



Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Austria

EUROPEAN COMMISSION

Produced by Consumers, Health, Agriculture and Food Executive Agency (Chafea) on behalf of:

Directorate-General for Justice and Consumers
Directorate E — Consumers
Unit E.1 Consumer markets

Contact: Marilena Di Stasi

E-mail: JUST-CONSULT-E1@ec.europa.eu

*European Commission
B-1049 Brussels*

Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Austria

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

“This report was produced under the EU Consumer Programme (2014-2020) in the frame of a specific contract with the Consumers, Health, Agriculture and Food Executive Agency (Chafea) acting on behalf of the European Commission. The content of this report represents the views of the Ipsos-London Economics-Deloitte consortium and is its sole responsibility; it can in no way be taken to reflect the views of the European Commission and/or Chafea or any other body of the European Union. The European Commission and/or Chafea do not guarantee the accuracy of the data included in this report, nor do they accept responsibility for any use made by third parties thereof.”

“The Ipsos-London Economics-Deloitte consortium present this document for the purposes of information only. The information contained here may not be current, does not constitute legal advice and should not be relied upon as such.”

More information on the European Union is available on the Internet (<http://europa.eu>).

Luxembourg: Publications Office of the European Union, 2015

PDF	ISBN 978-92-79-53746-2	doi:10.2838/700593	DS-02-15-932-EN-N

© European Union, 2015

Reproduction is authorised provided the source is acknowledged.

TABLE OF CONTENT

1. Austria	6
1.1 Regulatory background	6
1.1.1 Transposition of Directive 1999/44/EC	6
1.1.2 Table of the transposition	8
1.1.3 Additional rights	12
1.2 Enforcement and redress	13
2. Bibliography	16

TABLES

Table 1: Transposition of Directive 1999/44/EC in the Austrian legislation	9
Table 2: Right of information in the national law	12

BOXES

Box 1: Court cases on lack of conformity from the Austrian General Civil Code	15
Box 2: Court cases on lack of conformity from the Austrian General Civil Code	15

1. Austria

1.1 Regulatory background

This transposition of Directive 1999/44/EC on Consumer Sales into the Austrian legislative system aimed at achieving a higher level of consumer protection¹ and was a driver for the modernization of the previous Austrian warranty law, which had not been subject to any material changes since 1811. It affected the General Civil Code (i.e. the ABGB)² and the Consumer Protection Law³ since its transposition with effect from 1st January 2002.

Since then, the Austrian legislation was modified on 13th June 2014 in order to accommodate the new Directive on Consumer Rights (2011/83/EC). This Directive has the objective of obtaining a higher degree of harmonization between the different Member States. At the same time, it aimed at “striking the right balance between a high level of consumer protection and the competitiveness of enterprises.”⁴

1.1.1 Transposition of Directive 1999/44/EC

The transposition of Directive 1999/44/EC into the Austrian Law is complete. Table 1 in the next pages shows how each article has been accommodated in the national legislation⁵. There are nonetheless some departures from the original provisions at the EU level: referring to the definitions and the time limits that the Austrian law establishes. Each point is subsequently commented on below.

Definitions

The definitions contained in Article 1 of Directive 1999/44/EC are all transposed but one⁶. In fact, the concept of “consumer goods” has not specifically been transposed into the Austrian legislation. This is due to the fact that the ABGB⁷ applies to all types of goods, including immovable property.

It also has to be noted that the exclusion of second-hand goods that are obtained through administrative auctions has not been transposed into Austrian legislation.

Another definition that has been slightly modified is the notion of “producer”. §3 of the Austrian Product Liability Code (PHG)⁸ refers to the producer as “any person responsible for the production of the final product, the raw material or of single components, any person who presents himself as producer by affixing his name, trade mark or other distinguishing feature”, which is an expansion compared to Directive 1999/44/EC. However, at the same time, the notion of this term is restricted as the law doesn’t include “importers of consumer goods into the territory of the community”⁹.

¹ 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

² Allgemeines Bürgerliches Gesetzbuch (abbreviated ABGB), which is the Austrian General Civil Code (used interchangeably).

³ Konsumentenschutzgesetz (abbreviated KSchG), Consumer Protection Law.

⁴ European Consumers: Website accessed in April 2015. See:

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

⁵ Each but one: article 2.3, as commented in the following sections.

⁶ Article 1.2.f is not transposed, which is the definition for the “Repair” remedy.

⁷ As mentioned earlier in the text, the related law is the ABGB, the Austrian General Civil Code.

⁸ Produkthaftungsgesetz (abbreviated PHG). §3 “Hersteller (§ 1 Abs. 1 Z 1) ist derjenige, der das Endprodukt, einen Grundstoff oder ein Teilprodukt erzeugt hat, sowie jeder, der als Hersteller auftritt, indem er seinen Namen, seine Marke oder ein anderes Erkennungszeichen auf dem Produkt anbringt.” Retrieved from: https://www.jusline.at/3_Hersteller_PHG.html

⁹ Article 2.4 of Directive 1999/44/EC

Conformity with the contract

Regarding the concept of conformity with the contract, Austria has only departed on one point from the Directive 1999/44/EC, by non-transposing Article 2.3. This article explains when it shall be deemed that a good lacks in conformity.

Remedies

The remedies are extensively legislated in the Austrian General Civil Code. It can be seen that the Austrian legislation retains the hierarchy between remedies: §932 of the Austrian General Civil Code directly transposes article 3.3 Directive 1999/44/EC. According to it, the consumer has the right to require within a reasonable period of time a certain remedy between repair and replacement (§932(2, 3) ABGB) provided that none of these options is impossible or related to disproportionately high expenditure. This latter §932, second paragraph, also clarifies how to determine “disproportionately high expenditure” including factors like the value of the non-defective item, the seriousness of the defect or any inconvenience for the seller being related to the other remedy option.

If both repair and replacement are impossible or unreasonable, the consumer may demand a price reduction or “as long as it is not a minor defect” or the termination of the contract (§932(4) ABGB)¹⁰. The same shall apply after the expiration of the fixed period of time or if the seller refuses the subsequent performance. However, it should be noted that the Austrian legislation gives no hints on how to calculate a price reduction for a returned product. A new guarantee begins for repaired or replaced goods¹¹.

Claiming periods

In §933 of the Austrian General Civil Code it is stipulated that the statutory rights last for 2 years from the date of delivery in the case of movable items, whereas for immovable property the statutory rights amount to 3 years. In accordance with §9 of the Consumer Protection Law, the seller and the consumer can agree a reduced period of 1 year in the case of second-hand goods, with the burden of proof in both cases being maintained in 6 months. These terms respect the provisions from the Directive.

Directive 1999/44/EC provides the Member States the choice to introduce a period of two months for the consumer to inform the seller about the defect of a good. This period begins from the date the defect was discovered. However, the Austrian legislation does not introduce any specific period for the consumer to assert a claim once having discovered the defect, except within the guarantee period¹².

Seller liability

As it is the case in Directive 1999/44/EC, the Austrian legislator only contemplates the seller's (and not the producer's) liability. After the fulfilment of the warranty obligation towards the consumer, the seller in turn has a period of two months to claim from the one responsible for the lack of conformity (§933b ABGB). In any case, this right shall

¹⁰ The termination of the contract will imply a refund to the Consumer. However, the Austrian legislation does not neither specify whether this refund will suppose the return of the full price, or whether the seller can apply a reduction of the price due to use of the thing.

¹¹ECC-net, country fiche for Austria, available at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_AT.pdf

¹²See ECC-Net country fiche for Austria, http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_AT.pdf , accessed 23 November 2015

come under the statute of limitation of 5 years after the seller has rendered his service. This is valid for movable and immovable things, even after expiration of the periods to assert warranty rights mentioned in §933 ABGB.¹³ The same is valid for a previous seller in the same chain of contracts or any other intermediary, as long as they were granted a warranty related to the warranty rights of the previous seller. Notwithstanding, the claim shall be restricted to the amount of the expenses paid.

Second hand goods¹⁴

The consumer's claims under legal warranty (§§ 922 through 933 of the Civil Code) may not be excluded or limited prior to the knowledge of a defect. Any agreement on a shorter than the legal warranty period shall be ineffective; however, the legal warranty period may be reduced to one year for the sale of second-hand movable property provided that this is specifically negotiated on a case-to-case basis. With regard to automotive vehicles such a reduction shall be effective only when more than one year has passed since the day the vehicle was first registered.

1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and its transposition into the Austrian legislative system. All the articles but two have been transposed, and some of them contain an extension of the scope provided by the European legislation. This is briefly described in the table ("Comment").

¹³ According to §933 ABGB, the term amounts to three years for immovable things and to two years for movable goods.

¹⁴ See 'Notifications according to Article 32 and 33 of the CRD' at http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/notifications/. Status as of 19 May 2015, accessed on 14 October 2015

Table 1: Transposition of Directive 1999/44/EC in the Austrian legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Art.V Umsetzung ABGB	Objective and nature of the law
	1.2.a	Def. Consumer goods		No specific transposition because the relevant law applies to all types of goods
	1.2.b	Def. Consumer	§1(1)2. KSchG	Exception of §1(1)1. KSchG: someone for whom the transaction is not part of the business
	1.2.c	Def. Seller	§1(1)1. KSchG	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	§3PHG (Produkthaftungsgesetz, Product Liability Act)	Any persons responsible for the production of the final product, the raw material or of single components, any persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature (no mention of importers specifically)
	1.2.e	Def. Guarantee	§9b(1) KSchG	Direct, but merges article 2.2.(e) and partially 6) – Guarantee being any undertaking by the seller/producer to offer a given remedy free of charge if the consumer good does not meet the advertised specifications
	1.2.f	Def. Repair		Not transposed
	1.3	Exclusion second hand		Not transposed
	1.4	Contracts of sale types	§1(1) ABGB	<i>Direct transposition</i> - Contracts for the supply of consumer goods shall be deemed contracts of sale
Conformity with the contract	2.1	Conformity requirement	§922(1) ABGB	<i>Direct transposition</i> - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	§922(1,2) ABGB	<i>Direct transposition</i> - Stating that goods will be in conformity with the contract if they comply with a set of conditions (e.g. compliant with the description given by the seller; fit for purpose; quality and performance similar to goods of the same type)
	2.3	Lack of conformity	§922(2) ABGB	Implementing provision not expressed in terms of a presumption, but otherwise inclusion of the factors from Art. 2(2)
	2.4	Seller statements	§922(2) ABGB	<i>Direct transposition</i> - The seller shall not be bound by public statements in case she/he was not aware of the statement; the statement had been corrected; or the statement did not influence the decision of the consumer to purchase the good
	2.5	Installation	§9a KSchG	<i>Direct transposition</i> - Incorrect installation considered equivalent to lack of conformity if installation formed part of the sale or if the installation instructions created the shortcomings
Rights of the consumer	3.1	Liability	§924 ABGB	(direct, merges article 5.3. and 3.1. of the Directive)
	3.2	Remedies	§932ABGB	<i>Direct transposition</i> - Stating that the consumer has the right to have non-conforming goods brought into conformity free of charge, or to receive an appropriate discount in price, or to contract rescission

	3.3	Conditions	§932 ABGB	<i>Direct transposition</i> - Repair or replacement offered first and free of charge, unless implying disproportionate costs for the seller. Repair or replacement to be completed within a reasonable time taking into account the value of the good; the significance of the lack of conformity, or whether the remedy can be completed without inconvenience to the consumer
	3.4	Free of charge	§8(3) KSchG	<i>Direct transposition</i> - "Free of charge" referring to the necessary costs incurred to bring the goods into conformity, including postage
	3.5	Reduction of the price	§932(4) ABGB	<i>Direct transposition</i> - Stating that the consumer has the right to have non-conforming goods brought into conformity free of charge, or to receive an appropriate discount in price, or to contract rescission
	3.6	Contract rescission	§932(4) ABGB	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	§933b ABGB	<i>Direct transposition</i> - The seller is entitled to pursue remedies against the previous sellers, intermediaries or producer in the contractual chain if the lack of conformity originated there
Time limits	5.1	Time period	§933 ABGB	Two years for movable items, three years for immovable property
	5.2	Defect confirmation		Not transposed
	5.3	Reversed burden	§924 ABGB	Six months
Guarantees	6.1	Legally binding	§9b(1) KSchG	<i>Direct transposition</i> - Stating that the guarantee will be legally binding on the offerer of the guarantee under guarantee statement and conditions
	6.2	State rights and contents	§9b(12) KSchG	<i>Direct transposition</i> - The guarantee shall state that the consumer has legal rights under applicable national legislation, make clear that those rights are not affected by the guarantee; give the guarantee details and process for claiming, plus name, address of guarantor plus scope and duration.
	6.3	Written contract	§9b(3) KSchG	<i>Direct transposition</i> - On request by the consumer, the guarantee shall be made available in writing or another accessible durable medium
	6.4	Language of guarantees		Not transposed
	6.5	Respect 6.2-4	§9b(4) KSchG	<i>Direct transposition</i> - Specifying the validity of the guarantee contract for consumer even if it infringes on the above three paragraphs
Binding nature	7.1	Right restrictions	§9(1) KSchG	Rights cannot be restricted nor reduced
	7.1	Reduced period (2nd hand)	§9(1) KSchG	One year for second-hand products if negotiated by the parties
	7.2	Measures of protection	§13a KSchG	"§6 as well as §§864a and 879(3) ABGB will be applicable to users and consumers, no matter which is the law chosen by the parts for the contract"
National law and minimum protection	8.1	Supplementary rights		
	8.2	National rules retain		

Information	9	Inform of the rights		
Modification	10	Directive 98/27/EC		
Transposition	11.1	Date		
	11.2	Provisions		
Review	12	Jul-06		
Entry into force	13	Day of publication		
Address	14	To Member States		
Recitals	15	Period-of-use deduction		
	18	Suspension 2-year period	§933b(2) ABGB	In case of dispute

* The mention of "direct" means a direct transposition, disregarding the fact that the sentences can be placed differently or paraphrased relative to the Directive formulation

Legend

	Articles at the discretion of the Member State (not mandatory)
	Rules on procedures to transpose
	Recitals –at the discretion of the Member State

1.1.3 Additional rights

The additional rights available to the Austrian Consumer and User are principally contained in the Consumer Protection Law (*Konsumentenschutzgesetz*), the Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) and other related laws. The Austrian Unfair Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb – UWG*) modifies the legal framework for unfair commercial practices and advertising for the improvement of the consumers and users protection¹⁵.

Based on these legal texts Austrian consumers may invoke additional rights compared to those listed above.

Right of information

The following table displays some of the articles found in the aforementioned laws, which require the information provided to consumers and users to be clear and comprehensive¹⁶:

Table 2: Right of information in the national law		
Right of information	National Law	Comments
Right to obtain clear and comprehensible information	§5a (1) KSchG 1	Receive information on the “relevant characteristics” goods
	§5a (1) KSchG	“in a clear and comprehensible way”
	§5a (1) KSchG	“prior to the contract”
	§5a (1) KSchG 1-8	Necessary information

Related to the information prior to the contract, the entrepreneur is obligated to offer information on the “legal guarantee (...), the post-purchase services and the commercial guarantee” to the consumer §5a (1) KSchG and §28a KSchG for off premises contracts.

Right of withdrawal

The right of withdrawal¹⁷ is extensively legislated by §3 of the Austrian Consumer Protection Law and the Law on distance and off-premises contracts. This right has to be presented in the contract with details on its requirements and is valid for a minimum period of 14 days following the signing of the contract provided that the consumer has been informed about the right of withdrawal. If not, the period ends after 12 months and 14 days¹⁸. This applies to any contract which has not been concluded at the usual premises of the entrepreneur or at a market or exhibition stand used for this purpose. For distance and off-premises contracts, the right of withdrawal is established in similar terms, but in such cases, “the consumer will carry with the direct costs of the devolution of the good or service, unless the businessman has not offered to cover them or has not informed the consumer of this charge”¹⁹.

Other additional rights Austrian consumers may assert are cited in §6 of the Consumer Protection Law and determine inadmissible contractual components, which are not legally binding for the consumer. These include for example burdens of proof contractually imposed, but not foreseen by the national legislation or long periods during which the consumer is bound to the contract. Besides, consumers and users are also protected from

¹⁵ Incorporating Directive 2005/29/EC on unfair commercial practices and 2006/114/EC on misleading and comparative advertising.

¹⁶ Article §5a(1) retrieved from: https://www.jusline.at/5a_KSchG.html

¹⁷ “The right of withdrawal from a contract is the faculty of the consumer and user to stop the validity of a contract (...), without need of justification for the decision nor any type of penalty” (§3 KSchG).

¹⁸ Article §3(1) KSchG

¹⁹ According to §15(2) of the Austrian Law on distance and off-premises contracts (Fern- und Auswärtsgeschäfte-Gesetz = FAGG)

unfair commercial practices and misleading advertisements by the Unfair Competition Law (*Gesetz gegen den unlauteren Wettbewerb*), the objective of which is to ensure that competition is undistorted, which is stated in §1 of the Unfair Competition Law. Furthermore, this law shall provide assurance that consumers' economic behaviour is not materially distorted²⁰.

1.2 Enforcement and redress

Main task 1 consisted of a literature review covering various aspects of guarantees, including the commercial motivations to offer them as well as the behavioural reactions of consumers to guarantees, and an overview of the European Directives.

In case of a problem with a consumer good, consumers should address their claim to the seller (i.e. seller liability, §924 of the Austrian General Civil Code). The seller might have a department for consultation and claims, but these services are not an obligation for the seller. However, if a seller does have a dedicated customer service department the consumer should not be charged, should he have any claims to submit²¹.

If no solution between the two parties can be found, there exist three main possibilities to achieve an extrajudicial arrangement, which is generally more cost- and time-effective than the judgement of an ordinary court.

Conciliation

One option available to the consumer to obtain an out-of-court settlement is conciliation. This means that the contractual parties are supposed to achieve a consensual arrangement through investigation of a third party²². According to the recommendations of the European Commission, impartiality, transparency, efficiency and fairness are among the key principles that should be respected by the conciliation board. Added to this, the conciliators have a limited power of decision, which means that they can provide a proposed settlement to the contributing parties, which doesn't necessarily have to be accepted, but which can also serve as a professional assessment. However, it should be noted that statutory periods are not suspended, which might be important for the assertion of guarantee rights²³.

Mediation

Mediation²⁴ represents another possibility for the consumer to reach an out-of-court agreement with the entrepreneur. This is defined as a process during which the parties to the dispute are supported by a specially trained person²⁵, which should assist in the rapid and constructive resolution of the conflict.²⁶ In any case, the mediators are neutral and do not represent one of the parties to the dispute, and their role consists rather of assisting

²⁰ In accordance with §1(4)3 UWG (Unfair competition Law), „Wesentliche Beeinflussung des wirtschaftlichen Verhaltens des Verbrauchers“ die Anwendung einer Geschäftspraktik, um die Fähigkeit des Verbrauchers, eine informierte Entscheidung zu treffen, spürbar zu beeinträchtigen und damit den Verbraucher zu einer geschäftlichen Entscheidung zu veranlassen, die er andernfalls nicht getroffen hätte“. Retrieved from: <https://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=23&paid=1>

²¹ Article 6 b of the Consumer protection law states that the sellers may not charge a sum (e.g via a premium telephone line) to the consumer.

²² A list of registered conciliators is available at [europakonsument.at](http://europakonsument.at/de/page/notifizierte-schlichtungsstellen-%C3%B6sterreich): <http://europakonsument.at/de/page/notifizierte-schlichtungsstellen-%C3%B6sterreich>

²³ Website accessed in April 2015, available at: http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-_durchsetzung/Schlichtungsstellen

²⁴ Regulated by the law on mediation in civil aspects (Zivilrechts-Mediations-Gesetz – ZivMediatG).

²⁵ A list of registered mediators is available at the Federal Ministry of Justice, see http://www.mediatoren.justiz.gv.at/mediatoren/mediatorenliste.nsf/contentByKey/VSTR-7DZNPA-DE-p?open=&ref=mn&fname=A*

²⁶ Website accessed in April 2015. Available at: http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-_durchsetzung/Mediation

the parties and creating an environment which enables the participants to resolve the dispute. This method is primarily used for cases where it is important to maintain the long-term relationship between the parties. Notwithstanding, it is important to note that during mediation, the expiry of the statutes of limitations to the consumers' claims are not suspended.

Arbitration

Another form of alternative dispute resolution where disagreements between two parties are resolved outside of the traditional court system is arbitration. These private courts are characterized by the fact that the arbitrator has decision-making authority similar to the ordinary court. In fact, the arbitral award is equal to a legally binding judgement and it is only possible to appeal against it in exceptional cases, which is one reason why arbitrations are rather unusual in the case of consumer contracts²⁷.

Court settlements

If no out-of-court settlement can be reached, consumers and users also have the right to claim through a court. As contractual disputes are civil matters, the principle Law involved under this process is the Austrian Code of Civil Procedure (*Zivilprozessordnung*). It should be noted that the jurisdiction of the court depends both on the matter and the locality.

In general, for an amount of less than €15,000 the claim has to be addressed to the District Court (*Bezirksgericht*) in first instance, (except for rental law affairs or actions of trespass where claims should always be addressed to the District Court, independent of the amount in dispute). For claims exceeding €15,000, the Regional Court (*Landgericht*) is competent in first instance. As regards the local jurisdiction of the courts, the claim should be addressed to the court area where the defendant has his place of residence, which is defined as the place of general jurisdiction. Free consultation related to concrete legal issues in the area of competence of the court can be obtained at the District Court.²⁸

Court cases

There have been a number of court cases dealing with conflicts with regard to guarantees for consumer goods in Austria. Two cases are summarized below, with their respective interpretation of the Law.

²⁷ Website accessed in April 2015. Available at:
http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-_durchsetzung/Schiedsgerichte

²⁸ Website accessed in April 2015, available at:
http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-_durchsetzung/Gerichte

Box 1: Court cases on lack of conformity from the Austrian General Civil Code²⁹

Court case on the expense of dismantling and installation of defective goods, 2011

According to the judgement of the European Court of Justice on 16 June (ECLI:EU:C:2011:396), in addition to the warranty rights of the consumer, sellers are now obliged to bear the costs for dismantling and reinstallation of defective goods having been installed by a third party. This represents a reinforcement of consumers' rights, as before, the seller only had to meet costs arising from fault-based³⁰ damages³¹. Now the resultant costs are passed on to the seller; even if the damage might not be the fault of the seller, he still has not rendered his service in accordance with the contract. A limitation of costs may be contractually agreed by the parties. However, in any case, it shall be ensured that consumers' rights are not undermined.

Box 2: Court cases on lack of conformity from the Austrian General Civil Code³²

Court case on the repair of defective consumer goods, 2007

In the appeal of 13 July (6Ob143/07h), the Supreme Court (Oberster Gerichtshof) Austria estimated that after an unsuccessful attempt at repair of a defective good, consumers may demand the termination of the contract or the price reduction of the concerned good without having to grant the seller a second try to repair the defective product. This is even valid if the fixed period of time has not yet expired and the seller offers to remedy deficiencies.³³

²⁹ Verbraucherrecht.at web site

³⁰ The term of "fault" is regulated by §1294 of the Austrian General Civil Code. According to this, a differentiation has to be made between two types of fault: intent, which implies a sinister intention, and negligence, which is related to a lack of diligence. However, both cases involve the fault on part of the guilty person.

³¹ Website accessed in April 2015. See for instance one article about the court case on the expense for dismantling and installation of defective goods, available at:
https://verbraucherrecht.at/cms/index.php?id=49&tx_ttnews%5Btt_news%5D=2542&cHash=99f6316de1293d89256d5894e1d0da80

³² Verbraucherrecht.at web site

³³ Website accessed April 2015. See for instance one article about the court case on repair of defective consumer goods, available at:
https://verbraucherrecht.at/cms/index.php?id=49&tx_ttnews%5Btt_news%5D=1640&cHash=b466181e000e1007e59438597cf6bd1b

2. Bibliography

European Legislation

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 - Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0044:en:HTML>

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council – Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') – Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:en:PDF>

Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising – Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0021:0027:EN:PDF>

Legislation

Allgemeines Bürgerliches Gesetzbuch (ABGB) (Austrian General Civil Code) on civil matters and certain aspects of the sale of consumer goods and associated guarantees. Available at: [https://www.jusline.at/Allgemeines_Buergerliches_Gesetzbuch_\(ABGB\).html](https://www.jusline.at/Allgemeines_Buergerliches_Gesetzbuch_(ABGB).html)

Bundesgesetz über Mediation in Zivilrechtssachen (Zivilrechts-Mediations-Gesetz - ZivMediatG) (Mediation of Civil Rights Act), StF: BGBl. I Nr. 29/2003 (NR: GP XXII RV 24 AB 47 S. 12. BR: AB 6780 S. 696.). Available at: https://www.jusline.at/index.php?cpid=f04b15af72dbf3fdc0772f869d4877ea&law_id=456

Fern-und Auswärtsgeschäfte-Gesetz (FAGG) on distance and off-premises contracts, available at: http://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00004/imfname_338583.pdf

Gesetz gegen den unlauteren Wettbewerb (UWG), against unfair competition and incorporating Directive 2005/29/EC on unfair commercial practices and 2006/114/EC on misleading and comparative advertising. Available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002665>

Konsumentenschutzgesetz (KSchG) on some aspects of Consumer protection. Available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002462>

Produkthaftungsgesetz (PHG) (Austrian Code on Product Liability) mit berücksichtigtem Stand der Gesetzgebung am 01. April 2015. Available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002864>

Zivilprozessordnung (Austrian Code of Civil Procedure), last amendment found in 94. Bundesgesetz: Änderung der Zivilprozessordnung, des Disziplinarstatuts für Rechtsanwälte und Rechtsanwaltsanwärter sowie des Gerichtsorganisationsgesetzes (NR: GP XXV IA 1210/A AB 721 S. 83. BR: AB 9424 S. 844.). Available at: [https://www.jusline.at/Zivilprozessordnung_\(ZPO\).html](https://www.jusline.at/Zivilprozessordnung_(ZPO).html)

Reports

EEC-Net (2013) 'Help and advice on your purchases abroad'. The European Consumer Centre Network. 2013 Annual Report. Available at: <http://www.cec.consumo-inc.es/adjuntos/documentos/393.pdf>

Austrian Chamber of Labour (2015) 'Konsumentenrechte - Ein Ratgeber'. Available at: http://media.arbeiterkammer.at/wien/PDF/Publikationen/Konsumentenrechte_2015.pdf

Notifications according to Article 32 and 33 of the CRD. Status as of 19 May 2015, accessed on 14 October 2015. Available at: http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/notifications/

ECC-Net country fiche for Austria, accessed 23 November 2015, http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-GUARANTEE/country_fact_sheets/Country_fiche_AT.pdf

Europäisches Verbraucherzentrum Österreich (2012), 'Gewährleistung in Österreich. Ansprüche bei Mängeln'. Available at: <http://europakonsument.at/de/page/gew%C3%A4hrleistung-%C3%B6sterreich>

Europäisches Verbraucherzentrum Österreich (2012), 'Notifizierte Schlichtungsstellen in Österreich Adressenliste'. List of registered conciliators. Available at: [See for instance the: http://europakonsument.at/de/page/notifizierte-schlichtungsstellen-%C3%B6sterreich](http://europakonsument.at/de/page/notifizierte-schlichtungsstellen-%C3%B6sterreich)

Arbeiter Kammer (2014), 'Womit Konsumenten zu kämpfen haben'. Available at: http://www.arbeiterkammer.at/ueberuns/leistungen/Womit_Konsumenten_zu_kaempfen_haben.html

ORF (2015), 'Gewährleistung: Konsumenten kennen selten ihre Rechte'. Available at: <http://help.orf.at/stories/1755579/>

Konsumentenfragen (accessed 2015), 'Schlichtungsstellen'. List of mediation centres. Available at: http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-durchsetzung/Schlichtungsstellen

Konsumentenfragen (accessed 2015), 'Mediation'. On mediation. Available at: http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-durchsetzung/Mediation

Konsumentenfragen (accessed 2015), 'Schiedsgerichte'. On arbitration. Available at: http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-durchsetzung/Schiedsgerichte

Konsumentenfragen (accessed 2015), 'Gerichte'. On court processes. Available at: http://www.konsumentenfragen.at/konsumentenfragen/Mein_Alltag/Themen/Rechts-durchsetzung/Gerichte

Federal Ministry of Justice (accessed 2015), List of registered mediators. Available at: http://www.mediatoren.justiz.gv.at/mediatoren/mediatorenliste.nsf/contentByKey/VSTR-7DZNPA-DE-p?open=&ref=mn&fname=A*

Verbraucherrecht (2011), 'EuGH: Kosten De- und Montage mangelhafter Ware trägt Unternehmer'. Available at:

https://verbraucherrecht.at/cms/index.php?id=49&tx_ttnews%5Btt_news%5D=2542&chash=99f6316de1293d89256d5894e1d0da80

Verbraucherrecht (2007), 'OGH: Gewährleistung - nur ein Reparaturversuch nötig'. Available at:

https://verbraucherrecht.at/cms/index.php?id=49&tx_ttnews%5Btt_news%5D=1640&chash=b466181e000e1007e59438597cf6b

