact an approved [brand] repairer in Belgium or Luxembourg and any of their other establishments in the European Economic Area[169]". The consumer's claim was refused as he had his car repaired in France, rather than Luxembourg or Belgium which, according to the Belgian representative, invalidated the commercial warranty.

Even though the guarantor was aware of Regulation (EU) 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector which allows consumers to benefit from the Internal Market by having their cars repaired by any recognised dealer in the EU, no amicable solution could be reached.



SERVICE MAINTENANCE

Profitez juste du plaisir de conduire, tout le reste est sous contrôle. Si vous souscrivez à ce service, vous n'aurez aucune dépense imprévue, parce que toutes les interventions sur votre , y compris le remplacement des pièces d'usures seront couvertes. Ce contrat additionnel inclut les opérations d'entretien, y compris les remplacements de filtres et de l'huile moteur.

MOBILITE SERVICE

Durant les deux premières années suivant l'achat, votre est automatiquement couverte par le Service Mobilité , sans coût additionnel. Le Service Mobilité vous fournit des services d'assistance dans toute circonstance entraînant l'immobilisation de votre : panne, accident, crevaison, etc. Nous trouverons toujours la meilleure solution selon vos besoins, que ce soit un véhicule de remplacement, un rapatriement à votre domicile pour vous et vos passagers ou un séjour en hôtel.

EXTENSIONS DE GARANTIE

Vous souhaitez profiter des conditions de garantie pour votre plus longtemps ? Vous pouvez facilement souscrire, auprès de votre Distributeur, à une extension de garantie proposée par qui couvrira les avaries imputables à des défauts de fabrication pendant 1 ou 2 ans après les 2 années de garantie contractuelle. Vous pourrez ainsi profiter de cette couverture spéciale jusqu'à 4 ans en la commandant au moment de l'achat de votre Cette extension de garantie inclut la mobilité service à l'identique des deux premières années.

ACCESSOIRES

Si vous souhaitez donner à votre une touche plus personnelle, votre distributeur saura vous offrir un large choix d'accessoires d'origine, allant du siège enfant au porte-bagages. Chaque élément a été spécialement conçu pour s'adapter à votre propre et testé afin de répondre aux normes de qualité les plus élevées.

GARANTIE 2 ANS

Peu importe le kilométrage que vous parcourez avec votre , votre véhicule est garanti deux ans (pièces et main-d'œuvre) dans toute l'Europe.
Vous bénéficiez également de deux ans de garantie sur les pièces détachées, les accessoires et la main-d'œuvre - ceci bien sûr, sans limitation de kilométrage.

GARANTIE 2 ANS SUR LES REPARATIONS

Toute réparation effectuée dans le réseau de Points Service est garantie deux ans, pièces et main-d'œuvre, sans limite de kilométrage. Ces réparations sont réalisées avec des pièces d'origine , les seules à offrir le même standard de qualité que la pièce de première monte, permettant de maintenir le niveau maximum de sécurité et de fiabilité de votre

GARANTIE ANTI-CORROSION 6-12 ANS

Nous voulons que vous puissiez profiter de votre le plus longtemps possible. C'est pourquoi nous assurons une garantie de 12 ans contre la corrosion.
La carrosserie de votre est entièrement galvanisée, afin de la rendre insensible aux aléas des intempéries.

VEHICULE DE COURTOISIE

Ce service est proposé par votre Point Service . Lorsque vous y laissez votre véhicule à l'atelier, pour quelque intervention que ce soit, vous pouvez, si vous le souhaitez, profiter d'un véhicule de remplacement, à un prix raisonnable, assurant ainsi votre mobilité jusqu'à la reprise de votre .

RELATION CLIENT

Notre Service Relation Clientèle en France est à votre disposition, pour répondre à toute question concernant votre , au (prix d'un appel local).

● 169 « vous pouvez vous adresser à un réparateur agréé [marque] en Belgique ou au Luxembourg et leurs éventuels établissements supplémentaires dans l'Espace Economique Européen »

Special focus



Geographical restrictions in the territorial coverage of commercial warranties

Consumers have reported cases to the ECC-Net in which they felt discriminated against on geographical grounds, **either because they purchased an item in another country or because the commercial warranty conditions of their home country are not as beneficial as those in another Member State.**

Usually the situation is as follows: a seller based in one EU Member State offers goods for sale along with the possibility to have them delivered to another Member State. At purchase he/she proposes a commercial warranty on the item.
The warranty might have geographical restrictions limiting its application to the country of the seller, or specific cross-border conditions (shorter warranty period in the consumer's home country than in the country of sale, etc.).
Article 20 of Directive 2006/123/EC of 12 December 2006 on services in the Internal Market ("the Services Directive") prohibits discrimination based on nationality or place of residence[170] unless justified by objective reasons[171]. So each situation must be analysed on a case-by-case basis. However, a seller offering a commercial warranty in a cross-border context should be well aware of the specificities of the warranty. If it is limited to the country of sale, the consumer should be made aware of this[172].

Being particularly interested in consumer protection in a cross-border context, the ECCs asked during check n° 4[173] in the shops (total number of checks 79) if there were any geographical restrictions to commercial warranty cover. It seems that only a fifth of the sellers are aware of geographical restrictions to the warranties they supply.



7 *sellers responded that there are geographical restrictions and that the commercial warranty is only valid in the country of sale or in countries where the producer has a representative.*

8 *sellers claimed that there are no geographical restrictions.*



● 170 "Article 20 - Non-discrimination - 1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence. 2. Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria." ● 171 The 95th recital of the preamble of the Services Directive allows for a difference in treatment based on objective reasons: "The principle of non-discrimination within the internal market means that access by a recipient, and especially by a consumer, to a service on offer to the public may not be denied or restricted by application of a criterion, included in general conditions made available to the public, relating to the recipient's nationality or place of residence. It does not follow that it will be unlawful discrimination if provision were made in such general conditions for different tariffs and conditions to apply to the provision of a service, where those tariffs, prices and conditions are justified for objective reasons that can vary from country to country, such as additional costs incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, such as higher or lower demand influenced by seasonality, different vacation periods in the Member States and pricing by different competitors, or extra risks linked to rules differing from those of the Member State of establishment. Neither does it follow that the non-provision of a service to a consumer for lack of the required intellectual property rights in a particular territory would constitute unlawful discrimination." ● 172 See also the example on page 88 ● 173 See page 113

Practical example: case received by the ECC-Net

In 2008, an Austrian consumer bought three rolling shutters from a French company. In January 2014, 2 of them turned out to be defective. As the seller had filed for bankruptcy and the company had been dissolved, the consumer contacted the French producer. The producer advised the consumer to contact a specific repair service in Austria, but when the consumer did so, he was informed that he would have to pay the travel and labor costs of the repairer. The consumer checked the serial number of the defective products on the French website of the producer which showed that the products were covered by a commercial warranty until May 2015, including labour and travel costs. The producer said that the 7-year commercial warranty covers spare parts, but that travel and labour costs are only covered for the first 2 years for a consumer living in Austria. For French residents, travel and labour costs are covered for the full 7 years.

ECC-Net reminded the producer of the non-discrimination rule in article 20 of the Services Directive and asked for objective reasons justifying this difference in treatment.
The producer replied that they inform their resellers about the commercial warranty provisions of the respective country who then have the obligation to inform the customers. The difference in treatment is, according to the producer, justified by aspects such as commercial strategy, different market positions and organisation of the after-sales service. No evidence was provided to support the justification given[174]. No solution could be found for the consumer. The case has been transferred to the French authority responsible for implementation of the Services Directive and to the European Commission.

● 174 This is a recurring issue, see also the ECC-Net report "Enhanced Consumer Protection – the Services Directive 2006/123/EC".

On the French website of a producer and retailer of electronic and white goods operating in various countries it was specified that the commercial warranty only applied to products distributed/sold in France. A French consumer who purchased a product from this brand from a Belgian retailer contacted the ECC-Net to see if his item would be covered by a commercial warranty and, if so, which one. He knew that certain TVs were sold in various EU Member States but not in France and was worried that he might be discriminated against on account of the country in which he bought the item.

ECC-Net explained the non-discrimination rule in the Services Directive, the difference between the legal guarantee and commercial warranty, and that, in his case, there is no difference in the duration of the warranty period, which is 24 months for TVs in both France and Belgium.

A Belgian consumer bought a robot cleaner from a Luxembourgish seller with a French domain name. The cleaner turned out to be defective and the consumer contacted the producer, who agreed to replace the damaged part but asked for a French address for delivery. Otherwise the consumer would be redirected to a Belgian service centre and would be without warranty coverage. The consumer was told that, "on the proof of purchase the billing and shipping address are in Belgium, but the website you have purchased the robot from is French. This means that the warranty of your robot is only valid in France. In that case, you can either provide us with an address in France or I can redirect you to the Belgian support. Please note the robot will not be in warranty there."

The consumer, based on the assessment provided by the ECC-Net, got back in touch with the Luxembourgish seller who agreed to exchange the item and cover the shipping costs.

Special focus



Purchase of animals



The ECC-Net sometimes receives enquiries related to purchases of animals such as dogs, cats or horses. Unfortunately not all animals are healthy when sold, and the question of the legal basis for redress needs to be asked.

In several Member States, animals, including pets, are considered goods (movable items) in the legal sense and the **legal guarantee of conformity is applicable** to their sale to consumers. However, given the specific nature of animals, the duration of the reversal of burden of proof[175] or of the legal guarantee may be reduced. Every complaint needs to be checked on a case-by-case basis, taking into consideration the nature and the quality of each animal. However, some general rules can be mentioned:

Animals are considered goods in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Greece, Iceland, Italy, Latvia, Luxemburg, Malta, Norway, Romania, Slovakia, Slovenia, Sweden and United Kingdom. The normal duration of the legal guarantee **(2 years)** is applicable in **Belgium, Bulgaria, Croatia, Denmark, Estonia, France, Greece, Italy, Latvia, Luxemburg, Malta, Romania** (however in practice, sellers in pet shops give for the animals guarantees from 72 hours to 30 days) **Slovakia and Slovenia**.

In **Sweden**, the buyer of an animal has the right to complain up to **3 years** after purchase. In **Iceland and Norway**, the length of the legal guarantee varies based on the **expected lifetime** of the goods (usually not more than 2 years in Iceland and up to a maximum of 5 years in Norway). This also applies to animals. **Finland** has not adopted any time limits as regards the legal guarantee but the duration is based on the **expected lifespan** of the item. This rule is also applicable to animals.

Although animals by **Portuguese** law are goods, the Portuguese Civil Code provides for application of **special legislation** for sales of "defective animals".

In the **United Kingdom,** as with all other goods, the Limitations Act allows action for breach of contract (in effect breach of the requirements of the Sale of Goods Act for purchases made before the 1 October 2015 and the Consumer Rights Act 2015 after that date) to be taken up to **6 years** from the time of supply depending on the nature of the fault and of the goods, meaning that a pet with a lower life expectancy may not be considered faulty if it dies before 6 years are up.

Animals are not considered goods in Austria, Germany, Poland and the Netherlands. In Austria and Germany, they are protected by specific legislation but as long as the legal texts do not foresee a specific regime , the general rules on goods apply and the legal guarantee has a duration of 2 years. However, the reversal of burden of proof of 6 months may be reduced, depending on the animal category and the problem (e.g. sickness). For example, in Austria the period of reversal of burden of proof for a rabbit with myxomatosis would be 10 days. In Polish law, animals are not considered as goods. However, when they are traded, civil sales rules apply including the legal guarantee rules.

● 175 The Consumer Sale and Guarantees Directive foresees that "Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity."

In the **Netherlands**, animals are not considered goods but consumer law does apply. The consumer has the right to expect that the animal possess the qualities necessary for normal use, as well as for particular use as long as the consumer has informed the seller of this. The Dutch legal guarantee can be longer than 2 years, depending on the life expectancy of the animal. If the problem occurs within 6 months of purchase, the reversal of burden of proof applies.

In **Cyprus and Lithuania** animals are not considered as goods in legal terms and the legal guarantee rules are not applicable to their purchase.

In **Hungary,** the previous Civil Code included a specific rule for animals according to which the guarantee period was 60 days. The current Civil Code does not include any specific rule for animals so the general rule which covers the animal for one year from the date of delivery is applicable. In cases of consumer contracts the general 2-year period is applicable.
In **Ireland** at present there is no legislation governing the sale of domestic animals/pets and their durability. While it cannot be said that pets can be regarded or classified as consumer goods and as such covered under the general terms of the Sale of Goods and Services Act, ECC Ireland would use it as a guideline when handling complaints of this nature. The consumer's rights as a purchaser are based upon the contract with the seller/breeder and where the seller sells domestic animals in the course of his/her business, the consumer should be able to look for a remedy. In Ireland, there is a limitation period of 6 years within which a consumer can bring an action against a trader for 'lack of conformity' in relation to consumer goods, but it cannot be said that same applies to domestic animals/ living creatures.

The new **Czech** Civil Code includes a specific provision for animals recognising that they have a special significance and value as living creatures endowed with senses. Live animals are not a considered as goods, and provisions on goods apply, by analogy, to live animals only to the extent to which they are not contrary to animals' nature. However, there is no special provision in terms of guarantees, so as long as no case law exists which rules differently, the standard duration of 24 months (6+18) applies.

However, in the cases submitted to the ECCs, proving a defect is often very difficult and professional expertise may be required. The Danish ADR, for example, would seek veterinary advice to determine whether a pet had a defect and what caused it, but obtaining proof can still be difficult.

Practical example: case received by the ECC-Net

French consumers bought a purebred dog in Germany. Shortly after, they noticed a serious genital malformation which required surgery according to the vet. Through a friend who bought another dog from the same litter, they discovered that the breeder was well aware that their dog had shown symptoms of this life-threatening illness since birth. The consumers let the vet operate of the dog, which ended up costing them more than EUR 1000. They tried to recover this from the breeder amicably. The breeder promised to refund the money but didn't do so. The consumers contacted ECC France. Despite subsequent efforts made by ECC Germany, the breeder didn't respond.

The consumers were advised to launch a European small claims procedure in order to recover their money under the legal guarantee of conformity.

Check lists & country fact sheets



In order to find their way around commercial warranties and reach a deal which benefits them, consumers can use the check lists provided by the ECC-Net before subscribing, especially for warranties involving costs,

HERE

Commercial warranties have become an integral part of marketing and **such offers must be made in accordance with consumers' rights under the legal guarantee of conformity which applies in every EU Member State, Iceland and Norway and to every product sold to a consumer. The seller has to inform customers about the legal guarantee** and every commercial warranty must give additional benefits to those covered by the guarantee.

Therefore, the ECC-Net has also developed check lists allowing sellers to make sure that their commercial warranties meet requirements.

HERE

For a general overview regarding legal guarantees and commercial warranties, the ECC-Net has summarised the situation in each of the participating countries in a country fact sheets.

HERE

For an overview of the main rules governing legal guarantees and commercial warranties, this report also provides a summary table.

Summary of facts on the legal guarantee of conformity and commercial warranties

Main legal sources:
Directive 1999/44/EC on sale of consumer goods and associated guarantees and Directive 2011/83/EU on consumer rights, national implementations

LEGAL GUARANTEE	
Definition of non conformity	**A product is faulty if it does not comply with the given description or if it cannot be used for normal purposes or the specific purposes requested by the consumer. The product is also faulty if it is not of normal quality and does not perform as can be reasonably expected.**
Responsible for the application of the legal guarantee	Always the **seller.**
Duration of the legal guarantee	• **2 years** in the majority of EU-countries **(Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Spain)** as well as in **Iceland** and **Norway**, • **3 years in Sweden,** • **5 years in Iceland and Norway** for goods with a longer expected lifespan, • **6 years in Ireland.** • **United Kingdom** has two different limitation periods: **6 years in England, Wales and Northern Ireland, 5 years in Scotland.** • In the **Netherlands and Finland,** the duration is based on the expected lifespan of the item.
Shorter duration	In all countries, specific durations exist for perishable goods such as flowers and food, or goods with a marked date of maximum durability such as packed or canned food or drugs. In **Romania**, for example, a shorter duration is explicitly foreseen for goods with shorter expected lifespan.
Duration for second hand goods	• **No reduction in Bulgaria, Denmark, Estonia, Finland, France, Greece, Iceland, Ireland, Latvia, Lithuania, Malta, Netherlands, Norway, Sweden and United Kingdom.** • In **Austria, Belgium, Croatia, Cyprus, Czech Republic, Hungary, Italy, Luxembourg, Poland, Portugal, Romania, Slovenia and Slovakia** the time limit can be **reduced but not to less than 1 year.** • **In Germany,** the trader's responsibility for second-hand goods can be reduced to 1 year but previously the German legislator had **assimilated this to a prescription period of one year.** The CJEU ruled that this legal provision is not in compliance with directive 1999/44/EC (decision from 13/07/2017, C 133/16) and needs to be corrected in the German civil law. The prescription period cannot be shorter than 2 years even if the trader's responsibility is reduced **to one year.**

Deadline for the consumer to signal the existence of a defect or lack of conformity with the contract to the seller	• **2 months** from discovery in **Bulgaria, Croatia, Cyprus, Estonia, Italy, Latvia, Malta, Poland** (until 25 December 2014)**, Portugal, Romania, Slovenia and Spain.** • **Within reasonable time** of noticing the lack of conformity in **Austria, Belgium** (although the seller may impose a 2-month deadline), **Czech Republic, Denmark, Finland, Greece, Iceland, Ireland, Lithuania, Luxembourg, Netherlands, Norway, Slovakia, Sweden and United Kingdom.** • In **Finland, Iceland and Norway** the deadline can never be shorter than 2 months. In **Denmark, Netherlands and Sweden,** a complaint made within 2 months is always considered reasonable. • In **Hungary**, the complaint needs to be made **without delay**, but 2 months is always considered to be without delay. • In **France and Germany,** there is **no deadline** for signaling the existence of a defect other than the legal prescription period of 2 years.
Reversal of burden of proof: the defect is presumed to exist	• **All Member States** introduced this reversal of burden of proof in favour of the consumer in their national law. 5 of them went further by extending the normal 6-months duration of this reversal: • **1 year** in **Slovakia and Poland, 2 years** in **Portugal**, **2 years** in **France** from 2016. • **Slovakia** extends the reversal of burden of proof period to 12 months and within that period, proof that the item was not defective must be provided by an expert at the seller's expense. • In **Sweden** for building elements intended to constitute a major part of a single or dual family dwelling, the reversal of burden of proof is 2 years of delivery. • In **Spain**, in case of a repair or replacement of the item under the legal guarantee, in the first 6 months from the moment the repaired or replaced product is delivered to the consumer, the reversal of burden of proof is applicable.
Is there a third party testing body to assist the consumer with providing proof?	• In most countries consumers can ask any specialist body or repair shop for an expert opinion, but this opinion might not be accepted by the seller. In the event of a court procedure, the judge may accept it, or ask for an independent expert opinion. • Many **Danish** ADR bodies have their own experts who are asked for an opinion where necessary. • In **Poland**, consumers can get assistance from regional trade inspectorates which have lists of experts, as do common courts. • In **Malta**, an expert can be appointed by the Consumer Claims Tribunal. • In the **Czech Republic, Hungary and Slovenia** the Ministrof Justice has an official list of independent experts whom consumers and sellers can contact. • In **Bulgaria**, in the event of a court procedure, an expert is appointed by the judge from a list of experts. • In **Latvia**, there is no third-party testing body. If the dispute is handled by the Consumer Dispute Resolution Committee (established by the Consumer Rights Protection Centre of Latvia) parties can at any time provide the expert opinion or other proof, however there is no special regulation on that. • In **Lithuania**, the State Consumer Rights Protection Authority can help consumers to prove that goods are defective. Consumers can also ask a repair shop or an independent expert for a non-binding opinion.

Is there a third party testing body to assist the consumer with providing proof?	• **The United Kingdom** has a limited number of sector-specific ADR bodies (e.g. The Furniture Ombudsman) with the expertise to produce such reports. These can be costly and consumers may have to pay upfront, but in most cases the 'loser' in the argument should end up paying. • In **Denmark,** in cases where the ADR covers the expenses for third party testing, the ADR will assess if they find a need to use experts in the specific dispute.
Hierarchy of remedies to be provided	• **In most countries, repair or replacement**, and if this is impossible or not possible within a certain time frame or without significant inconvenience to the consumer, **partial or total refund.** • **No hierarchy** in **Greece, Poland, Portugal** and **Slovenia**. In **Poland** however, the seller may refuse the consumer's choice of remedy under specific conditions and offer an alternative solution. • In **Ireland**, **a dual policy exists:** under national law, the consumer can claim a refund, or if he/she accepts repair or replacement, under the transposed EU rules priority is given, in the first instance, to repair or replacement and, following that, partial or total refund. • In the **United Kingdom,** the Consumer Rights Act 2015 provides for short term right to reject the item within the first 30 days from delivery. This has effectively specified the time limit for doing this, as opposed to 'lapse of a reasonable time' previously applicable under the concept of acceptance. If the consumer wishes to argue this, reversed burden of proof does not apply. This means that the consumer may be expected to prove that fault existed at the point of delivery, unlike when asking for a remedy in the standard way (repair/replacement/price reduction up to full refund). In other cases, the traders should initially be given the opportunity to correct the issue by repair or replacement. If this does not resolve the situation within a reasonable time and without significant inconvenience to the consumer, he/she can insist on a full or partial refund, the latter taking into account usage up to that point. Traders can also offer a refund outright if repair or replacement is impossible or disproportionate. • In **Denmark**, the consumer may claim **a refund right away** if the defect is significant, but not if the seller offers to repair or replace the product. • In **Latvia**, the consumer is, in the first instance, only entitled to repair or replacement. Only if this is not possible or cannot be done within a reasonable time frame, can the consumer request a partial or total refund. • In **Lithuania,** if the things sold do not correspond to the quality requirements the buyer (consumer) shall be entitled to demand, at his own choice; 1) to eliminate the defects without any payment within a reasonable time 2) to replace the thing of improper quality with a thing of satisfactory quality 3) to reduce the price accordingly 4) to cancel the contract and ask for full refund The consumer has no right to cancel the contract if the defect is minor.

Time frame for providing a remedy	• In most countries, the first remedy to be provided is repair or replacement. This must be done free of charge and **within a reasonable time frame** in **Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Iceland, Italy, Lithuania, Malta, Netherlands, Norway, Poland[176], Romania, Spain, Sweden and United Kingdom.** • In **Bulgaria, France and Luxembourg,** the deadline is 1 month. • In **Hungary,** the seller must try to perform the repair or provide a replacement within 15 days. • In **Romania**, the seller or repairer must also bring the goods into line with requirements within 15 calendar days of when the consumer notifies them of the issue or hands over the product to the seller or their representative. National law specifies that if the period required for repair exceeds 15 calendar days, the consumer can cancel the contract and be refunded. • A trader operating in **Estonia** is obliged to accept any written complaint and answer the consumer within **15 days**. • If repair or replacement is impossible within a set time frame, the seller must provide a partial or total refund. This has to be done within 1 month in **Bulgaria**, and within a **reasonable time frame** in **Germany, Iceland, Lithuania, Malta, Norway and Sweden.** • **No deadline** is set in **Austria, Belgium, Croatia, Estonia, Finland, France, Hungary, Ireland, Italy, Poland** (however the trader has to answer the complaint within 14 days)**, Spain, Netherlands and United Kingdom.** • In **Slovenia**, a deadline of **8 days** is fixed by law within which the seller has to satisfy the consumer's request. • In the **Czech Republic, Latvia, Portugal and Slovakia**, a deadline of **30 days** for providing a remedy is set. In Slovakia, once this deadline passes, the item is considered unrepairable and the consumer has a right to a replacement or refund. • In **Greece**, the seller or repairer has to bring the goods into line with requirements within a **justifiable period** and without significant inconvenience to the consumer. • In **Lithuania**, while the seller must remove the defects within a **reasonable time frame**, the legislation does not define a specific time period. Rather it depends on the nature of the item, the complexity of the defects and other factors. If a deadline is established in the guarantee document or by the repair service the consumer called upon, the seller or his/her representative must comply. In case the consumer claims a refund, the money has to be returned as soon as possible but not later than **15 days after** the return of the item, unless the consumer and the seller have agreed otherwise. What constitutes a reasonable time frame usually varies between cases. It is thus important that the consumer fix a deadline for remedy.
Obligation to inform the consumer about availability of spare parts	• In **France**, the producer has to inform the seller of the period in which the spare parts necessary for the use of the goods are available on the market. The seller has to tell the consumer before conclusion of the contract. • In **Slovenia**, the seller has to provide an obligatory guarantee for specific technical goods granted by the producer when concluding a sales contract. This guarantee includes information on the period following its expiry, during which the body issuing the guarantee provides maintenance, spare parts and coupling devices.

176 The seller has to respond to a request for a precise price reduction o an exchange within 14 days otherwise the claim is deemed to be recognized by the seller.

Obligation to provide spare parts to the seller or repairer	• In **Italy**, there is no obligation of information but the seller should inform the consumer if the goods are out of production on the legal basis of fairness, transparency and equity in contractual relations, as these are recognised as fundamental consumer rights. • From 2016, in **France**, the producer has **2 months** in which to supply spare parts. • In **Malta**, if the goods are such as may require maintenance or replacement of parts, replacement parts and an appropriate repair service must be made available for a reasonable period from delivery. The trader or the producer may release themselves from this obligation by expressly notifying the consumer in writing, before the contract is concluded. • In **Greece and Romania,** national law states that the seller (Greece) or the producer (Romania) should ensure provision of spare parts **throughout the expected lifespan** of the product. • In **Portugal**, "The consumer has a right to after-sales assistance, namely provision of spare parts for the **average expected lifespan** of the products supplied". • In **Slovenia**, under the obligatory guarantee for specific technical goods, maintenance and spare parts must be available for **at least 3 years** after expiry of the guarantee.
Remedies under the legal guarantee have to be provided free of charge	This includes **communication costs, shipping costs, administrative fees, and repair or replacement**.
Expensive phone lines for complaint management	• Hotlines enabling consumers to ask for application of the legal guarantee must be **accessible at a basic rate** in **Austria, Belgium, Czech Republic, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and United Kingdom.** • In the **Netherlands,** the basic tariff which can be applied is indicated in a ministerial regulation. • In **Lithuania,** consumers may be charged higher rates, but the price has to be indicated.
Suspension of the legal guarantee during repair/replacement	• In **Belgium, Bulgaria, Ireland, Italy, Lithuania, Luxembourg, Malta**, the **Netherlands, Norway and Romania,** during repair or replacement the 2-year legal guarantee is suspended and continues as soon as the consumer receives the repaired or replacement item. • In **Austria, Croatia, Greece and Iceland**, a **new 2-year guarantee period** starts when the **repaired or replacement** item is delivered to the consumer. In **Denmark,** once a **replacement** item is delivered to a consumer, **a new 2-year legal guarantee period** starts. In Denmark, in the event of a **repair**, the consumer can claim **a 3-year** guarantee period if the same defect reoccurs. • In **Portugal and Slovakia, a new period starts** in the event of a **replacement**. This is also the case in **Slovenia** for the replaced item or major components, unless otherwise agreed in the contract.

Suspension of the legal guarantee during repair/replacement	• In **Spain**, the law distinguishes between repair and replacement. For **repairs**, the legal guarantee is **suspended**. Once the item is repaired, the guarantee period continues. In the first six months from delivery of the repaired product to the consumer, the reversal of burden of proof is applicable. For **replacements**, **a new 2-year guarantee period** comes into force on delivery. During the first six months from delivery, the reversal of burden of proof is also applicable. • A similar situation exists in **Hungary** where the Civil Code states: "The legal guarantee period is **suspended** for the time during which the goods are being **repaired** and the consumer cannot use them. If the goods or any major component of the goods is **replaced** or repaired, the **guarantee period recommences** for the goods or major components that have been replaced or repaired as well as for any defect resulting from the repair." • In **Germany and Sweden,** the law is not explicit on this point. In Germany, the courts may consider that the legal guarantee starts anew for any exchanged parts. To prevent this, sellers usually refuse to accept the existence of a defect covered by the legal guarantee, but repair the item, claiming that it is a goodwill gesture and without acknowledging any legal obligation. In **Sweden**, in the event of a repair: Not the product itself, but the replaced part gets an extended warranty, if the same error that has been remedied returns. The consumer can make a claim within 3 years, if the same defect occurs again. • In **Bulgaria**, there is no legal provision for this. The Bulgarian enforcement authority considers that the legal guarantee lasts for two years from purchase. A replacement is not a new purchase and the original terms of the guarantee continue to apply. • In **France,** the law doesn't expressly say for the legal guarantee but the general approach is that the repair or replacement does not benefit from a new guarantee; the guarantee rights of the first item remain applicable. The law only clarifies this point for commercial warranties. Any period of immobilisation of 7 days or more extends the remaining warranty by the time needed for repair...
Prescription period for legal action by the consumer based on the legal guarantee of conformity	• **The prescription period can never be shorter than the legal guarantee period.** • In **Belgium and Poland,** the prescription period is **1 year from discovery of the defect**, but it cannot expire before the end of the legal guarantee period of 2 years. • In **Austria, Bulgaria, Croatia, France, Germany, Greece, Latvia, Lithuania and Malta,** the prescription period in cases of non-conformity of goods is based on the legal guarantee period and is therefore **2 years from delivery to the consumer**. • The prescription period is also **2 years, but from notification by the consumer of the seller of the existence of a defect in Luxembourg, the Netherlands, Portugal and Slovenia.** • In **Hungary**, the prescription period is limited to **2 years from delivery of the goods**, but if the consumer is unable to enforce a claim for a legitimate reason, the prescription period is suspended. In such cases, the claim remains enforceable for one year from the time when the impediment is eliminated, even if the 2-year prescription period has expired or has less than 1 year to run.

Prescription period for legal action by the consumer based on the legal guarantee of conformity	• In **Italy**, the prescription period for enforcing claims of non-conformity expires **26 months after delivery** of the goods. • In **Cyprus, Estonia and Spain,** the prescription period is limited to **3 years from delivery** of the goods. • In **Denmark, Finland and Romania** it is also limited to **3 years**, but **from the moment in which the consumer detected** or should have detected the **defect**. • In the **Czech Republic and Slovakia,** the general prescription period is **3 years from when the claim is made.** • In **Ireland**, the general limitation period of **6 years from delivery** of the goods applies (as is the case in the **United Kingdom** outside of Scotland where it is 5 years), and **Sweden** foresees a 10-year general prescription period. The consumer can take legal action within **10 years of delivery** if he/she has made a complaint to the seller within the legal guarantee period of 3 years. • In **Norway**, the prescription period is **3 years from delivery** of the item, or **5 years** based on the legal guarantee for longer-lasting items, unless there is a suspension of the statutory limitation period. In cases of gross negligence or conduct contrary to good faith, the deadline can be extended. To the 3 years, 1 year can be added for each year in which the consumer was unaware of the defect up to a maximum of **10 years** (13 years in total).
Can the consumer make a claim against the importer or any other intermediary in the sale chain up to and including the producer?	• **Most countries do not foresee such a possibility** and the consumer can only make a claim against the producer or importer, for example, if they offer their own commercial warranty. • According to **Finnish** legislation, the consumer has the right, with certain restrictions, to make a claim related to a defect in a product against a business which supplied the goods for resale at an earlier point in the supply chain. This is also the case in **Sweden** if the seller is insolvent, has ceased trading or cannot be located. • In **Norway**, an option exists to forward a claim to an importer, a national producer or previous seller in the chain. • In **Iceland**, if the seller has a claim against another intermediary the supply chain, the consumer can also make a claim against this party. • In **France**, under the legal guarantee against hidden defects, the consumer can make a claim against any intermediary in the supply chain other than the final seller. • The same situation exists in **Spain**, where the consumer can also make a direct claim against the producer for replacement or repair when contacting the seller is impossible or excessively inconvenient to the consumer. For this purpose, manufacturers, importers or other intermediaries are considered producers. • Under the **Hungarian** product guarantee, which covers movable goods only, the consumer can make a claim against the producer. The manufacturer, the importer and distributor are considered as producers for this purpose. A producer can be held liable for two years from the date on which they distributed the product. In the event of a fault in a product, the consumer must inform the producer without delay. Informing a producer within 2 months is considered to be without delay.

Can the consumer make a claim against the importer or any other intermediary in the sale chain up to and including the producer?	The consumer is liable for any damage resulting from late notification. The consumer can ask the producer to repair the product or – if this cannot be done within a reasonable time frame and without prejudice to the consumers interests – to replace it. The producer is exempted from liability if it can be proven that *1)* they did not manufacture or distribute the product, *2)* the defect could not have been detected, taking into account existing scientific and technical knowledge, *3)* the defect was caused by the application of legal or mandatory provisions. • In **Slovenia**, under the 1-year obligatory guarantee on specific technical products the consumer can make a claim against any intermediary in the supply chain. • In **Ireland**, although it relates to commercial warranties rather than the legal guarantee, section 19(1) of the Sale of Goods and Supply of Services Act 1980 refers to a right of action for consumers against others in the supply chain. "The buyer of goods may maintain an action against a producer or other supplier who fails to observe any of the terms of the guarantee as if that producer or supplier had sold the goods to the buyer and had committed a breach of warranty, and the court may order the producer or supplier to take such action as may be necessary to observe the terms of the guarantee, or to pay damages to the buyer. In this subsection, "buyer" includes all persons who acquire title to the goods within the duration of the guarantee and, where goods are imported, "producer" includes the importer." • In the **United Kingdom**, it is normally only possible to make a claim for damages (including personal injury claims) caused by a faulty or unsafe product, but not for remedies under the legual guarantee. In some isolated cases, it may be possible to make such claims against third parties, but this is normally prevented by inserting appropriate clauses into contracts made higher up the supply chain. • In **Portuguese** law, the consumer is allowed to claim repair or replacement from the producer or the representative of the producer in his/her area of residence. • In **Latvian** law, in the event of non-conformity of goods, a consumer is entitled to submit a claim to the trader. A trader is understood as a natural or legal person (including an importer) who within the scope of his/her economic or professional activity offers or sells goods to consumers, including by intermediary of other persons acting in his/her name. Recourse against the producer may also exist if the defective product causes economic or bodily harm, based on product liability.

COMMERCIAL WARRANTY

In all Member States, Iceland and Norway, commercial warranties are regulated by law.
The commercial warranty is binding on the provider.

Responsibility for application of the commercial warranty	**The guarantor/provider of the warranty.**
Costs	Commercial warranties have to be free of charge in **Finland, Latvia and Slovenia.**
Timing of information	• **Before conclusion of the contract** in **Austria, Belgium, Denmark, Finland, Hungary, Italy, Latvia, Lithuania, Romania, Slovenia, Spain and Sweden.** • This can be done at the latest upon delivery of the item which is then considered as the moment of conclusion of the contract if there is no pre-contractual phase in **Croatia, the Czech Republic, France, Germany, Italy, Netherlands, Poland, Portugal and Slovakia.** • In **Luxembourg**, the information has to be provided at the latest at the moment of conclusion of a contract. • In **France**, a commercial warranty can also be offered upon repair of an item, so the information must then be provided before conclusion of a repair contract. • No specific rules are laid down in **Bulgaria, Ireland Iceland and Hungary** (for on-premises contracts) but general rules on pre-contractual information apply. • In the **United Kingdom,** consumers can expect to be made aware that the purchase of the commercial warranty is optional, that any such warranty can be provided by other parties, of their statutory rights, etc. The pre-contractual information should be given in accordance with the general applicable rules. • In **Poland**, the seller is not obliged to specifically inform the consumer about the existence of a commercial warranty, but must hand over all documentation concerning the purchased item, including on a commercial warranty, if it exists.
Formal requirement	• **Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania** (the seller must provide the commercial warranty in writing at the request of the consumer. For long term use products the commercial guarantee must always been given in written form)**, Slovenia, Slovakia, Spain, and Sweden** normally require a written warranty document for off- and on-premises contracts. • A durable format is accepted at the consumer's request in **Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Hungary, Netherlands, Portugal, Slovenia, Slovakia, Spain, Sweden** (for off-premises contracts; for on-premises and distance contracts a readable and durable format is accepted) and **United Kingdom.** • In **Germany and Hungary** an obligation to provide a written document only exists for off-premises and distance contracts. • In 7 countries a written document needs to be provided only at the consumer's request: **Cyprus** (or another durable medium available and accessible to the consumer), **Czech Republic, Estonia, Finland, Iceland, Lithuania and Poland.** • In **Norway** the law does not oblige the seller to confirm the commercial guarantee in writting.

Language requirements	• It is a legal requirement that the commercial warranty be explained in plain, simple, clear, comprehensive and understandable terms in **Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Italy, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Sweden and United Kingdom.** • The use of the national language is requested in **France, Greece, Lithuania, Luxembourg** (where the consumer can choose between French and German), **Malta** (where a commercial warranty must be written in at least one of the official languages, i.e. English or Maltese), **Portugal, Slovenia and United Kingdom.** In **Belgium,** the commercial warranty must be written in at least one of the official languages of the region in which the product is offered for sale. • If the item is introduced to trading in the Republic of **Poland**,the warranty statement is made in Polish. The requirement to use the Polish language does not apply to names, trademarks, trade names, designation of the origin of goods and customary scientific and technological terminology.
Inclusion of a reminder of the legal guarantee	• **Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom:** the commercial warranty has to provide a reminder of the existence of the legal guarantee and explain that the commercial warranty has no influence on the rights of the consumer under the legal guarantee provisions. However, if these informations are not given, the warranty is still binding. • In **France**, the consumer must be reminded of the existence of the legal guarantee of conformity and the legal guarantee against hidden defects.
Information on the guarantor, cover, duration, geographical coverage and price	• **Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Spain and United Kingdom.** • In **Denmark** the warranty must inform about the contents including any limitations and obligations. • In **Portugal**, geographical coverage is not expressly mentioned. • In **Sweden**, information on the content of the warranty must be given. However, the law does not specify what information is to be given.
Information on how the consumer can exercise his/her rights (complaints procedure and after-sales service)	• **Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia and United Kingdom.** • In **Sweden**, all information necessary for the consumer to make use of the warranty must be given. However, the law does not specify what information is to be given. • In **Poland** the commercial warranty has to indicate besides a reminder of the legal guarantee the name and address of the guarantor or its representative in Poland, the duration and territorial scope of the warranty and the consumer's rights when noticing a defect. • In **Romania** the warranty must include the content of the warranty, all essential elements such as duration, product identification details, the medium period for which the product can be used, if it is the case, how the warranty will be applied – maintenance, repair, replacement and the time limits for each measure, details of the company offering it and of the service and a reminder of the legal guarantee.

Appendix

Table of Member States having transposed the directive on consumer rights

(based on information available in September 2014)

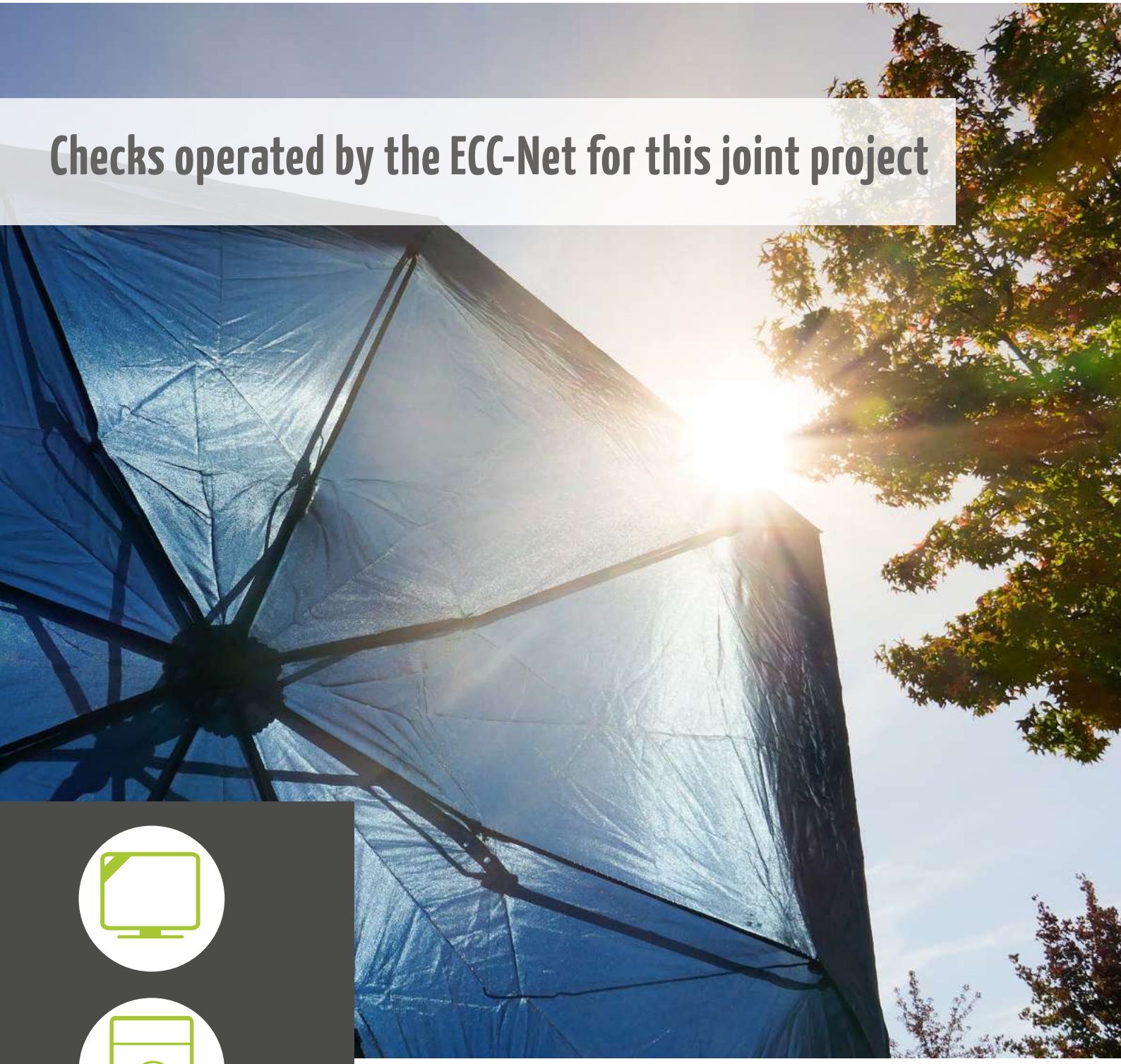
COUNTRY*	TRANSPOSITION STATUS	TRANSPOSITION LAW AND ENTRY INTO FORCE
AT	transposed	Entry into force 13th June 2014; transposition law: Verbraucherrechte-Richtlinie-Umsetzungsgesetz (VRUG).
BE	transposed	Entry in force 31/05/2014. transposition law of 21/12/2013.
BG	draft law	draft from the Ministry of Economy and Energy which very soon will be sent to the Council of Ministers as a proposal bill. After that the national assembly needs a few weeks to adopt the law.
CY	transposed	Entry into force 13/06/2014. Transposition law: Law 133(I)/2013 The Consumer's rights Law of 2013. The Law was published in the Government Gazette on 8/11/2013.
CZ	transposed	With effect from 1 January 2014 a new Civil Code (Act no. 89/2012 Coll.) and related implementing minor regulations were adopted in the Czech Republic. Most of requirements of Directive 2011/83/EU were implemented there. The Act on Consumer Protection (no. 634/1992 Coll.) was also amended.
DE	transposed	Entry into force 13th of June 2014.
DK	transposed	Entry into force 13th of June 2014; transposition law: Lov om forbrugeraftaler.
EE	transposed	Entry into force 13th of June 2014; transposition law: The Directive 2011/83/EU has been implemented into Estonian national law, more precisely into two acts. The Law of Obligations- the new reduction is coming into the force on 13th of June 2014 Consumer Protection Act - the new reduction is coming into the force on 13th of June 2014 The new reductions include the provisions of the Directive.
ES	draft law	approved by the Spanish Government beginning of April but has not yet been submitted to the Spanish Parliament.
FI	transposed	Entry into force 13th of June 2014; transposition law: Consumer Rights Protection Law amending the Finnish Consumer Protection Act (38/1978).

*ISO_3166-1

FR	transposed	by a horizontal law, introducing and amending other dispositions of the consumer code as well: Loi « consommation » du 17 mars 2014. The transposition measures entered into force on June 13th 2014 but for certain points an application decree is necessary. The decree is foreseen for september 2014.
GR	transposed	Enforcement begins from the 13th of June 2014.
HR	draft law	The directive is implemented in the new Consumer Protection Act, which is currently under parliamentary procedure and will become effective before the summer.
HU	transposed	by the Consumer Protection Act which came into force on 8 April 2014. (some provisions became effective on 13 June 2014, and some will be effective from 1 January 2015.). trasnposition law: decree on The Rules of Contracts between Consumers and Undertakings.
IE	transposed	Entry into force 13th of June 2014.
IS	draft law	EEA - country ; every EU-law first has to be implemented in the EEA-contract for Iceland and Norway. But it seems that only minimal changes will be needed when the time comes. It has not yet been adopted in Icelandic national law. However the process of implementation has begun.
IT	transposed	Entry into force 13th of June 2014.
LT	transposed	Entry into force 13th of June 2014. transposition law: Consumer Rights Protection Law and Civil Code of the Republic of Lithuania.
LU	transposed	Loi du 2 avril 2014.
LV	transposed	Entry into force 13th June 21014. implementation law: Consumer Rights Protection Law.
MT	transposed	Entry into force 13th of June 2014; transposition law: The Consumer Rights Regulations, Legal Notice 439 of 2013.
NL	transposed	Transposition law: "Implementatiewet richtlijn consumentenrechten". The law entered into force on 13 June 2014.
NO	transposed	Entry into force 13th of June 2014; transposition law: New Right to withdrawal law (angrerettlov). There will however also be minor changes in the Consumer Goods law (forbrukerkjøpslov), Sale of Goods and Services on credit law (finansavtalelov), Sale of craftsman services law (håndverkertjenestelov) and the Marketing law (markedsføringsloven).
PL	transposed	The Consumer Rights Directive has been implemented into Law on consumer rights (Ustawa o prawach konsumenta). Entry into force 25th of December 2014. The Directive 1999/44 has been implemented into the Polish Civil Code.
PT	transposed	Entry in force 13th June 2014; decree-law 24/2014, of 14th February.

RO	transposed	Entry into force 13/06/2014. Transposition law: Emergency Governmental Ordinance 34/2014.
SE	transposed	Entry in force 13th June 2014;
SI	transposed	Entry in force 13th June 2014; transposition law: Act amending the Consumer Protection Act
SK	transposed	The Directive 2011/83/EU is transposed in a completly new Act which came into force on 1st May 2014 (Act 102/2014 Coll.)
UK	transposed	Entry into force 13th of June 2014.

Checks operated by the ECC-Net for this joint project



The after-sale service of 72 shops: "check n° 1"



During "check n° 1" the investigation focused on whether the seller would accept having the defective good returned to him/her or redirect the consumer to the producer. The investigation was aimed at finding out whether consumers can really benefit from the reversal of burden of proof. So, from 3 November to 12 November 2014, the ECC-Net carried out checks in 21 countries **(Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Italy, Latvia, Luxemburg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden)** for three product categories (photo camera, washing machine and TV) of six different brands and a total of 23 product references in the after-sales service of 72 shops (total number of checks 97).

In the 1st scenario, ECCs enquired how the seller would react if a consumer contacted him/her about an item alleged to be defective which was purchased a little less than 6 months ago[177] and without a commercial warranty.

In 44 out of the 53 cases (83%) the seller would accept having the item returned to him/her.

Nevertheless, many of the sellers strongly suggested that consumers should contact the producer directly as this would be faster (the seller would, in any case, send the defective item to the producer for repair).

In 9 out of the 53 cases (17%) the seller would not accept having the item returned to him/her. The consumer would be referred to the producer or one of the brand's official repair centres.

In one instance, the seller informed the consumer that he/she could only return an item (TV) within 2 weeks of purchase[178]. After these 2 weeks, the consumer would need to contact the manufacturer.

When consumers asserted their rights under the legal guarantee only 3 sellers changed their attitude:

- After insisting on and referring to the terms of the legal guarantee, the seller asked for the product to be brought to the shop and an email to be sent to him explaining the rights under the legal guarantee.
- The seller admitted that the item could be returned to him. At the same time he insisted that the item would only be sent to a repair centre if many other similarly defective goods were returned. He thus took no account of the reasonable time frame within which a repair must be carried out or a replacement provided.
- The seller admitted the existence of a legal guarantee but still encouraged the consumer to use the commercial warranty instead of the legal guarantee, stating that under the legal guarantee the consumer has to prove that the defect has been there since the date of purchase[179]. The salesperson insisted that it is always the consumer who has to prove this fact and never the seller.

● 177 The deadline of 6 months has been chosen in order to verify whether consumers really benefit from the reversal of burden of proof during the first six months after delivery, see also page 23. ● 178 The seller seems to be trying to confuse the consumer by offering a cooling off period during which the consumer can withdraw from a contract. ● 179 In Germany, the rule on the reversal of burden of proof has been implemented and all defects occurring during the first 6 months after delivery are presumed to have existed upon delivery. The seller would have to prove that the item was not defective, see also page 23.

In several cases it was obvious that, even though the seller knew about the legal guarantee, he/she would make enquiries with the producer and follow the producer's procedure and opinion stating for example: "The producer is the one to decide whether to agree to meet the consumers claim or not. The producer has the last word".

In the 2nd scenario, ECCs enquired about what would happen if an item which had been purchased without a commercial warranty a little less than 16 months ago turned out to be defective. In this scenario the consumer would still be within the 2-year minimum duration of the EU legal guarantee[180], but in most countries would no longer be able to benefit from the period during which there is a presumption of conformity (6 months from delivery as a minimum. The burden of proof would thus be on the consumer[181].

In 32 out of the 44 cases (73%) the seller would accept having the item returned to him/her. In 12 out of the 44 cases (27%) they would not.

The possibility of having easy access to an independent expert opinion: "check n° 2"



From 3 to 14 November 2014, the ECC-Net performed checks in 17 countries (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Italy, Luxembourg, Malta, Netherlands, Poland, Romania, Spain and Sweden) for three product categories (photo camera, washing machine and TV) of three different brands and a total of 8 product references on whether consumers have easy access to independent expert opinions. A total of 42 (repair) shops were checked (total number of checks 43).

On **25 occasions (58.14%) the ECCs request was accepted**. **On 18 occasions (42.86%) the ECCs received a refusal** (5 for the TV, 6 for the washing machine and 7 for the photo camera).

The reasons communicated to the ECCs vary.

- For two repair shops it was the first time that they had been confronted with such a request and they did not know how to handle it (camera).
- One repair shop said that they did not have the necessary technical expertise for the specific product (camera).
- One repair shop redirected the ECC to the producer's after-sales service (camera).
- Three other repair shops refused, arguing that the product was under guarantee: two answered that the consumer had to call the producer if the seller refused a repair, the other did not want to open the product because it could invalidate the existing warranty.
- One repair shop refused, arguing that a repair by them would invalidate the legal guarantee as they were not a brand representative (TV).
- Two repair shops informed the consumer that only licensed experts can make repairs (TV and washing machine).
- In four instances, the shops would only agree to analyse the defect if the product had been bought in their shop (camera and TV).
- In one case, the repair shop refused because they were afraid of being "prosecuted" in the future (washing machine).

● 180 The deadline of 16 months has been chosen as, in most of the countries, the duration of the legal guarantee is two years, see also page 13. ● 181 Only in Portugal would the reversal of burden of proof still be applicable, as it applies for the 2 years of the legal guarantee, see also page 23.

The importance of commercial warranties in the sales' process online: "check n° 3"

During the 123 online checks conducted by the ECC-Net from 29 October to 11 November 2014 in 24 countries (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Spain, France, Croatia, Italy, Latvia, Lithuania, Hungary, Malta, Netherlands, Norway, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden), it became clear that the majority of items in the product categories checked are offered for sale with a commercial warranty. In 74 out of 123 (60.61%) a reference to a commercial guarantee was made on the website, in 44 out of 123 (35.77%) no such reference was made, and in 5 cases (4.07%) the information provided was unclear[182].



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● 182 In 16 cases (13.01%) the information provided was unclear as a guarantee was indicated but it was not specified whether this referred to the legal guarantee or an additional commercial warranty for the item.

Whether and how how consumers are informed about the legal guarantee and the commercial warranty and if there are any geographical restrictions to commercial warranties: "check n° 4"



From 29 October to 12 November 2014, the ECC-Net carried out checks in 25 countries **(Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden)** for 3 product categories (photo camera, washing machine and TV) of 8 different brands and a total of 70 product references to see if consumers are correctly informed about their rights under the legal guarantee provisions and if commercial warranties are of benefit to them. A total of 104 websites were screened and 62 shops contacted by the ECCs (total number of checks 202).

In 120 out of 202 cases (59%) the description of the item included no reference to or reminder of the legal guarantee of conformity. This was the case for 81 out of 123 online checks (66%), and 39 out of 79 on-site checks (49%).

In 29 cases (14%), of which 16 were online and 13 in shops, the **information provided was unclear** as a guarantee was indicated, but it was **not specified whether the seller made reference to the legal guarantee or advertised an additional commercial warranty** for the item.
So 74% (79% for the online checks and 66% for the checks on premises) of descriptions were unsatisfactory with regard to information on the legal guarantee.

Only in 50 out of 202 cases (24.57%) was a reference to the legal guarantee included in the product description. Online, in 21.14% of cases, the information was directly accessible at the specific product page and **not hidden in the terms and conditions**. In the shops, only in 30.38% of cases was a reference to the legal guarantee visibly included in the product description. When looking more closely into the product descriptions, in 10 cases ECCs were able to establish that a reference to the legal guarantee was made.
In 12 cases, even though no clear information was given on the legal guarantee, the seller was proactive in providing information about it. In 3 cases, the sales agent did so on request. In 1 case, the sales agent could not give information due to being unaware of the legal guarantee.

The ECCs therefore had to look more deeply into the information available and question the sales agents in order to get more information.

When searching for the provider of the advertised commercial warranty, in only 60.16% of cases online was it possible to find this out. In 28 out of 123 cases (22.76%), it was provided by the seller, in 21 (17.07%) by the producer, in 9 (7.32%) by both producer and seller and in 16 (13.01%) by a third party insurer. In 27 instances (21.95%), it was unclear and in 22 (17.89%), no information was provided.

In shops, the commercial warranty was usually advertised as a seller's warranty without any specific reference to the legal guarantee (10 out of the 24 checks - 41.67%), only in 4 cases was a reference to the legal guarantee made. In 8 cases, the commercial warranty was offered by the producer (33.33%) and in 1 case by both seller and producer. In one case it was offered by an insurance company and in one case the identity of the provider could not be determined.

When asked if the legal guarantee was presented correctly online with regard to the legal requirements, in only 39 out of 123 cases (31.71%) did the ECCs answer in the affirmative. In 11 cases (8.94%), the seller only copied the text of the law without any further information[183].
In 44 cases (35.77%), the legal guarantee was not correctly presented and in 20 cases (16.26%) the text was incomplete.[184] A total of 52.03% of the references made to the legal guarantee were unsatisfactory.

Provisions for return of defective goods under the legal guarantee were clearly explained in only 27 out of 123 cases (21.95%). In 7 cases, the consumer was advised to contact the seller for further information on the returns policy. In 75 cases (60.98%), the returns policy was not clearly explained, while in 7 cases (5.69%) the information was incomplete. [185]
So in 66.67% of cases, consumers were not clearly informed about how to return a defective item to the seller.

In 33 out of 79 checks in shops (41.77%), the duration of the legal guarantee was given or could be determined by the ECC. In 25 cases, correct information (2 years or 3 years) was provided. In one case the duration was indicated incorrectly as "maybe 12 months", in another as 5 years.

As regards information on the content of the warranty from web sellers, in 10 cases the ECCs indicated that no information was available. In several other cases information was available but the consumer would need to search for it either in the sitemap of the website or the general terms and conditions. Here, the consumer would find, for example, that electronics are covered, but products such as software, removable data media or products included as a bonus are excluded.
Whereas in 35 cases, the ECCs indicated that information on the warranty was easily available, few commercial warranties gave a comprehensive overview of the content. The content varies considerably from one to another and needs to be compared carefully.
The same observation was made during the checks in shops. Several ECCs reported that no information on the warranty cover or any exclusions was given. **The content varies as much as it does online and needs to be compared and researched carefully**, as several shop assistants claimed that the commercial warranty covered all risks and there would be nothing to pay should something go wrong. Knowledge of the commercial warranty varies among sales agents and after-sales employees, the latter being better informed as it is they who agree or refuse to apply the commercial warranty.

● 183 It should be noted that copying the text of the law concerning legal guarantees is obligatory under French law, for example. ● 184 In 9 cases no answer was provided by the ECC. ● 185 In 7 cases no answer was provided by the ECC.

The names given to commercial warranties in the Member states: "check n° 5"

From 29 October to 11 November 2014, the ECC-Net carried out checks in 24 countries **(Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden)** for 3 product categories (photo camera, washing machine and TV) of 7 different brands and a total of 46 product references on the names given to commercial warranties. A total of 104 websites were screened by the ECCs (total number of checks 123).
The names given to commercial warranties vary from one country to another but certain tendencies can be observed across Europe:

- An indication of "added value" by adding "Extra", "Plus", "Super", or even "Maxi" or "Mega" which can be further exaggerated: "Extra guarantee", "Plus Guarantee", "Warranty Plus", "Garantía Plus", "Service Plus Polis", "Plus guarantee", "jamstvo" and Super jamstvo" in Croat, "Mega Guarantees", "Extra Guarantee Standard and Extra Guarantee Premium", "basic, economy class, business class and first class";
- An indication of duration: "1-year guarantee", "2-year guarantee", "24-month guarantee", "+ three years", "Langzeitgarantie" (long term warranty for up to 48 months), or just "extended guarantee". In some cases the ECCs felt that, for the sake of transparency, the terms used should be changed, for example a 5-year guarantee is in reality an extended warranty of 3 years as it starts only at the end of the 2-year legal guarantee;
- A reference to the party providing the commercial warranty: "producer's guarantee", "manufacturers guarantee", insurance;
- Use of the concept of protection: "Schutzbrief", "Contrato de Compra Tranquila", « Contrat Achat Tranquille », "safety agreement";
- An indication of the seller's name in the name of the commercial warranty;
- A right to return.



The duration of commercial warranties offered online and in shops: "check n° 6"



From 29 October to 12 November 2014, the ECC-Net carried out checks in 25 countries **(Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden)** for 3 product categories (photo camera, washing machine and TV) of 8 different brands and a total of 70 product references on the duration of commercial warranties. A total of 104 websites were screened and 62 shops were visited by the ECCs (total number of checks 202).

The duration of commercial warranties varies considerably between Member States and product categories. However, the checks revealed that the **most common duration is 2 years (33.66%) which coincides with the duration of the legal guarantee in the vast majority of Member States**[186] . However, cover of more than 5 years[187] has been found for various product references. For washing machines, cover of up to 10 years can be found if the producer guarantees the motor for that long.

Numbers of warranties by duration

- **6 months**: 2
- **12 months:** 24
- **1/2/3 years**: 1
- Guarantees can vary from 1 to 3 or 1 to 5 years[188] and even cover the lifetime of the item.
- **24 months**: 59, also 2 years for free and 5 years against payment: 7, and 2 years offered by the manufacturer, with an option to extend to 3 or 5 years: 2; so a total of 68 free warranties of two years duration (33.66%)
- **3 years**: 25
- **3 or 5 years**: 1
- **Up to 48 months**: 1
- **4 years**:14
- **Up to 5 years**: 2
- **5 years**: 28
- **More than 5 years:** 3
- **6 years:** 1
- **7 years:** 1
- **10 years:** 2

When looking more closely at the 3 product categories checked:

- **The most common duration of commercial warranty offered for TVs was 2 years**[189], coinciding with the duration of the legal guarantee in most cases. Considering the average life time of a TV, the duration seems short. According to several producers' online information, the average life time of a flat screen TV (LCD/LED or plasma) is 40 000 hours, giving an average of 4 to 10 years[190] depending on usage, maintenance, location, etc.. In the countries with a legal guarantee which takes into consideration the expected lifespan of an item (Iceland, Norway and the Netherlands[191]), the average expected lifespan of a TV would generally be estimated at between 5 and 7 years.

● 186 See also page 16. ● 187 Some countries have a longer legal guarantee period, see page 17. ● 188 This is valid in countries with a longer duration of legal guarantee. ● 189 6 months: 2, 1/2/3 years: 1, 1 year: 1, Guarantees can vary from 1-5 years and can even cover the lifetime of the product, 24 months: 16, 2 years for free, 5 years against payment: 3, 2 years offered by the manufacturer, but can be extended to 3 or 5 years: 2, Up to 48 months: 1, 3 years: 2, 3 or 5 years: 1, 4 years: 1, Up to 5 years: 2, 5 years: 2 ● 190 See also the study by the French Agency for Environment Energy Control http://ademe.typepad.fr/files/dur%C3%A9e-de-vie-des-eee.pdf ● 191 See also page 17

The most common duration of commercial warranty for washing machines was of more than 2 years in 17 checks and of a maximum of 2 years in 26 checks[192]. There is no official average expected lifespan of washing machines. According to a study by GIFAM and TNS Sofres, consumers have reported their washing machines lasting up to 10 years. This should be set against issues such as usage, maintenance, etc.. Also, most consumers would apparently like their washing machine to last a little bit longer (11 years)[193]. According to the French Agency for Environment and Energy Control, the average life time could be between 5 and 11 years, whereas a French insurer would generally expect a washing machine to have an 8-year lifespan. In the Netherlands, the expectancy is 2 to 8 years[194] and in Iceland, more often than not, the ADR decided that washing machines fall under the 5 year rule[195].

For cameras, the most common commercial warranty duration was 12 months, less than the legal guarantee duration. 24 months were also regularly on offer, and even 4 to 6 years[196] for higher value cameras. As a camera is a fragile and portable item, a commercial warranty of 12 months might be a good offer. See page 59 for an analysis of the advantages of commercial warranties and instances where they offer added value.

The costs for commercial warranties sold online and in shops: "check n° 7"



From 29 October to 12 November 2014, the ECC-Net conducted checks in 25 countries **(Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden)** for 3 product categories (photo camera, washing machine and TV) of 9 different brands and a total of 74 product references (46 product references online and 44 in the shops) to see whether commercial warranties are offered against payment. A total of 104 websites were screened (total number of checks 123) and a total of 62 shops were investigated by the ECCs (total number of checks 79).

During the online check[197] 43 checks (34.96%) revealed a commercial warranty for which the consumer must pay. 9 commercial warranties were free of charge for the first 2 years but offered against payment after that (2 years free of charge for 3 years approx. EUR 20, or 5 years approx. EUR 30; 2 years offered by the manufacturer, with the chance to extend to 3 or 5 years against payment; 2 years free of charge, with possible extension to 5 years for EUR 49 to 79, if cover for accidental damage is included; 2 years free of charge, with possible extension to 5 years for EUR 59.99).
For warranties offered against payment, the costs vary considerably and, especially given the duration of the contract and depreciation in value, the benefit of a commercial warranty varies considerably.

● 192 12 months: 13, 24 months: 13, 3 years: 7, 2 years for free, 5 years against payment: 2, 4 years: 6, 5 years: 9, More than 5 years: 3, 6 years: 1 ● 193 http://www.gifam.fr/images/stories/dossiers-de-presse/2011_06_21_GIFAM_CP_Durabilite_Vfinale1.pdf ● 194 http://www.uneto-vni.nl/consumenten/over-uneto-vni/garantie-en-kwaliteit/gebruiksduurverwachting-uneto-vni ● 195 See page 17 ● 196 12 months: 13, 24 months: 11, 3 years: 7, 2 years for free, 5 years against payment: 2, 4 years: 6, 5 years: 8, 6 years: 1 ● 197 From 29 October to 11 November 2014, the ECC-Net conducted checks in 24 countries (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Spain, France, Croatia, Italy, Latvia, Lithuania, Hungary, Malta, Netherlands, Norway, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden) for three product categories (photo camera, washing machine and TV) of seven different brands and a total of 46 product references to see whether commercial warranties are offered against payment. A total of 104 websites were screened by the ECCs (total number of checks 123).

- For cameras, from EUR 3.29 to 99.90, depending on the duration of the warranty and the price of the product in certain cases (EUR 3.29, 4, 4.39, 7, 10, 12.65, 14, 16.50, 17, 18,99, 21.46, 29.90, 39, 59, 99.90)

- For washing machines, from EUR 17 to 129.99, depending on the duration of the warranty and the price of the product in certain cases (EUR 17, 20, 29, 29.90, 39, 39.90, 40, 48, 49, 50, 51.76, 59, 65, 69, 70, 79, 80, 90, 99, 99.90, 100, 113, 119, 129.99)

- For TVs, EUR 24.99 (up to 48 months), 1 year EUR 12/2 years EUR 22/3 years EUR 32, 3 years, EUR 20/5 years EUR 39/ 3 years with accidental breakage cover EUR 29.

Only in 25 cases was the offer free of charge. In 35 cases, information on the price of the service was not available online without ordering. The ECCs therefore also checked in the shops.







In the shops[198], 25 checks (32.05%) revealed warranties offered against payment. In 44 cases (56.41%) they were free of charge[199]. The costs vary considerably but are quite similar to those found during the online checks.

- From EUR 12 to 69
- From EUR 39 to 100
- 10 to 20% of the purchase price for 1 to 3 years
- For insurance policies, a monthly fee of EUR 4 to 6 depending on the purchase price, so EUR 48 to 72 per year
- EUR 100 for 5 years

When looking more closely into the 3 product categories:

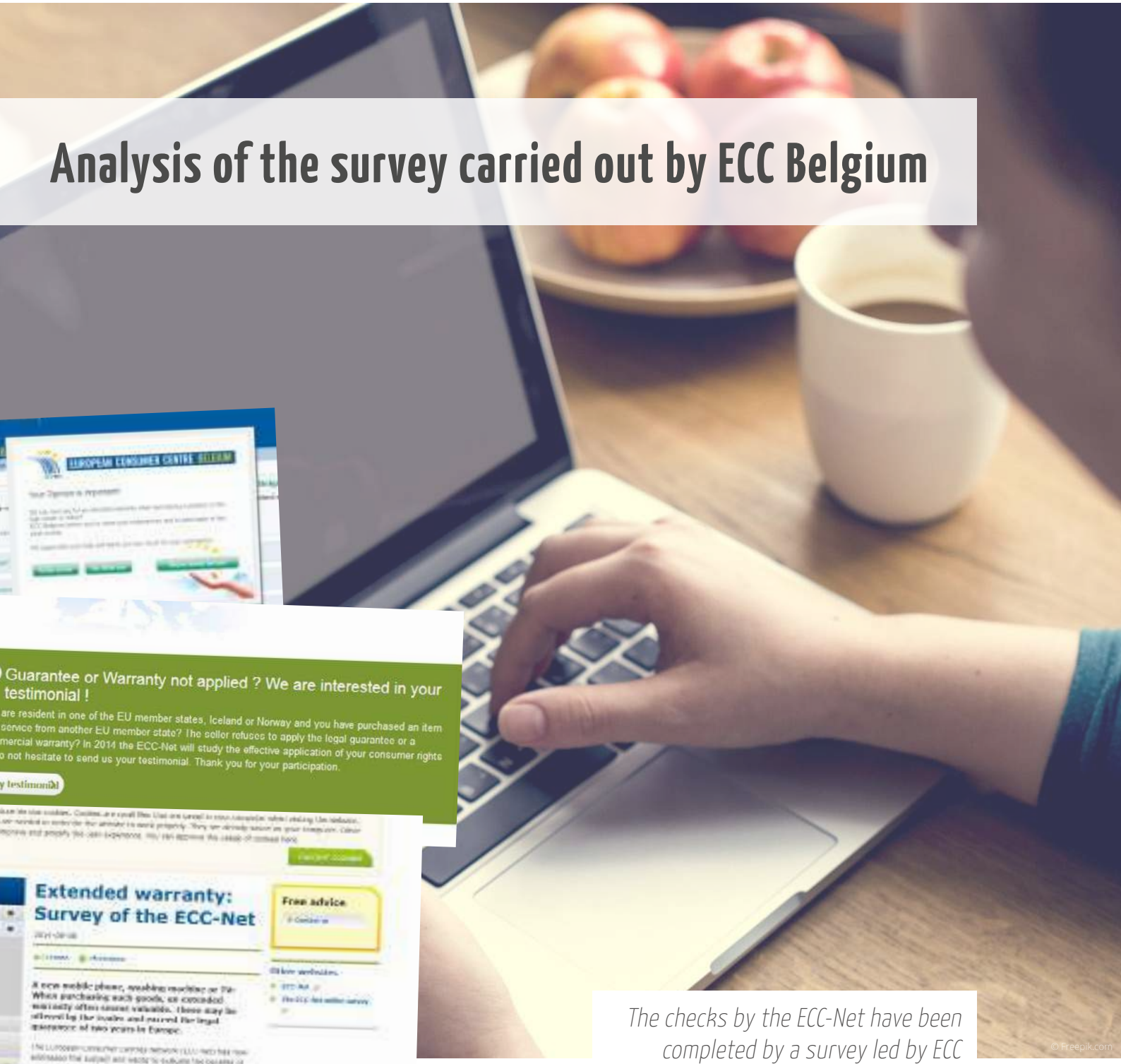
- For the TVs, warranty prices range from EUR 12 for one year, EUR 24.99 for 2 years, EUR 20 to 32 for 3 years, EUR 30 to 79 for 5 years, up to EUR 100 for a longer duration. Also, several offers of insurance exist for which the consumer pays a monthly fee for as long as he/she continues the contract. It should be highlighted that ECCs looked at different models of TV, ranging in price from EUR 269 to EUR 1169.

- For the washing machines, warranty prices range from EUR 17 to 129, depending on duration and the price of the product[200]. The price range of the washing machines checked was EUR 389 to 919 with an average price of EUR 518 online, and EUR 269 to 1169 with an average price of EUR 530 in the shops.

- For the cameras, the warranty price ranges from EUR 3.29 to 99.90, depending on duration and the price of the product[201]. The price range of the cameras considered was EUR 59 to 322 with an average value of EUR 100 in the shops, and EUR 49 to 109, with an average value of EUR 70 online.

● 198 From 31 October to 12 November 2014, the ECC-Net conducted checks in 22 countries (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Spain, France, Croatia, Italy, Latvia, Luxembourg, Malta, Netherlands, Norway, Austria, Poland, Portugal, Romania, Slovenia, Slovakia and Sweden) for three product categories (photo camera, washing machine and TV) of six different brands and a total of 44 product references to see whether commercial warranties are offered against payment. A total of 62 shops were investigated by the ECCs (total number of checks 79). ● 199 In one case no information on the price was available and for 8 checks ECCs did not provide an answer. ● 200 (EUR 17-20-29-29.90-39-39.90-40-48-49-50-51.76-59-65-69-69.90-70-79-80-99-99.90-100-113-119-129.99) ● 201 (EUR 3.29,4, 4.39,7, 7.15, 9.90,10, 12, 12.65, 14, 16.50,17, 18, 19.99, 21.46, 39, 59, 69, 99.90)

Analysis of the survey carried out by ECC Belgium



The checks by the ECC-Net have been completed by a survey led by ECC Belgium from 15 July to 5 October 2014.

To support the ECC-Net joint project on legal guarantees and commercial warranties, ECC Belgium launched an online survey in English, French and Dutch in order to collect consumer feedback and experience on commercial warranties.
543 people responded to the survey[202] between 15 July and 5 October 2014. It was not mandatory to answer all questions. The analysis provided below is based on the answers received, and excludes participants who skipped the question.

86% of participants were aware of the existence of a 2-year legal guarantee in Europe (against 14% who were not[203]).

56.1% of participants had already purchased a commercial warranty[204], 40.5% for household products, 36.6% for electronic devices and 12.5% for vehicles. In 74.9% of cases, respondents said that the seller offered the commercial warranty, in 16.99% the producer, and in 5.8% an insurance company.

44.6% of respondents had made use of the commercial warranty and 65.3% said they were satisfied with it. **Among the 34.7% dissatisfied participants, reasons given for their dissatisfaction were the numerous exclusions, inefficiency** (long delays, lack of response from the seller, etc.), **overlaps with other contracts** (protection via a credit card, for example), **and cost-benefit calculations** showing that the warranty was too expensive for the service offered.
Several consumers commented that they suspect planned obsolescence of their goods[205] as in most cases, **defects appeared after the end of the commercial warranty period.** Some felt as if the producer/seller tried to fix the product's lifespan and offered a commercial warranty with no risk. Some wondered why the duration of the legal guarantee was not aligned to a greater extent with the expected lifetime of each product and offered free of charge. Others said that, taking into account the price of the product and the price of the commercial warranty, if the warranty is applied the item lasts longer and is therefore less expensive per year. Others still, indicated that they had seen products for sale with a 1-year warranty (and thus not indicating the legal guarantee period). Some respondents saw no advantage in a commercial warranty of 2 years if the legal guarantee lasts as long, or a warranty of 5 years, if the average lifetime of the product is also 5 years.

Only 32.5% of participants would consider paying for a commercial warranty in future (against 39.4% who would not and 28 % who do not know).

● 202 287 (63.6%) participants indicated Belgium as their country of residence, followed by Austria with 33 participants (7.3%), Slovenia 25 (5.5%), Malta 15 (3.3%) etc.. 92 participants didn't indicate their country of residence. ● 203 and 80 participants who skipped the question ● 204 35 participants skipped the question ● 205 See also in French http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/etudes_et_rapports/Etude-Obsolescence-Web.pdf

Addresses of the ECCs

Help and advice for consumers in Europe



The European Consumer Centres Network (ECC-Net) is a network of centres in **30 European countries**, which offers **free information, advice and assistance** to consumers on **cross-border** transactions. It is co-funded by the European Union and by its Member States, Iceland and Norway.
The ECC-Net plays an important role in consumer protection in these countries by cooperating with the European Commission, national authorities, traders and their organisations to increase awareness of and compliance with consumer rights.

Between its establishment in 2005 and the end of 2013, half a million consumers have contacted the ECC-Net members for information and assistance. With its focus on business-to-consumer rights in cross-border shopping, whether in person or via distance purchases (mainly e-commerce), the ECC-Net has unparalleled insight into the issues consumers face when shopping in the Single Market. This enables the network to provide key input to the European Commission and policy makers at national and EU levels on improvements needed to fine-tune consumer legislation and/or its enforcement.

The ECCs offer individual support to consumers: They help consumers to reach amicable solutions to cross-border disputes with traders in the 30 countries of the network, either by contacting the trader involved directly or by transferring cases to Alternative Dispute Resolution schemes.
If extrajudicial solutions are impossible, the ECCs give advice on further action, for example, the European small claims procedure or payment order.
This network of 30 centres provides information about national and EU laws, ensures consumer protection aspects are taken into account in national and EU legislative processes, and initiates and ensures professional cooperation with other EU networks and traders in order to better protect consumer interests.

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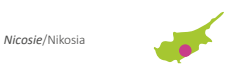
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ECC Finland



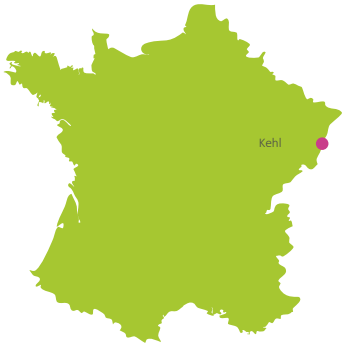
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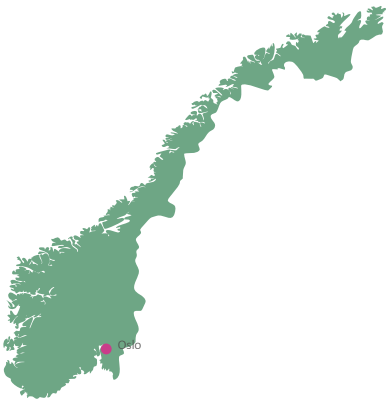
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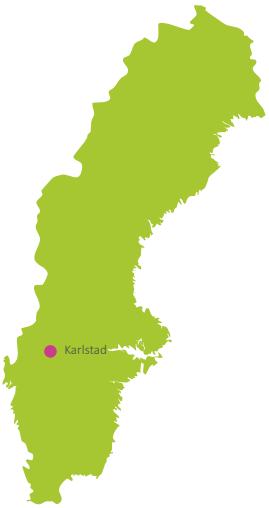
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