



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

Country fiche: Belgium

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TABLE OF CONTENT

1.	Belgium.....	6
1.1	Regulatory background	6
1.1.1	Transposition of Directive 1999/44/EC	6
1.1.2	Table of the transposition	9
1.1.3	Additional rights	13
1.2	Enforcement and redress.....	13
2.	Bibliography.....	16

TABLES

Table 1:	Transposition of Directive 1999/44/EC in the Belgian legislation	10
Table 2:	Right of information in the national law	13

BOXES

Box 1:	Mediation via ECC-net regarding non-conformity	15
Box 2:	Court case consumer association acting as civil party to obtain the respect of Belgian law, Case Test achat / Apple.....	15

1. Belgium

1.1 Regulatory background

Directive 1999/44/EC on Consumer Sales was transposed via the Law of 1st Septembre 2004 on “la protection des consommateurs en cas de vente de biens de consommation”. In its first paragraph, the law is announced as the transposition of the 1999/44/EC in its article 1, that “this law transposes 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”.

Belgium was late in the transposition of this European Directive as the implementation should have occurred no later than 1st January 2002. Moreover the transposition within the Law of 1st of September 2004 was only effective as of 1st January 2005.

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC in the Belgian Law can be considered to be complete. Table 1 in the next pages shows how each article has been accommodated in the national legislation. There are nonetheless some departures from the original provisions at the EU level. This mainly refers to:

- The preservation of the Belgian historical law regarding the right to claim damages and the additional hidden defect guarantee;
- The necessary period to repair or exchange a defective good being added to the length of the legal guarantee;
- The specification that the reimbursement can be partial.

Belgian legislators also:

- Introduced a 2-month defect confirmation at the sole discretion of the parties; and,
- The possible reduction of the legal guarantee for second hand goods.

Definition and scope

The definitions contained in Article 1 of Directive 1999/44/EC are all transposed and there is no significant difference. The legal guarantee is a two year guarantee for brand new goods and can be reduced to 1 year for second hand goods (maintaining the European Directive in its Article 7.1). Second hand goods sold in public auction are not included in the guarantee regardless of whether the consumer was present or not during the sales (Article 1.3).

Right of consumers

The remedies of replacement or repair must be provided to the consumer free of charge; but this shall not prevent the consumer to eventually claim damages if this action is justified. Article 1649 quinquies §2 of the Civil Code¹ does not mean that damages are due, but *could be* payable in case of detriment. The detriment can be caused by the good itself or the damages resulting from the use of the defective goods.

¹ These and the following mentioned articles belong to the Belgian Civil Code. 21 Mars/March 1804. – Code Civil, Livre III: Manières dont on acquiert la propriété - TITRE VI à XIII (art. 1582 - 2010). Retrieved from: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1804032134&table_name=loi

Directive 1999/44/EC establishes a hierarchy in the remedies. In the Belgian legislation this aspect is maintained. Firstly, the consumer can choose between repair or replacement, the repair or replacement shall be completed within a “reasonable time” (not defined) of the complaint and this solution is free of charge. As provided in the Directive 1999/44/EC, if the difference between replacement and repair is disproportionate the consumer may not be able to choose between these two options. Such is also the case in Belgian law.

According to Art. 1649 quarter. § 1er while the product is being repaired or replaced (or if the consumer and producer are looking for an agreement), the legal guarantee is suspended. If the solution is the replacement of the good, then the guarantee is not totally renewed, but as provided by the Art. 1649 quarter, the waiting time for replacement is added to the existing guarantee.

Secondly, a refund or a reduction of the purchase price will be due if the repair or replacement is not possible or have not been executed within a reasonable time. Another difference relates to the reimbursement, which can be a refund or a reduction of price. In Belgian law it is specified that reimbursement may be partial and the seller is allowed to apply a rate to take into consideration the use of the product by the consumer. However the law does not provide any indications about the calculation of this rate.

Additionally, the provision of the two first remedies (repair or replacement) could be skipped if the defect of the product is major and prevents the consumer from using the good. Finally, in both Belgian legislation and the European Directive, the contract cannot be cancelled if the defect is minor.

Right of redress

The final seller is liable for defects in the product (Art. 1649 sexies) but recourse action is possible against the producer or any intermediaries in the transmission of the property of the product, maintained from article 4 Directive 1999/44/EC. Moreover, in the Belgian law, any agreement that reduces or limits the responsibility of the producer (or any intermediaries) is not valid.

Under Belgian law, the consumer can also seek compensation over and above the cost of the product itself if the seller was actually aware of the defects at the time of sale. Under Article 1645 ‘Should the seller be aware of the item's defects, he/she shall be obliged, in addition to reimbursing the price received, to pay the buyer compensation.’² However, where the seller was unaware, this does not apply and the normal hierarchy of redress is in place.

Installation

Under Article 1649ter§4, Section 4., the seller is also liable for costs of poor installation if this is also part of the sales contract (“Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his/her responsibility”). This could be imagined, for

² 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

example, in the sale and fitting of kitchen units. This also applies if incorrect instructions are given to the buyer for the purposes of self-installation.³

Time limits

As previously quoted, the legal guarantee is suspended during the period when the consumer is pursuing a claim or while the product is being repaired or replaced (Art. 1649 quarter §1).

The time limit of 2 months proposed by the European Directive has been transposed into the Belgian legislation. The parties to the contract may, although this is not mandatory, specify the existence, the length of the notification period (minimum 2 months) and the consequences of the lack of notification.

Concerning the reversed burden of proof, under the legal guarantee of conformity the prescription is 6 months as in Directive 1999/44/EC. In Belgium, during the first 6 months the seller has to prove that there was no defect on the product; after those 6 months the consumer must prove that there was a defect.

Besides the legal guarantee, the Belgian legislation provides an additional guarantee which has existed for decades: 'the hidden defect' guarantee. This guarantee is defined in the Civil Code Art. 1641 to 1649. Art. 1648 from this code states that the time limit is a 'brief period'. There is no indication about what should be considered as a 'brief period' nor if the period starts from the purchase date or from the day on which the consumer becomes aware of the defect.

In fact there is no reversed burden of proof under the hidden defects guarantee. Therefore, the consumer has to prove that: (a) the defect existed at the time of the purchase; (b) the seller ignored the defect; or (c) the default is major and prevents proper use of the item.

When going to court, the consumer can decide whether to use the legal guarantee or the hidden defect guarantee. This choice depends of the day of the discovery of the defect as well as the consumer's ability to prove the defect.

Guarantees⁴

Any contract shall be given in writing or in any durable medium and the contract shall mention that "the consumer has the legal right in the national law" meaning:

- The legal guarantee defined in Article 1649 of the Civil code;
- The 'hidden defect' guarantee defined in Articles 1641 to 1648 of the Civil Code.

³ 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 See Art. 1649ter. Inserted in the Civil Code by Law 2004-09-01/38, art. 3, introduced 1st January 2005, available at:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1804032134&table_name=loi

⁴ Although by "guarantee" the Belgian law understands in article 1649 bis. §2 5° « all commitment of a seller or a producer towards a consumer to reimburse the price, or replace, repair or to address the problem if the good does not correspond to the conditions announces in the guarantee declaration or within its publicity », and seems therefore to point out to the *legal guarantee*, the specifications of what shall the guarantee contract contain, seem to apply exclusively to the commercial guarantee (given with or without extra price). Prior to the approval of Directive 2011/83/EC on Consumer Rights, the legal guarantee was associated with the name "statutory rights", as it was meant following the terminology presented within Directive 1999/44/EC.

Both need to be mentioned in the contract. The national rights, as stated in the European Directive and reproduced in the Belgian Civil Code, are not affected by any other warranty.

1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and their transposition into the Belgian legislative system. Most of the articles have been transposed and some of them contain an extension of the scope provided by the European legislation.

Table 1: Transposition of Directive 1999/44/EC in the Belgian legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Art.1	<i>Direct transposition</i> - The purpose being to ensure a uniform minimum level of consumer protection
	1.2.a	Def. Consumer goods	Art.1649bis. §2	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)
	1.2.b	Def. Consumer	Art.1649bis. §2	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.c	Def. Seller	Art.1649bis. §2	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	Art.1649bis. §2	<i>Direct transposition</i> - Producer being the manufacturer or importer of the good, or purporting to be so via trademark
	1.2.e	Def. Guarantee	Art.1649bis. §2	<i>Direct transposition</i> - 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	Art.1649bis. §2	<i>Direct transposition</i> - Repair meaning bringing consumer goods into conformity with the contract of sale.
	1.3	Exclusion second hand	Art. 1649 quater. §2	Second hand sold in public auction are not included in the guarantee
	1.4	Contracts of sale types	Art.1649bis. §3	<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	Merged with 2.2	<i>Direct transposition</i> - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	Art. 1649ter. §1	<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	Art. 1649ter. §3	<i>Direct transposition</i> - Disregarding lack of conformity if the consumer was aware of the fault, or if the lack of conformity had its origin in materials supplied by the consumer
	2.4	Seller statements	Art. 1649ter. §2	<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	Art. 1649ter. §4	<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	Art. 1649 quater. §1	<i>Direct transposition</i> - Establishes that the seller is liable for any lack of conformity which exists at the time the good is delivered

	3.2	Remedies	Art. 1649 quinquies. §2	Reference to “reasonable time” without specifying, but in addition to the remedy the art. 1649 quinquies §1 does not prevent the possibility of damages for the goods itself or for the damages resulting from the use of the defective goods. While the product is repaired or replaced the guarantee is suspended
	3.3	Conditions	Art. 1649 quinquies. §2	<i>Direct transposition</i> - "Free of charge" referring to the necessary costs incurred to bring the goods into conformity, including postage
	3.4	Free of charge	Art. 1649 quinquies. §2	<i>Direct transposition</i> - Right to price reduction or contract rescission if the consumer is not entitled to the other remedies, or if the seller has not completed them within a reasonable time or without significant inconvenience to the consumer
	3.5	Reduction of the price	L211-10	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
	3.6	Contract rescission	Art. 1649 quinquies. §3	In case of a reimbursement the consumer might be applied a rate to take In consideration the use he had of the goods.
Right of redress	4	Final seller liability	Art. 1649 sexies	Mentioning “against any producer or any contractual intermediaries in the transmission of the property of the product”.
Time limits	5.1	Time period	Art. 1649 quater. §1/§2	One year from the date on which the consumer becomes aware of the defect (this first prescription cannot reduce the following one) or 2 years from the purchase date. While the product is repaired or replaced the guarantee is suspended
	5.2	Defect confirmation	Art. 1649 quater. §2	The law provides the possibility of a defect confirmation at the sole discretion of the seller and the consumer. This defect confirmation cannot be shorter than 2 months (as per Directive)
	5.3	Reversed burden	Art. 1649 quater. §4	(<i>direct</i>) 6 months for legal guarantee. Under the legal guarantee of hidden defect there is no reversed burden of proof and the consumer need to prove that the defect exist before the purchase.
Guarantees	6.1	Legally binding	Art. 1649 septies. §1	<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	Art. 1649 septies. §2	<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	Art. 1649 septies. §3	(In case of a written contract the conditions aforementioned in Art. 1649 septies. §2 must be reproduced.
	6.4	Language of guarantees		Not transposed
	6.5	Respect 6.2-4	Art. 1649 septies. §4	This clause is extended to the respect of the conditions stated in the article 13 §1 of the 14 th of July 1991 on commercial practice and information and protection of the consumer
Binding nature	7.1	Right restrictions	Art. 1649 octies Art. 32 law 14 July 1991	Article 32 of the Law of 14 th July 1991 has been modified and all the clause that reduce or prevent the use of the legal guarantee or the guarantee against hidden defect are considered abusive and so not valid

	7.1	Reduced period (2nd hand)	Art. 1649 quater. §1	Second hand item are included in the guarantee but this one can be reduced to one year
	7.2	Measures of protection		
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	Art. 1649 quater. §1/§2	While the product is repaired or replaced the guarantee is suspended

* 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 Belgian Consumer and User are principally contained in the following laws⁵:

- Law of the 6th of April 2010 related to market practice and consumer protection
- Law of the 21st of December 2013 which is part of the economic code and transposes some of the articles of the Directive 2011/83/EU
- Law of the 11th of March 2003 related to juridical aspects of the information society

These laws give reference to some other codes for more specific cases, such as:

- Code judiciaire
- Code pénal
- Code civil
- Code de la publicité écologique
- Code de droit économique

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 comprehensive⁶:

Table 2: Right of information in the national law		
Right of information	National Law	Comments
Right to obtain clear and comprehensible information	Art. VI. 2. Law 21st of December 2013	Receive the “correct” information on goods
		“in a clear and comprehensible way”
		“prior to the contract”
	Chapter 6 Law 21st of December 2013	Unfair clauses

Right of withdrawal

The right of withdrawal is, for distance and off-premises contracts, 14 days starting from the day after the delivery or the transfer of the property (Art. VI. 67-68)⁷. This right needs to be mentioned in the contract. If the company does not warn the consumer about his right when contracting, the period of the right of withdrawal is extended to 14 days starting on the day of the late notification without exceeding 1 year + 14 days (the initial timing for the right of withdrawal).

The consumer can be requested to support the cost of sending back the product and should send it within 14 days after informing the seller. Then the seller has 14 days to provide the reimbursement to the client.

1.2 Enforcement and redress

In case of a problem with a good, consumers should address their claim to the seller. Following the first claim, the consumer can request a reaction from the seller through a

⁵SPF Economie, P:M:E., Classes moyennes et Energie (accessed November 2015), 'Réglementation'. Retrieved from: <http://economie.fgov.be/fr/consommateurs/Internet/Reglementation/>

⁶ Article §5a(1) retrieved from: https://www.iusline.at/5a_KSchG.html

⁷ An exhaustive list is detailed in Art. VI. 73 Law of 21st of December 2013

notice and this is generally a prerequisite before going either to court or to an ADR. A consumer association can also contact the seller to try to solve the problem.

Alternative Dispute Resolution (ADR)

There are four kinds of extra judicial dispute resolution mechanisms and the choice of the third party is either free (in the case of contractual mediation and contractual conciliation) or needs to be state agreed (in the case of legal mediation, legal conciliation or arbitration).

Mediation

Mediation mainly consists of re-establishing a dialog between the consumer and the seller with the help of an outside party. The mediator does not take any decision, which is the main difference with conciliation and arbitration. This procedure is defined in the *Code judiciaire*, Articles 1724 to 1737⁸. The use of this procedure does not prevent the parties going to court or to a conciliation or arbitration procedure.

Conciliation

Conciliation is a mediation where the third party takes a decision. However this decision is not binding. This procedure is defined in the *Code judiciaire*, Articles 731 to 734⁹. The use of this procedure does not prevent the parties from going to court or to an arbitration process.

Arbitration

For arbitration both parties need to agree to an arbitration process or insert a clause to use arbitration in the event of a claim when they sign an initial contract during the purchase transaction. The third party in arbitration will render a decision which is binding. This procedure is defined in the *Code judiciaire*, articles 1676 à 1723¹⁰.

Ombudsman

These entities are predefined for a specific sector and generally legislated by a specific law. There are nine areas where ombudsmen are active according to the official website¹¹:

- Money (bank, insurance, Tax)
- Career and retirement (jobs, unemployment, pension)
- City
- Education and Youth (school, scholarship)
- Housing and environment (social housing, urbanism)
- Administrative (ID, passport)
- Mobility (transport, road)
- Healthcare (handicap, senior)

Consumer

However the Consumer Ombudsman does not deal with complaints related to guarantee and is only dedicated to mail, energy and telecom issues.

⁸ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1967101035
accessed 23 November 2015

⁹ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1967101004&table_name=loi
accessed 23 November 2015

¹⁰ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1967101006
accessed 23 November 2015

¹¹ Official website of the ombudsman network available at : <http://www.ombudsman.be/fr>

Court proceedings

Under the case of unfair commercial practices (*Code Droit Economique Livre VI Section 'Des clauses abusives'*¹² related to unfair practices, illicit or abusive clauses) and following the Directive 98/27/EC on injunctions for the protection of consumers' interests, the Minister of Economic Affairs, consumer organisations, professional and interprofessional organisations (only against unfair commercial practices) and individual consumers can seek injunctions to stop an illegal practice by a trader.

Since September 1st 2014 in Belgium, similar to injunctions, consumers can also jointly complain through 'Class actions'. To begin a class action there must be at least two complainants. In these cases, consumer organisations can act as a civil party in criminal proceedings and claim damages for violation of the collective interest of consumers.

Cases

Box 1: Mediation via ECC-net regarding non-conformity¹³

Mr D. receives partial compensation because his reclining chairs did not match the advertisement on eBay. Mr D. ordered 6 reclining chairs, which he saw advertised on eBay, for € 350. The description provided by the French seller referred to aluminium as the material of the reclining chairs. When Mr D. received the recliners, he noticed that they are made of stainless steel rather than aluminium.

The purchaser, justifiably, feels that the reclining chairs are not the ones he ordered. However, despite this fact he gets no satisfaction from the vendor, so he contacts the ECC. ECC-Net's intervention with the vendor leads to an acceptable outcome. Since returning the reclining chairs to France would be quite expensive, the vendor proposes a 30 % discount, which amounts to € 105. Mr D., who wants to solve the dispute as soon as possible, eventually agrees to the proposed solution.

Box 2: Court case consumer association acting as civil party to obtain the respect of Belgian law, Case Test achat / Apple¹⁴

Test Achat, the Belgian consumer association, mounted a legal action in 2012 against Apple due to what Test Achat saw as market practices which were not observing EU law on guarantees (improper presentation of minimum information, failure to provide sufficient warranty etc.). The court action was successful and Apple was obliged to come in line with EU legal norms.

¹² http://economie.fgov.be/fr/binaries/CDE_Livre_6_tcm326-256636.pdf accessed 23 November 2015

¹³ Source ECC Belgium, available at: <http://www.eccbelgium.be/mr-d-receives-partial-compensation-because-his-reclining-chairs-did-not-match-the-advertisement-on-ebay-s64841.htm>

¹⁴ Source Test Achat, article available at : <http://www.test-achats.be/famille-prive/nc/en-direct/apple-viole-la-loi-sur-la-garantie>

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- Articles 731 to 734

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1967101004&table_name=loi

- Articles 1676 to 1723

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1967101006

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Ministry of economics: <http://economie.fgov.be/fr/>

Ombudsman network: <http://www.ombudsman.be/f>

