



IMPLEMENTATION OF THE SALE OF GOODS DIRECTIVE IN EU MEMBER STATES

1. Background

In follow-up to our recent article¹ on the novelties brought by the Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (the “**Directive**”) and its transposition into Romanian law, we will shortly review below the implementation specifics of the Directive in selected European Union member states.

This article focuses on the implementation of the most important provisions of the Directive in Austria, Cyprus, Spain, France and Luxembourg (collectively referred to as the “**Countries**”), more specifically on relevant additions brought to the same under the national transpositions of the Directive.

2. Liability of the seller

As mentioned in our initial article, under the Directive, the seller is liable to the consumer for any lack of conformity which exists at the time when the goods are delivered and which is discovered within two years of that time.

¹ Daniel Alexie, Carmen Bănică, “Romania – Consumer Protection Updates In The Sale Of Goods Field”, available in English at https://www.mprpartners.com/wp-content/uploads/2022/01/Sale_of_goods_Directive_e_20220117.pdf, accessed on February 7, 2022.

Moreover, in case of goods with digital elements, when the sales contract provides for continuous supply of digital content or digital services over a period of time, the seller will be liable for any lack of conformity of the digital content or digital service which occurs or is discovered within two years from the delivery date of such goods. If the contract provides for a continuous supply for more than two years, the seller will be liable for any lack of conformity of the digital content or digital service which occurs or is discovered within the period of time during which the digital content or digital service is to be supplied under the sales contract.

Luxembourg and Cyprus have implemented the above referenced provisions in identical form to the Directive. In the case of France and Austria, the provisions have been transposed in very slightly different wording but without impacting the effects thereof.

Instead, in Spain, based on the transposition of the Directive, the seller is liable to the consumer for any lack of conformity which exists at the time when the goods are delivered and which is discovered within three years following the delivery, instead of two. Moreover, under the Spanish transposition of the Directive, if the sales contract provides for the continuous supply of digital content or services for a period of less than three years, the period of liability will be three years from the time of delivery.

Regarding the burden of proof, the Directive provides that any lack of conformity which becomes apparent within one year of the time when the goods were delivered will be presumed to have existed at the time when the goods were delivered, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or with the nature of the lack of conformity.

While Luxembourg and Austria have implemented the one-year period, Cyprus, Spain and France respective implementations of the Directive provide for a two-year period as of the delivery of goods.

3. Consumer remedies

The Directive provides consumers with a number of remedies for lack of conformity, namely the repair and replacement of goods, price reduction and termination of the sales contract.

The transposition of the Directive in Cyprus and France provide some notable additions to the Directive, as presented below.

Thus, in case of Cyprus transposition, the main additions / clarifications are:

- (i) unless the lack of conformity is insignificant, the consumer may reject the goods and terminate the contract or request their immediate replacement if the lack of conformity becomes apparent within 30 days as of delivery;

- (ii) repair or replacement must be carried out within a reasonable period of time, not exceeding 25 days from the moment the seller has been informed by the consumer of the lack of conformity, and if an extension of that period is required, the consumer's express consent is necessary;
- (iii) when the goods are delivered to the seller by the consumer for repair or replacement and when the goods are returned or replaced, the seller must issue, on a case-by-case basis, an acknowledgement of receipt and delivery, and at the time of delivery of the goods, the consumer will have the right to ask the seller to provide a written report of the results of the technical inspection carried out on the goods, including an opinion on the relevant findings;
- (iv) if the contract is fully or partially terminated, upon receipt of the goods and/or receipt of any receipt for the return of the goods, the seller must issue an acknowledgement of receipt of the goods and reimburse the consumer with the price paid for the goods within 30 calendar days of their receipt.

The implementation of the Directive in France also provides relevant additions / clarifications, as follows:

- (i) the goods must be brought into conformity within a reasonable period of time, which may not exceed 30 days following the consumer's request and without any major inconvenience to the consumer, taking into account the nature of the goods and the use sought by the consumer;
- (ii) any goods repaired under the legal guarantee of conformity benefit from a six-month extension of this guarantee;
- (iii) in case of reimbursement to the consumer of the sums owed by the seller, this must be made upon receipt of the goods or proof of their return and at the latest within the following fourteen days.

Furthermore, as permitted by the Directive, the Luxembourg and Cyprus transposition of the same provide for the obligation of the consumer to notify the seller in order to benefit of his or her rights under the legal guarantee of conformity.

4. Commercial guarantees

As also mentioned in our previous article, commercial guarantee certificates must contain the following information:

- (i) a clear statement that the consumer is entitled to corrective measures from the seller, free of charge, in case of lack of conformity of the goods and that those corrective measures are not affected by the commercial guarantee;
- (ii) name and address of the guarantor;

- (iii) the procedure to be followed for the implementation of the commercial guarantee;
- (iv) the designation of the goods covered by the commercial guarantee;
- (v) the conditions of the commercial guarantee.

The Countries bring a few additions to these requirements, especially, as expected, related to the languages to be used:

- (i) in the case of Cyprus, the information to be provided to the consumer must be in Greek, without prohibiting the use of another additional language, which must be an official language of the European Union;
- (ii) in the case of Luxembourg, the guarantee certificate must be drawn up in French or German, as the consumer chooses;
- (iii) Spain - the guarantee certificate must be drafted at least in Spanish.

Furthermore, the French transposition of the Directive adds useful provisions regarding the compliance of the commercial guarantee. Thus, any professional operating in certain economic sectors may request the administrative authority responsible for competition and consumption to take a formal position on the compliance of the commercial guarantee that it plans to introduce with the legal requirements. According to the French normative act implementing the Directive, the purpose of this formal statement is to protect the professional from a change in assessment by the administrative authority that would expose the seller to fines.

A decree of the French Council of State will specify the list of relevant economic sectors in which particular difficulties arise in the area of commercial guarantees.

This article contains general information and cannot be considered qualified legal advice.



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