

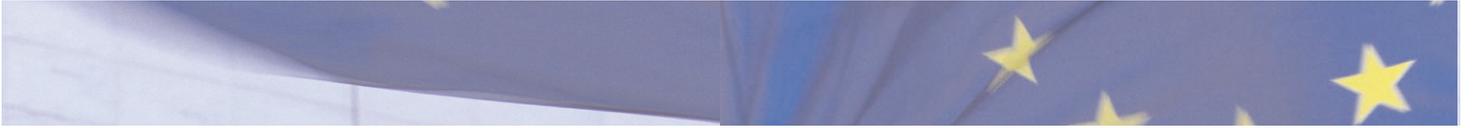
**COMPARATIVE REPORT ON TRANSPOSITION**



**DIRECTIVE 99/44 ON CERTAIN ASPECTS OF  
THE SALE OF CONSUMER GOODS AND  
ASSOCIATED GUARANTEES**

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# INTRODUCTION

## OUTLINE OF THE REPORT

On 25 May 1999, the Council and the European Parliament adopted directive 99/44\* on certain aspects of the sale of consumer goods and associated guarantees. All Member States were due to implement the directive into national law by 1 January 2002.

In April 2002, UNICE issued a comparative report on transposition of the directive by the EU Member States plus Switzerland. This was done in response to the high interest among UNICE member federations to find out when and how the directive had been implemented in the different Member States.

Since only three Member States (Austria, Germany, Finland) implemented the directive by then, UNICE considered it useful to carry out a new update of the transposition report in order to provide up-to-the-minute information on whether and how the directive is being adapted to domestic systems. The present updated report has been completed in light of the transposition or draft laws available in the different Member States at the time of elaboration of the report.

According to the present update:

- ✓ all Member States have implemented the directive in their national legal orders with the exception of Belgium and France, which are in the process of doing so;
- ✓ information gathered also shows that national transposition laws reveal substantial divergences given the minimum harmonisation character of the directive.

## EU DIRECTIVE ON CONSUMER GOODS AND GUARANTEES

The directive aims at ensuring consumer protection and strengthening consumer confidence in cross-border shopping by laying down a common set of minimum rules valid no matter where the goods are purchased.

In particular, it is worth noting that the directive:

- harmonises minimum standards for consumer protection throughout the Internal Market, but allows Member States to apply stricter rules;
- applies to business-to-consumer sales [not to business-to-business (B2B)];
- applies only to goods which are not in conformity with the contract when delivered (defective goods);
- applies to all consumer goods, as set out in article 1 of the directive;
- offers consumers a two-year legal protection period to secure a remedy (this can be reduced to one year for second-hand goods on a case-by-case basis), including a right to repair or replacement, or a price reduction;
- provides that, during the first six months, the consumer does not need to prove that the product was defective when delivered (i.e. reversal of burden of proof), thereafter the consumer must prove the existence of a defect at the time of delivery;
- provides that, if the product was defective at the time of delivery, the consumer can ask the seller first to repair or replace the goods free of charge (this choice depends on cost); only if this is not feasible or the seller fails to do so can the consumer ask for a price reduction or refund (not for minor defects);
- provides that repair or replacement "free of charge" includes costs such as materials, labour and postage;
- allows Member States to opt to ask the consumer to report a defect within two months (notification period);
- allows Member States to opt to grant consumers a limited time to pursue their claim for a remedy (limitation period), which must be at least two years;
- entitles the seller to claim a remedy against the party responsible in the chain, including the producer (i.e. right of redress), but only within the limits of national law;
- provides that commercial guarantees can be granted over and above the conditions of this directive, but never undercut them, must be written in at least one of the official EU languages, must be clear and intelligible, need not cover the whole of the EU, but must state its duration and territorial scope.

\* Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

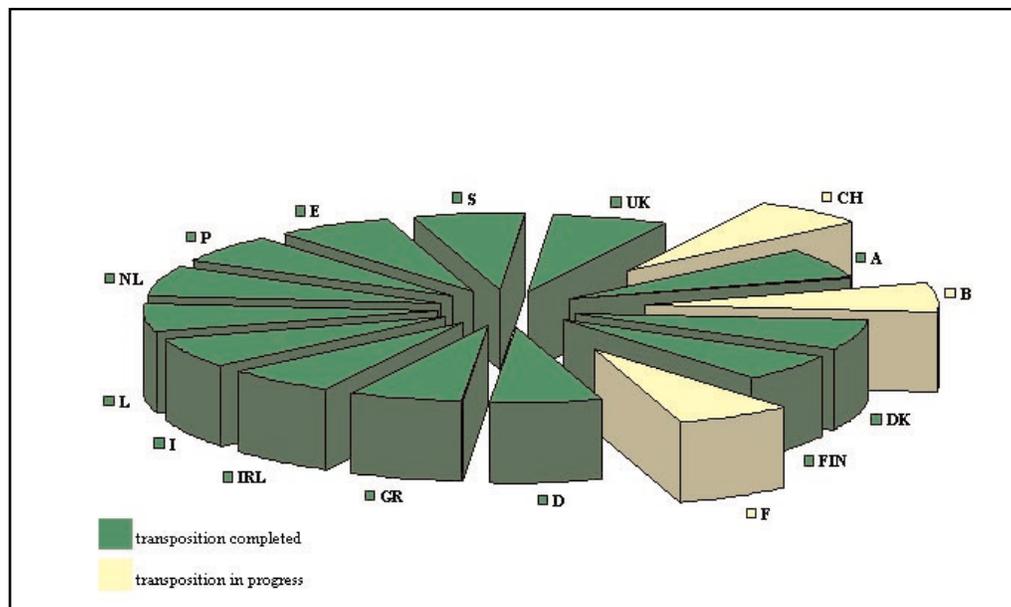
## INTRODUCTION

There are also areas where Member States enjoy a certain degree of discretion. Hence, they can either choose among different options, or may adopt more stringent provisions, compatible with the Treaty, to ensure a higher level of consumer protection. This is the case for the following issues:

- hierarchy of remedies: first repair whenever cheaper, in the last resort refund, but they could introduce a "wear and tear" clause into national law to take account of use made of the good;
- definition of "free of charge remedy": Member States could add costs other than materials (e.g. transportation costs);
- definition of consumer goods: it could be characterised by product type rather than intended use;
- beginning of the limitation period remains unclear: it could be interpreted differently (for industry, it should be at the time of delivery);
- Member States can allow interruption of limitation and legal protection period while consumer is receiving remedy (this would prove impracticable);
- Member States can allow a reduction of legal protection period for second-hand goods to as short as one year (industry would welcome such a reduction).

It is therefore of general interest and particularly for companies selling consumer goods to know how the different Member States have adapted the directive provisions to their domestic systems, since the directive allows Member States to impose additional requirements and go beyond some provisions of the directive.

### Transposition of the consumer guarantees directive



The following information sets out the main points relating to transposition of key issues of the directive, emerging from an assessment of the transposition measures adopted so far.

According to the information collected, more than two years after the implementation deadline, all Member States have transposed the directive except for Belgium and France. Likewise, Switzerland is still in the process of implementing the directive.

# NATIONAL TRANSPOSITION

## DETAILS OF TRANSPOSITION LAW

|                | Transposition   | Publication date | Date of entry into force   | Integration in national law   |
|----------------|---|------------------|--|---|
| AUSTRIA        | 'Gewährleistungsrechts-Änderungsgesetz', BGBl. I 48/2001, p. 1019   | 8 May 2001       | 1 January 2002   | In Civil Code   |
| DENMARK        | 'Lov om ændring af lov om køb', L 2002 213  | 22 April 2002    | 24 April 2002  | In separate law   |
| FINLAND        | Act concerning amendments of Consumer Protection Act, Suomen Säädökokoelma No 1258/2001, p. 3509  | 19 December 2001 | 1 January 2002   | In Civil Code   |
| GERMANY        | 'Gesetz zur Modernisierung des Schuldrechts', BGBl I No. 61, 2001, p. 3138  | 26 November 2001 | 1 January 2002   | In Civil Code   |
| GREECE         | 3043/02 'Law on the liability of the seller for real defects and lack of the agreed qualities'  | 21 August 2002   | 21 August 2002   | In Civil Code and the 2251/94 Law for Consumer Protection   |
| IRELAND        | 'European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulation 2003', S.I. No. 11 of 2003   | 22 January 2003  | 22 January 2003  | In separate law   |
| ITALY          | 'Decreto Legislativo' 2/2/2002, n. 24', GURI - serie generale - n.57 - 8/3/2002   | 8 March 2002     | 23 March 2002 (Article 1519 septies on commercial guarantees on 30 Jun 2002) | In Civil Code   |
| LUXEMBOURG     | 'Loi du 21 avril 2004 relative à la garantie de conformité due par le vendeur de biens meubles corporels'   | 29 April 2004    | 1 January 2005   | In separate law   |
| NETHERLANDS    | 'Law of March 6, 2003, aiming to adjust Book 7 of the Civil Code to EU directive on certain aspects of the sale and the guarantees of consumer products', Staatsblad van het KN n° 110 van 6/3/2003               | 6 March 2003     | 1 May 2003   | In Civil Code   |
| PORTUGAL       | 'Decree-Law n° 67/2003', Diário da República I Série A n° 83, de 8 Abril de 2003  | 8 April 2003     | 9 April 2003 (7 July 2003 for voluntary guarantees)                          | In separate law plus amendments to the Law for Consumer Protection  |
| SPAIN          | 'Ley 23/2003, de 10 de julio, de Garantías en la Venta de Bienes de Consumo', BOE núm. 165 , de 11/7/2003, p. 27160   | 11 July 2003     | 11 September 2003  | In separate law (plus amendment of articles of the Civil Code, the Commerce Law and the General Law for the defence of consumers) |
| SWEDEN         | 1. Lag (2002:587) om ändring i konsumentköplagen (1990:932) minor changes in:<br>2. Lag (2002:588) om ändring i konsumenttjänstlagen (1985:716)<br>3. Lag (2002:565) om ändring i marknadsföringslagen (1995:450) |                  | 1 July 2002  | In the Consumer Sales Act   |
| UNITED KINGDOM | 'Sale and Supply of Goods to Consumers Regulation 2002', Statutory Instrument 2002 No 3045  | 10 December 2002 | 31 March 2003  | In separate law   |

## NATIONAL TRANSPOSITION

### CONTENT OF TRANSPOSITION LAW

#### a) Scope of application (article 1)

##### (1) Ratione personae (material scope)

|                |   |
|----------------|---|
| AUSTRIA        | Law also covers business-to-business relations, but regulations for business-to-consumer relations are stricter                 |
| DENMARK        | Law limited to business-to-consumer relations   |
| FINLAND        | Law limited to business-to-consumer relations   |
| GERMANY        | Law also covers business-to-business relations, but with some stricter regulations for business-to-consumer relations           |
| GREECE         | Law limited to business-to-consumer relations   |
| IRELAND        | Law limited to business-to-consumer relations   |
| ITALY          | Law limited to business-to-consumer relations   |
| LUXEMBOURG     | Law limited to business-to-consumer relations   |
| NETHERLANDS    | Law limited to business-to-consumer relations, but the law changes the redress position of retailers vis-à-vis previous sellers |
| PORTUGAL       | Law also covers business-to-business relations  |
| SPAIN          | Law limited to business-to-consumer relations   |
| SWEDEN         | Law limited to business-to-consumer relations   |
| UNITED KINGDOM | Law limited to business-to-consumer relations   |

##### (2) Object of the liability period

|                |  |
|----------------|--|
| AUSTRIA        | Limited to what is provided for in the directive     |
| DENMARK        | Limited to what is provided for in the directive     |
| FINLAND        | Not limited to what is provided for in the directive |
| GERMANY        | Not limited to what is provided for in the directive |
| GREECE         | Not limited to what is provided for in the directive |
| IRELAND        | Not limited to what is provided for in the directive |
| ITALY          | Limited to what is provided for in the directive     |
| LUXEMBOURG     | Limited to what is provided for in the directive     |
| NETHERLANDS    | Limited to what is provided for in the directive     |
| PORTUGAL       | Not limited to what is provided for in the directive |
| SPAIN          | Limited to what is provided for in the directive     |
| SWEDEN         | Limited to what is provided for in the directive     |
| UNITED KINGDOM | Not limited to what is provided for in the directive |

## NATIONAL TRANSPOSITION

### (3) Extension of the scope

|                |  |
|----------------|--|
| AUSTRIA        | Extension to all services  |
| DENMARK        | No extension to services or other  |
| FINLAND        | No extension to services or other  |
| GERMANY        | No relevant extension to services  |
| GREECE         | No extension to services, but 'liability' covers the sale of defective movable goods as well as real estate which lacks the agreed qualities attributed to it  |
| IRELAND        | Extension to services and products   |
| ITALY          | No extension to services, but the rules also apply to contracts deemed equivalent to sales: barter, application, submission, work contract and all other contracts for supply of consumer goods application of the rules to sales contracts and, by analogy, to other contracts deemed to be equivalent and intended for the provision of services equivalent to the provision of consumer goods |
| LUXEMBOURG     | Extension to services  |
| NETHERLANDS    | Extension to some services (installation)  |
| PORTUGAL       | No extension to services, but to supply contracts for consumer goods to be manufactured or produced and of leasing of consumer goods<br>Extension to immovable goods   |
| SPAIN          | No extension to services or other (the scope is extended to any tangible movable good for private consumption)   |
| SWEDEN         | No extension to services or other  |
| UNITED KINGDOM | No extension to services, except where a retailer agrees as part of the sale contract to install the goods or to sub-contract the work<br>No extension to other, but the rules may apply where goods are commissioned by, or made to order, for a consumer   |

### b) Rights of the consumer (article 3)

|         | Hierarchy of remedies   |
|---------|---|
| AUSTRIA | First repair or replacement (unless it is impossible or disproportionate), both within "reasonable time", second, price reduction or refund (except for minor defects)  |
| DENMARK | First repair or replacement (unless it is impossible or disproportionate) second price reduction or termination. Consumer cannot claim price reduction or termination if seller offers repair or replacement within a reasonable time   |
| FINLAND | First repair or replacement in reasonable time, second price reduction and third termination of contract if the default is not minor  |
| GERMANY | Clear hierarchy of remedies: refund only when other remedies have been refused by seller or are inconvenient to the consumer<br>When customer receives price reduction, he has exhausted all entitlement to further remedy. If consumer withdraws from contract, he can still claim damage refund |
| GREECE  | The rights of consumers consist of repair free of charge, replacement or price reduction. They are provided in an alternative way without any kind of hierarchy   |

## NATIONAL TRANSPOSITION

|                |   |
|----------------|---|
| IRELAND        | First repair or replacement (unless it is impossible or disproportionate), second price reduction or rescission of the contract with regard to those goods  |
| ITALY          | In sequence: first - if possible - repair; second, if repair is too costly or impossible, replacement; third termination of the contract or price reduction if neither the first nor second arrangement is possible   |
| LUXEMBOURG     | The consumer can choose first between repair or replacement (unless it is impossible or disproportionate) within a time limited to one month once the consumer has opted for repair, second between price reduction or termination but cannot claim price reduction or termination if seller offers repair or replacement and cannot claim termination if the defect is minor   |
| NETHERLANDS    | The consumer may ask for repair and for replacement, but details are not defined  |
| PORTUGAL       | No hierarchy is established in the law. The consumer has the right to have the goods brought into conformity free of charge by repair or replacement or to have an appropriate price reduction or the contract rescinded  |
| SPAIN          | The consumer may require the seller to repair or to replace the good, unless one of the options is impossible or disproportionate. The consumer may require an appropriate reduction of price or the rescission of the contract if the first two options are not feasible   |
| SWEDEN         | First repair or replacement (unless disproportionate). Second price reduction or termination, which cannot be claimed if seller offers repair or replacement within a reasonable time   |
| UNITED KINGDOM | If a product that was faulty at the time of sale is returned to the retailer, the consumer is legally entitled to a full refund, if this is within a reasonable time of the sale or a reasonable amount of compensation (or "damages") for up to six years from the date of sale (five years after discovery of the problem in Scotland)<br>Under the Regulations, consumers can choose to request instead a repair or replacement<br>The retailer can decline either of these if he can show that they are disproportionately costly in comparison with the alternative<br>However, any remedy must also be completed without significant inconvenience to the consumer<br>If neither repair nor replacement is realistically possible, consumers can request instead a partial or full refund, depending on what is reasonable in the circumstances |

### c) Time limits (article 5)

#### (1) Liability period of the seller (article 5.1)

|         | <b>Two-year validity (article 5.1)</b>   |
|---------|--|
| AUSTRIA | Duration of the liability period is only limited for movable goods to two years; for immovable goods the duration of the liability period is three years<br>Right to claim "damage compensation" over and above remedy, but after ten years as of delivery; claiming party has to prove that damage was caused by the seller |
| DENMARK | The transposition law limit the duration of the liability period to two years<br>But the consumer still has the right to invoke guarantees for hidden defects after the end of the liability period  |

## NATIONAL TRANSPOSITION

|                |  |
|----------------|--|
| FINLAND        | The transposition law does not limit the duration of the liability period to two years. The duration of the liability period is as long as the product is supposed to last<br>Besides, the consumer still has the right to invoke guarantees for hidden defects after the end of the liability period  |
| GERMANY        | The transposition law limit the duration of the liability period to two years  |
| GREECE         | The transposition law limit the duration of the liability period to two years<br>The consumer does not have the right to invoke guarantees for hidden defects after the end of the liability period. However, the seller cannot invoke the limitation if he has concealed intentionally a defect or the lack of an agreed quality  |
| IRELAND        | The transposition law does not limit the duration of the liability period to two years. The duration of the liability period is as long as the product is supposed to last<br>Besides, the consumer still has the right to invoke guarantees for hidden defects after the end of the liability period  |
| ITALY          | The transposition law limit the duration of the liability period to two years. (This period may be as long as 26 months (two years plus two months) if the defect in the good was discovered on the last day of the two-year guarantee - in order not to deprive the consumer of the two-month notification period from discovery of the defect)<br>The consumer still have the right to invoke guarantees for hidden defects after the end of the liability period, but only if express provision is made an "additional" negotiated voluntary guarantee - which does not supersede the statutory guarantee but which is freely agreed and additional to the statutory two-year guarantee |
| LUXEMBOURG     | The transposition law limit the duration of the liability period to two years<br>Consumer can invoke guarantees for hidden defects on the basis of the Civil Code  |
| NETHERLANDS    | The legal guarantee is related to the 'normal expected lifetime of a product', so what consumers reasonably max expect, taking into account all circumstances. Could be longer than two years  |
| PORTUGAL       | Duration of the liability period is only limited for movable goods to two years; for immovable goods the duration of the liability period is five years<br>No consumer right to invoke guarantees for hidden defects after the end of the liability period   |
| SPAIN          | The transposition law limit the duration of the liability period to two years<br>No consumer right to invoke guarantees for hidden defects after the end of the liability period. However, article 1490 of the Civil Code foresees a period of six months in order to invoke guarantees for hidden defects   |
| SWEDEN         | The transposition law limit the duration of the liability period to two years<br>No consumer right to invoke guarantees for hidden defects after the end of the liability period   |
| UNITED KINGDOM | English law already generally provides a six-year limitation period in which consumers can bring claims in relation to faulty goods<br>The liability period has been extended from two years in the directive to six years in alignment with the current limitation period<br>The regulation does not require manufacturers or retailers to offer consumer guarantees nor does it impose minimum periods if guarantees are given   |

## NATIONAL TRANSPOSITION

### (2) Limitation of the liability period (article 5.1)

The directive makes no provision for a period of limitation (i.e. the period within which a court action based on a conformity defect as compared with the contract has to be initiated).

However, the directive specifies that if Member States make provision for a period of limitation for consumers to exercise their rights, this may not be less than two years after the time of delivery.

|                | <b>Provision for a period of limitation</b>  |
|----------------|--|
| AUSTRIA        | If the consumer does not take action within two years after having filed a complaint, he can no longer exercise his rights   |
| DENMARK        | No provision for a period of limitation  |
| FINLAND        | No provision for a period of limitation  |
| GERMANY        | No provision for a period of limitation, but notification and negotiations stop the limitation period  |
| GREECE         | The law provides for a period of limitation of five years for real estate and of two years for movable goods. However, the consumer can still exert his right after the period of limitation if he had notified the defects to the seller before its expiration  |
| IRELAND        | No provision for a period of limitation<br>Under the Statute of Limitations Act, 1957 Section 11 - most actions based on simple contracts and quasi contracts and other contracts as set out therein have a limitation period of six years. Date of accrual of the cause is the date in which the breach of contract took place and not the date the damage was caused |
| ITALY          | Only one-year guarantee for "second-hand goods"  |
| LUXEMBOURG     | The law provides for a period of limitation of two years   |
| NETHERLANDS    | If the consumer does not take action within two years after he filed a complaint, he can no longer exercise his rights   |
| PORTUGAL       | Consumer's rights end after any of the two periods elapse - liability period and notification period - if the consumer has not notified the seller of the lack of conformity or, if he has notified, six months after the notification date  |
| SPAIN          | The law provides for a period of limitation of three years after the time of delivery  |
| SWEDEN         | No provision for a period of limitation  |
| UNITED KINGDOM | No change to UK law required. The UK relies on its pre-existing six-year rule on limitation of actions   |

## NATIONAL TRANSPOSITION

### (3) Notification by consumers (article 5.2)

The directive does not introduce a binding period during which the consumer must notify (i.e. the period within which the consumer must notify the conformity defect to the seller after discovery to the defect).

However, it allows Member States to impose on consumers a period for notification of the defect to the seller, a period of two months from the date on which the consumer detected the lack of conformity. If the legislator introduces this notification period, failure to act within this period will deprive the consumer of his right.

|                | Notification obligation  |
|----------------|--|
| AUSTRIA        | Not introduced   |
| DENMARK        | Introduced period of two months  |
| FINLAND        | Introduced reasonable time (but the consumer has always two months of the discovery to make his claim)                             |
| GERMANY        | Not introduced   |
| GREECE         | Not introduced   |
| IRELAND        | Not introduced   |
| ITALY          | Introduced period of two months of discovery of the defect and, at most, 26 months from the date on which the goods were delivered |
| LUXEMBOURG     | Not introduced   |
| NETHERLANDS    | Introduced: "reasonable period"(two months is said to be considered "reasonable")  |
| PORTUGAL       | Introduced period of two months for movable goods, one year for immovable goods  |
| SPAIN          | Introduced period of two months  |
| SWEDEN         | Introduced within a reasonable time (within two months is always considered reasonable)  |
| UNITED KINGDOM | Not introduced   |

## NATIONAL TRANSPOSITION

### (4) Burden of proof (article 5.3)

Under article 5.3 of the directive the Member States shall introduce a "presumption rule", whereby any lack of conformity which becomes apparent within six months of delivery is presumed to have existed at the time of delivery (unless it is incompatible with the nature of the goods or the lack of conformity).

After this six-month period the reversal of the burden of proof can be provided in the transposition law. Thus it is for the consumer to prove that the lack of conformity existed at the time of delivery.

|                | Reversal of burden of proof  |
|----------------|--|
| AUSTRIA        | "Presumption rule" introduced as provided in article 5.3   |
| DENMARK        | "Presumption rule" introduced as provided in article 5.3   |
| FINLAND        | "Presumption rule" introduced as provided in article 5.3   |
| GERMANY        | "Presumption rule" introduced as provided in article 5.3   |
| GREECE         | Not introduced   |
| IRELAND        | "Presumption rule" introduced as provided in article 5.3   |
| ITALY          | <p>"Presumption rule" introduced as provided in article 5.3</p> <p>If the burden of proof lies with the vendor (within the first six months of delivery), he will have to demonstrate:</p> <ul style="list-style-type: none"> <li>- non-existence of the notified conformity defect</li> <li>- or that presumption of the existence of the defect at the time of delivery is incompatible with the nature of the good or with the nature of the conformity defect</li> <li>- or that the defect appeared more than six months after the delivery date</li> </ul> <p>The consumer is only obliged to notify the defect within two months of its discovery</p> |
| LUXEMBOURG     | Not introduced   |
| NETHERLANDS    | "Presumption rule" introduced as provided in article 5.3   |
| PORTUGAL       | Introduced. Lack of conformity which becomes apparent within two years (five years for immovable goods) of delivery of the goods shall be presumed to have existed at the time of the delivery, unless it is incompatible with the nature of the goods or the nature of the lack of conformity   |
| SPAIN          | "Presumption rule" introduced as provided in article 5.3   |
| SWEDEN         | "Presumption rule" introduced as provided in article 5.3   |
| UNITED KINGDOM | Within the first six months of delivery of the goods it is for the retailer to prove, in disputed cases, that the goods did conform with the contract at the time. After the six-month period it is for the consumer to prove that the lack of conformity existed at the time of sale  |

## NATIONAL TRANSPOSITION

### d) Commercial guarantee (articles 2 and 6)

|             | <b>Transposition law limited to the provisions of the directive</b>  |
|-------------|--|
| AUSTRIA     | Strictly limited to the directive  |
| DENMARK     | Strictly limited to the directive  |
| FINLAND     | Strictly limited to the directive  |
| GERMANY     | Strictly limited to the directive  |
| GREECE      | Not limited<br>The commercial guarantee is compulsory in the case of new products with a long life duration. Regarding high-tech products, the duration of the guarantee must be proportional to the period of time they remain high-tech    |
| IRELAND     | Strictly limited to the directive  |
| ITALY       | Not limited<br>It makes provision for a "possible" additional "negotiated guarantee" which is cumulative, optional, free and open (complementing the statutory two-year guarantee; open in terms of duration, scope and territorial coverage |
| LUXEMBOURG  | Strictly limited to the directive  |
| NETHERLANDS | Strictly limited to the directive  |
| PORTUGAL    | Strictly limited to the directive  |
| SPAIN       | Strictly limited to the directive  |
| SWEDEN      | Strictly limited to the directive  |
| SWEDEN      | Not limited<br>If the guarantor fails to comply with the requirements of the directive with respect to guarantees then the enforcement authority may apply for an injunction against the seller, requiring him to comply                     |

## NATIONAL TRANSPOSITION

### e) Final seller's right of redress (article 4)

|                | <b>Special provisions on the final seller's right of redress</b>  |
|----------------|---|
| AUSTRIA        | Right of redress vis-à-vis the next seller in the chain, but limited to once cost (not retail remedy)<br>Such claims within the chain to be made within two months after having satisfied previous claiming party in the chain; right of redress expires after five years   |
| DENMARK        | No special provisions   |
| FINLAND        | No special provisions, this right is already addressed and provided for under contract law<br>Existing Sale of Goods legislation provides for certain implied terms and conditions and any clause to exclude these terms and conditions is void unless it is fair and reasonable according to Section 55 of the 1893 Act as substituted by Section 22 of the 1980 Act   |
| GERMANY        | Right of redress within business chain, including all parties, but only B2B, plus compensation of expenditure. Right of redress expired de facto after five years   |
| GREECE         | The final seller has the rights of redress against the previous seller with the same liability and limitation period mentioned in article 5   |
| IRELAND        | No special provisions   |
| ITALY          | Special provisions: the vendor may also seek recourse for goods transferred before 23 March 2003, the date of entry into force of the Italian transposition   |
| LUXEMBOURG     | No special provisions   |
| NETHERLANDS    | The Netherlands already had some provisions on redress in the Civil Code. Apart from the implementation of the directive, the redress paragraph was changed: the right (of the retailer) of redress nowadays, can no longer be excluded contractually   |
| PORTUGAL       | The right of redress is exercised by the seller that has provided a remedy to a consumer and by the person against whom the right of redress was exercised (within the business chain), for the damages caused by these actions<br>The seller has the right of redress within a period of five years from the date on which the previous seller has delivered the good. The seller should exercise his right of redress within a period of two months from the date of having provided the remedies to the consumer |
| SPAIN          | Article 10 of the law foresees that the one who has offered a remedy to a consumer (normally, it is supposed to be the final seller) shall be entitled to pursue remedies against the liable of a lack of conformity in the contractual chain, within one year from the date on which he detected such a lack of conformity   |
| SWEDEN         | No special provisions   |
| UNITED KINGDOM | No special provisions   |

## NATIONAL TRANSPOSITION

### f) Special features of transposition law

#### (1) Second-hand goods

|             | <b>Special provisions on second-hand goods (e.g. article 7.1 (2))</b>   |
|-------------|---|
| AUSTRIA     | Duration of the liability period can be reduced to one year for second-hand goods by agreement (as provided in article 7.1)<br>Provisions of article 1.3 (the expression "consumer goods" does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person) has been copied into law  |
| DENMARK     | No special provisions   |
| FINLAND     | No special provisions concerning the liability period<br>Provisions of article 1.3 (the expression "consumer goods" does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person) has been copied into law  |
| GERMANY     | The seller and the consumer may agree contractual agreements which have a shorter time period for the liability of the seller (article 5.1), but not less than one year (as provided in article 7.1)<br>Provisions of article 1.3 (the expression "consumer goods" does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person) has been copied into law |
| GREECE      | No special provisions   |
| IRELAND     | Existing national consumer protection provisions provide a longer period of time in relation to second-hand goods than envisaged in article 7 and therefore it was not transposed<br>Provisions of article 1.3 (the expression 'consumer goods' does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person) has been copied into law                    |
| ITALY       | Statutory guarantee same as that on other consumer goods but with a validity of one year  |
| LUXEMBOURG  | Possibility of special clause between consumer and seller limiting a shorter guarantee period (but not shorter than one year)<br>For second-hand cars, this clause is only accepted if the first registration occurred over one year before the present contract  |
| NETHERLANDS | No special provisions concerning the liability period<br>Provisions of article 1.3 (the expression "consumer goods" does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person) has been copied into law  |
| PORTUGAL    | Special provisions concerning second-hand goods: the liability period can be reduced to one year by agreement between interested parties as provided in article 7.1   |

## NATIONAL TRANSPOSITION

|                |  |
|----------------|--|
| SPAIN          | The minimum liability period can be reduced as provided in article 7.1   |
| SWEDEN         | No special provisions concerning the liability period<br>No general exclusion of second-hand goods sold at public auction where consumer have the opportunity of attending the sale in person but no right for consumer to price reduction in such a situation   |
| UNITED KINGDOM | Special provisions concerning second-hand goods:<br>The consumer guarantee takes effect as a contractual obligation at the time the goods are delivered<br>The guarantee must be made available within a reasonable time of the consumer's request<br>The regulation does not apply where the goods became defective over a period of time. The apply where the goods are defective at the date of delivery. Consumers may still have be able to rely on an implied term of satisfactory quality depending upon circumstances<br>The legislator has not used the possibility to exclude "second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person" as provided in article 1.3 |

### (2) Languages

|                | Special language provisions   |
|----------------|---|
| AUSTRIA        | No special language provisions  |
| DENMARK        | No special language provisions  |
| FINLAND        | The guarantee provisions must be drafted in Finnish and Swedish   |
| GERMANY        | No special language provisions  |
| GREECE         | The seller is obliged to provide the consumer with written instructions of safe use, conservation as well as the dangers entailed by use of the product. These instructions should be in Greek or in internationally accepted symbols<br>The guarantees should contain the necessary information in Greek |
| IRELAND        | No special language provisions  |
| ITALY          | No special language provisions  |
| LUXEMBOURG     | The guarantee provisions can be drafted in French or in German  |
| NETHERLANDS    | No special language provisions, the Dutch law only states that the guarantee provisions should be in clear and understandable language  |
| PORTUGAL       | The guarantee provisions should be in Portuguese  |
| SPAIN          | The guarantee must be written at least in Spanish   |
| SWEDEN         | No special language provisions  |
| UNITED KINGDOM | The regulation provides that for consumer goods marketed with the United Kingdom, a guarantee must be drafted in English  |

## NATIONAL TRANSPOSITION

### (3) Other notable features of transposition law

|                |   |
|----------------|---|
| AUSTRIA        | Any reimbursement to the consumer may be reduced to take account of the use that the consumer has had of the goods since they were delivered to him (as provided in recital 15)   |
| GERMANY        | Any reimbursement to the consumer may be reduced to take account of the use that the consumer has had of the goods since they were delivered to him. (as provided in recital 15) There are no detailed arrangements   |
| IRELAND        | The transposition law is an additional protection and not a substitution of existing consumer protection granted by the Sale of Goods and Supply of Services Act 1980 and the Unfair Terms Regulations 1995<br>Some added protection includes:<br>The liability of retailers for statements made on the specific characteristics of the goods<br>The reduction of the price of the goods as a remedy open to consumers in certain circumstances<br>The liability of retailers in relation to incorrect installation of the goods even when the goods are installed by the consumer following inappropriate instructions<br>If the goods have a guarantee, consumers will have a right to obtain a written guarantee at the time of purchase with the details on how to make a claim under the warranty, the duration of the guarantee and the territorial scope |
| ITALY          | The two-year guarantee also extends to "installation" of the good, to which "additional" guarantees can be added (offered by the producer or vendor) which do not supersede the statutory guarantee but supplement it   |
| LUXEMBOURG     | The law does not prevent consumers from taking action on the basis of civil law<br>The law is also applicable to contracts concluded as from 1 January 2002   |
| PORTUGAL       | Extension of the producer liability for defective products (related to safety according to national law that transposes directive 85/374*)<br>Extension to quality issues: the consumer that has purchased a defective good can choose to demand from the producer the repair or replacement of the good  |
| SWEDEN         | Any reimbursement to the consumer may be reduced to take account of the use that the consumer has had of the goods since they were delivered to him (as provided in recital 15)<br>If rectification or the delivery of substitute goods is not adequate under the circumstances of the case or does not take place within reasonable time after complaint is made, the buyer may i.e. rescind the contract. If the buyer has rescinded the contract he shall pay for any gain he has made from the goods and also pay reasonable compensation if he has had any other benefit from the goods  |
| UNITED KINGDOM | Any reimbursement to the consumer may be reduced to take account of the use that the consumer has had of the goods since they were delivered to him (as provided in recital 15)   |

\* 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.

## TRANSPPOSITION STILL IN PROCESS

### FRANCE

- In 2003, the Ministry of Justice issued another draft proposal closer to the directive. This draft law is currently being examined by the *Conseil d'Etat*. After that, it has to be adopted by the Council of Ministers and then examined by the Parliament. No timetable is available at this point in time.
- It should be integrated in the Consumer Code but a few articles of the Civil Code would be also amended.
- **Scope**
  - ❖ limited to business-to-consumer (B2C) relations (Note: the current regime existing in the Civil Code already apply to B2B/B2C relations, but the French regime differs from the European regime. Then after the transposition two regimes would apply: the regime of the Consumer Code resulting from the transposition of the directive and the "French regime" of the Civil Code)
  - ❖ movable goods as well as real property
  - ❖ object of the liability period will be strictly limited to what is provided for in the directive
  - ❖ no extension of the scope to services or other
- **Hierarchy of remedies** (article 3 of the directive)
  - ❖ repair: the purchaser can ask, without payment, for the defective good to be replaced or repaired, the vendor must do so within one month (three months for real property) unless impossible or disproportionate. If he fails to do so or the time limit elapses, the purchaser recovers the right to ask for any of the other available remedies (contract rescission or price reduction). The vendor can have to pay compensation to the purchaser
- **Two-year validity** (article 5 of the directive)
  - ❖ the draft limits the duration of the liability period to two years, from the sale of the product as provided by the directive
- **Limitation of the liability period** (recital n°17 and article 5.1)
  - ❖ the draft provides for a period of limitation: the consumer would have 2 years to act from the sale. This two-year-period would be included in the general ten-year-period of limitation applicable in civil law for all contractual actions
- **No notification obligation** (article 5.2)
- **Time limits: inclusion of the six months for the presumption of prior existence**
- **The draft is not strictly limited to the provisions of the directive with respect to the commercial guarantee** (article 1.2 (e), articles 2 and 6)
- **The draft contains special provisions on the final seller's right of redress** (article 4)
- **An action based on absence of conformity does not rule out an action based on contractual or non-contractual liability**
- **There are no specific arrangements for second-hand goods**

## TRANSPOSITION STILL IN PROCESS

### BELGIUM

- Transposition law draft issued by the Ministry of Consumer Protection currently under discussion.
- To be integrated in the Civil Code.
- Estimated date of adoption: last quarter of 2004.

### SWITZERLAND

- The Federal Council presented a draft transposing law for consultation in 2001. No final decision on further proceedings has been taken yet. However, it is expected that the changes will be integrated in a revision of the consumer protection law to be submitted in late 2004.

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