



Press release

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Guarantees in the EU – The transposition of Directive EU 2019/771 Roadmap for consumers and traders

On the 1st of January 2022, the old Directive 1999/44/CE which ruled the guarantees for lack of conformity of goods for so many years will be repealed. With the development of technology and of the digital internal market, an update and adaptation of the current rules was essential, namely for goods with digital elements and for digital content and services. Two directives were adopted, Directive EU 2019/771 on certain aspects concerning contracts for the sale of goods and Directive EU 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services.

Transposition of those two directives is quite complex. The European Consumer Centres Network (ECC-Net) have gathered information to help consumers and traders to navigate through the most important features of the new dispositions that will apply to purchases of goods and services starting on 1st January 2022 in the EU, Island and Norway.

More information about those two diplomas will follow in the beginning of January 2022 and throughout the year. So, follow us on our social media accounts and website [ECC-Net website our your national website] for more news!

1. Duration of guarantee of goods for lack of conformity

➤ New goods

Austria, Bulgaria, Denmark, Cyprus, France, Germany, Luxembourg, Malta, Poland, Slovenia chose to adopt the minimum of 2 years guarantee for goods during which period the seller is liable for any lack of conformity that shall appear. Portugal and Spain increased the period limit to 3 years. In Finland, the seller's liability period for defects is determined on the basis of the assumed lifespan of the goods and is ultimately be limited on the basis of the general limitation period.

➤ Second hand goods

In the case of second-hand goods, the seller and the consumer can agree to contractual terms or agreements in Austria, Bulgaria, Cyprus, Germany, Luxembourg, Poland, Slovenia and Spain, with a shorter liability or limitation period, provided that such shorter periods shall not be less than one year. Portugal introduced a distinction between refurbished goods, for which the liability period is the same as for new goods, 3 years, and used goods for which this period can be reduced by contractual agreement to 18 months. Also in Malta, the period is 2 years for used goods if the consumer can prove that the trader was aware of the defect at the time of the purchase and did not inform the consumer.

➤ Goods with digital elements

Those are defined as any tangible movable items that incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions.

The normal time limit will be 2 years in Austria, Bulgaria, Denmark, Cyprus, France, Germany, Luxembourg, Malta, Poland, Slovakia, Slovenia, Spain, and 3 years in Portugal.

It can be longer for goods with continuous supply of digital services or content. In those cases, the warranty period shall cover the entire period of provision in Austria, Bulgaria, Denmark, France, Germany, Portugal, and Slovenia.

In Germany, the limitation period is extended to 12 months after the provision has ended. If a defect occurs within this period, the consumer has at least 4 months to bring the claim in court.



In Finland, It would be determined on the basis of the assumed lifespan of the goods and would ultimately be limited on the basis of the general limitation period.

The trader will have an obligation to inform the consumer before the contract about the technical requirements of the goods with digital elements and to provide all the instructions needed for the installation and updates. On the other hand, the consumer will have an obligation to cooperate with the trader in the installation and the update of the goods within a reasonable time.

In Denmark, the consumer will be able to complain about any lack of conformity in digital content or digital services that the consumer receives on an ongoing basis for up to two months after the end of the delivery period. The rules apply to digital content/digital services supplied to the consumer after 1 January 2022, even if the contract for the supply was concluded before 1 January 2022.

2. Does the consumer have to prove the lack of conformity?

Directive 1999/44/CE established a legal presumption that any lack of conformity which becomes apparent within 6 months when the goods were delivered were presumed to have existed at the time when the goods were delivered, unless proved otherwise or unless it was incompatible with the nature of the goods or with the nature of the lack of conformity. With the new directive, this period increases to 1 year in Bulgaria, Cyprus, Denmark, Finland, France for second hand items, Germany, Luxembourg, Poland, Portugal for used goods when the period of guarantee was reduced to 18 months, Slovakia, Slovenia, Spain for second hand goods and by agreement. For new goods in France and for new goods and refurbished goods in Portugal and in Spain, the period will be 24 months.

In Austria, starting in the 1st of January 2022, there will be different laws dealing with the defects liability. The defectiveness at the time of handover/provision shall be presumed if the defect occurs within 1 year when the new law (Verbrauchergewährleistungsgesetz/VGG) is applicable and within 6 months when the ABGB is applicable. In the case of continuous digital services, the trader shall bear the burden of proof for the conformity with the contract during the entire period of provision.

In Cyprus, the period will increase to 2 years in 2025. Slovakia also plans to extend this period to 2 years.

In Finland, if the goods become defective within one year of their purchase (delivery), the defect would be presumed to have been in the goods already at the purchase (delivery) stage, unless proven otherwise or if the normal lifespan of the goods is less than one year. The period of 1 year is also valid for digital content and digital services.

For goods with digital services, the period limit was set up to 1 year, but some countries will have a longer period of 2 years (Portugal when the digital content is provided in a single act, Germany). In the case of continuous supply of digital services or content for less than or equal to 2 years or when the contract does not determine the period of supply, the period will be 2 years in France. But the period limit will follow the period during which the digital content or digital service is supplied under the contract, when the continuous supply of the digital content or digital service is for more than 2 years, in France and in Slovenia. While in Austria, the trader shall bear the burden of proof for the conformity with the contract during the entire period of provision. In Portugal, the period is fixed to 3 years for goods with digital elements/digital service when the digital element is provided for up to 3 years or for the duration of the contract when it provides for the continuous supply of the digital element or digital service for more than 3 years.

3. How can the lack of conformity be remedied?

The directive EU 2019/771 establishes that, in the event of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity through repair or replacement of the goods. If it is impossible or, compared to the other remedy, would impose costs on the seller that would be disproportionate, taking into account all circumstances, or the seller refuses to bring the goods into conformity, the consumer is entitled to receive a proportionate reduction in the price or to terminate the contract.

➤ Repair and replacement

Repair and replacement are carried out by the seller within a reasonable period of time since the consumer informed them about the lack of conformity. Some countries have defined that this period should not exceed 30 days, such as France, Slovenia or Portugal.

The consumer will have to make the goods available to the seller, at the seller's expenses.

As before, the seller shall bear the costs of the repair or replacement of the goods.

Some countries introduced an *extension of the guarantee period*, such as Spain or France where any good repaired within the framework of the legal guarantee of conformity benefits from an extension of this guarantee of six months. In Portugal, the consumer who chooses to repair will also benefit from an extension of the guarantee for six months, up to a maximum of 4 repairs.

➤ **Price reduction and termination of the sales contract**

The directive establishes that the consumer is entitled to a price reduction or the termination of the contract when:

- a) the seller has not completed repair or replacement or didn't bring the good into conformity through repair or replacement
- b) a lack of conformity appears despite the seller having attempted to bring the goods into conformity;
- (c) the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the sales contract; or
- (d) the seller has declared, or it is clear from the circumstances, that the seller will not bring the goods into conformity within a reasonable time, or without significant inconvenience for the consumer.

In those cases, the reduction of price shall be proportionate to the decrease in the value of the goods, which were received by the consumer compared to the value the goods would have if they were in conformity.

The consumer is not entitled to ask for the termination of the contract if the lack of conformity is minor which is the seller's responsibility to demonstrate.

The termination of the sales contract can be partial, only related to the non-conforming goods with or without some of the conforming goods the consumer acquired together, if the consumer can not reasonably be expected to accept to keep only the conforming goods.

In Finland, if the product is defective, the seller is not obliged to correct the error if there is an insurmountable obstacle to it or if it would cause him unreasonable costs. As a general rule, the consumer would be entitled to a price reduction or cancellation after only one unsuccessful attempt at redress.

➤ **What if the lack of conformity appears within 30 days after the delivery of the goods?**

Portugal and Slovenia introduced new rules when the lack of conformity of the goods occurs within 30 days of the supply of the goods. In Portugal, consumer can choose between replacement of goods and the termination of the contract, so called "right to reject". In Slovenia, they introduced a right to refuse: the right of the consumer to immediately withdraw from the contract, notwithstanding the hierarchy of claims.

➤ **New period of guarantee or just suspension of the period?**

In Portugal, when the goods are replaced, the consumer will benefit from a new period of guarantee for lack of conformity. In Malta and in France, there is a suspension during the time the goods are not being used because of the lack of conformity. The two-year legal guarantee will not start over again with the replaced product but continues from the original date of purchase. But, if the consumer chooses the repair and the seller did not provide reparation, in France, compliance by replacing the good will cause a new legal warranty period to run, for the benefit of the consumer.

5. Other aspects

Some Member States took the opportunity to introduce in the transposition rights that were not foreseen in directive EU 2019/771.

➤ **Right to repair and aftersales services**

While in some countries a right to repair and the obligation to provide information about spare parts already existed, such as in Bulgaria, France, Germany, others introduced new provisions in their transposition, in line



with a more sustainable approach of consumer rights. In Poland, availability of spare parts is required for 7 to 10 years, depending on the type of the device in question. Slovenia has a manufacturer's one-year statutory guarantee for so-called technical goods and the obligation on the manufacturer to provide post-sales services against payment for 3 years after the expiration of the mandatory guarantee.

In Portugal, the manufacturer will have the obligation to provide the spare parts needed for the repair for 10 years starting from the date of the placing on the market of the last item and assistance for registered goods for 10 years, for free or against payment. In Spain, rules will be quite similar: manufacturers will be obliged to have parts to repair their products for 10 years after the product is no longer manufactured. They will also have to provide a proper technical service during 10 years.

6. And what about UK?

The limitation period of the guarantee for goods is 6 years in England, Wales and Northern Ireland; 5 years in Scotland. The period of the burden of proof is 6 months.

Consumers can reject the item outright if it is yet to be 'accepted'. 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. The first remedy to be provided is repair or replacement. This must be done free of charge and within a reasonable timeframe (no deadline set).