



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

Country fiche: Bulgaria

EUROPEAN COMMISSION

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TABLE OF CONTENT

1. Bulgaria	6
1.1 Regulatory background	6
1.1.1 Transposition of Directive 1999/44/EC	6
1.1.2 Table of the transposition	7
1.1.3 Additional rights	12
1.2 Enforcement and redress	12
2. Bibliography	14

TABLES

Table 1: Transposition of Directive 1999/44/EC in the Bulgarian legislation	8
Table 2: Right of information in the national legislation	12

BOXES

Box 1: Court case on reimbursement to a consumer due to quality concerns	13
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1. Bulgaria

1.1 Regulatory background

This section describes the transposition of Directive 1999/44/EC on Consumer Sales in the Bulgarian legislative system.

1.1.1 Transposition of Directive 1999/44/EC

The Directive has been transposed in 2007 into the Bulgarian legal system via the Consumer Protection Act¹, promulgated via the State Gazette on 9th December 2005 and subsequently amended and supplemented. Other Directives that have been transposed via the latter are: Directive 98/6/EC on the consumers protection in the indication of the prices of the products offered; Directive 2011/83/EU on consumer rights; Directive 2001/95/EC in general product safety; Council Directive 85/374/EEC concerning the liability for defective products; Council Directive 93/13/EEC on unfair terms in consumer contracts; Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts; Directive 98/27/EC on injunctions for the protection of consumers' interests; Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market. Table 3 on the next pages shows how each article of Directive 1999/44/EC has been accommodated in the national legislation. There are nonetheless some departures from the original provisions.

Definitions

The definitions contained in Article 1 of Directive 1999/44/EC are all transposed and there is no significant difference. In fact, the Bulgarian legislation has limited the scope of the Directive provisions to the goods specified in article 1.2.a. of the Directive, as second-hand products obtained through public sale are left outside the scope of this law (Consumer Protection Act, Article 104 (3))².

Rights of the consumer

Two major departures are observed with regards to the rights of consumers.

As stated in article 3, paragraph 3, of the Directive 1999/44/EC on Consumer sales, the seller has to complete the remedy, as per the request of the consumer, within a reasonable timeframe. In the Bulgarian legislation, this “reasonable timeframe” has been limited to one month after the date when the claim was addressed to the seller (art. 113(2) of the Consumer Protection Act). Reduction of price or refund can be requested if this limit is not respected³.

Additionally, as per Art. 114 (3) of the Consumer Protection Act, the consumer is entitled to request a rescission of the contract and thereafter a reimbursement if, for the same

¹ Consumer Protection Act, 9th December 2005. Link: <http://www.mi.government.bg/en/library/consumer-protection-act-1-c25-m258-2.html>. Accessed on 13th November 2015.

² In the Green Paper from 2007 this aspect is considered as an expansion (“a more limited exclusion”) of the Directive, because some second-hand goods are indeed covered with this formulation by Law 3/2014. See COM (2007) 210 final, p. 7. Available at:

http://ec.europa.eu/consumers/archive/cons_int/safe_shop/guarantees/CSD_2007_EN_final.pdf

³ECC-net, Country fiche for Bulgaria, available at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_BG.pdf

good, the consumer has requested three times a repair within the time of the guarantee (two years as per art. 115).

Time limits

In Article 115 (1) of the Consumer Protection Act, it is mentioned that the statutory rights last for 2 years from the date of delivery. The two year period for exercising the rights is applicable for both new and second-hand goods. These terms respect therefore the provisions from the Directive. However, and embracing one of the soft options from Recital 18 from the Directive, and under Article 115 (2), the legal guarantee is suspended during the period when the consumer and seller are resolving a claim, or while the product is being repaired or replaced.

Defect confirmation

Finally, the defect confirmation of 2 months proposed by the Directive⁴ has been transposed into the Bulgarian legislation. Under the Consumer Protection Act the consumer does not have to respect any other time limits when exercising their rights other than the two years period as from the delivery of the good (Section II, Art. 115 (3)).

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 Bulgarian legislative system. Most of the articles have been transposed and some of them contain an extension of the scope provided by the European legislation as commented above. This is briefly described in the column "Comment".

⁴ Under the Recitals of the Directive 1999/44/EC it is written: "Whereas Member States should be allowed to set a period within which the consumer must inform the seller of any lack of conformity; whereas Member States may ensure a higher level of protection for the consumer by not introducing such an obligation; whereas in any case consumers throughout the Community should have at least two months in which to inform the seller that a lack of conformity exists;"

Table 1: Transposition of Directive 1999/44/EC in the Bulgarian legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Consumer Protection Act	Purpose of the present legislation: to protect the consumer.
	1.2.a	Def. Consumer goods	Consumer Protection Act, art. 104 (3)	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply) but additional specification for second-hand goods
	1.2.b	Def. Consumer	Consumer Protection Act, Supplementary Provisions, § 13.1	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.c	Def. Seller	Consumer Protection Act, art. 104 (1)	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	Consumer Protection Act, art. 104 (2)	Not transposed as such. The definition of producer is more complex and descriptive than the one in the Directive. Additionally to the Directive, the “producer” also makes reference to : Business operator or distributor who modifies the characteristics of a product by its activity The representative of the business operator/importer if they are not located in Romania The distributor if the importer is not known even if the producer is mentioned or if the distributor does not inform the consumer about the identity of the importer within 30 days Business operator who imports good in order to sell/rent/lease them.
	1.2.e	Def. Guarantee	Consumer Protection Act, art. 117 (1)	<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	Consumer Protection Act, art. 104 (4)	<i>Direct transposition</i> - Repair meaning bringing consumer goods into conformity with the contract of sale.
	1.3	Exclusion second hand	Consumer Protection Act, art. 104 (3)	<i>Direct transposition</i> - Exclusion of second-hand goods sold at a public auction which the consumer can attend
Conformity with the contract	1.4	Contracts of sale types		Not transposed
	2.1	Conformity requirement	Consumer Protection Act, art. 105 (1)	<i>Direct transposition</i> - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	Consumer Protection Act, art. 106	<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	Consumer Protection Act, art. 109	<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	Consumer Protection Act, art. 107	<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	Consumer Protection Act, art. 110	<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	Consumer Protection Act, art. 113 (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	Consumer Protection Act, art. 112 / 113 / 114	<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	Consumer Protection Act, art. 112 Consumer Protection Act, art. 113	"Consumer goods shall be brought into conformity with the sales contract within one month after the date on which the complaint was addressed by the consumer."
	3.4	Free of charge	Consumer Protection Act, art. 113 (4)	Transposed, but the labour costs incurred are more detailed including also: costs of fault finding, use of experts, removal, and packaging.
	3.5	Reduction of the price	Consumer Protection Act, art. 114 (1)	<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
	3.6	Contract rescission	Consumer Protection Act, art. 114 (4) Consumer Protection Act, art. 114 (2)	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor - But additional right of the consumer / obligation for the seller: if for the same good, the consumer has requested three times a repair within the time of the guarantee (two years as per art. 115), the seller is obliged to satisfy a claim of contract rescission and to reimburse the client
Right of redress	4	Final seller liability	Consumer Protection Act, art. 116	<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	Consumer Protection Act, art. 115 (1) Consumer Protection Act, art. 115 (2)	<i>Direct transposition</i> - The seller shall be held liable if the lack of conformity becomes apparent within two years from delivery of the good
	5.2	Defect confirmation	Consumer Protection Act, art. 126 (1)	<i>Direct transposition</i> - In order to claim, the consumer must inform the seller of the lack of conformity within a period of two months (also obligations by Member States and the Commission in the execution and monitoring of this) - As per art. 126 (1) The time limit for addressing complaints is two months after detection of the lack of conformity (applicable for goods) / fourteen days (applicable for services)

	5.3	Reversed burden	Consumer Protection Act, art. 108	<i>Direct transposition</i> - Any lack of conformity detected within six months of delivery of the goods is presumed to have existed at the time of delivery unless incompatible with the nature of the goods or the lack of conformity
Guarantees	6.1	Legally binding	Consumer Protection Act, art. 117 (2)	<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	Consumer Protection Act, art. 119	<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	Consumer Protection Act, art. 118	Regardless of the request of the client, the guarantee must be made available in writing or in another durable medium accessible thereto.
	6.4	Language of guarantees	Consumer Protection Act, art. 119 (3)	"The information shall mandatorily be made available in the Bulgarian language."
	6.5	Respect 6.2-4	Consumer Protection Act, art. 121	<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	Rights restriction	Consumer Protection Act, art. 111 (1)	<i>Direct transposition</i> - Stating that previously agreed conditions between seller and consumer which are agreed before a lack of conformity is known will not be binding if they reduce the consumer rights under this Directive.
	7.1	Reduced period (2nd hand)	Consumer Protection Act, art. 111 (1)	No reduction for second-hand goods
	7.2	Measures of protection	Consumer Protection Act, art. 111 (1)	<i>Direct transposition</i> - Consumers are not to be deprived of the protection afforded by this legislation if the contract opts for the law of a non-member state
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	Consumer Protection Act, art. 115 (2)	During repair
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* 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

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

1.1.3 Additional rights

The additional rights available to the Bulgarian consumer⁵ are principally contained in the Consumer Protection Act, and other related laws specific for each industry (such as Foodstuff Act, Postal services Act, Tourism Act, etc.). The Consumer Protection Act also defines the legal framework for unfair commercial practices and advertising for the improvement of the consumers and users protection.

Article 1 of the Consumer Protection Act summarizes the basic rights of users. These are the: (a) right to be informed for products and services; (b) right to be protected against the risk of acquisition of products and services that are hazardous to consumers' life, health or property; (c) right to protection of consumers economic interests upon acquisition of products and services with regard to unfair commercial practices and methods of sale, unfair contractual terms, and provision of guarantees associated with consumer goods; (d) right to obtain redress for damage caused by defective products; (e) right of access to judicial and out-of-court procedures for the resolution of consumer disputes; (f) right to education on issues related to consumer protection; (g) right of association for the purposes of protecting consumers' interests; (h) right to be represented before State bodies making decisions on issues affecting consumers.

Right of information

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

Table 2: Right of information in the national legislation		
Consumer right of information	National Law	Comments
Right to obtain clear and comprehensible information	Consumer Protection Act, art. 4	Information in a clear and comprehensive manner
	Consumer Protection Act, art. 5 (2)	In writing or in another proper manner, to be true, comprehensive, legible, clear and intelligible
	Consumer Protection Act, art. 6	The information has to be provided in advance

Right of withdrawal

According to Article 55, the consumer shall have the right to withdraw from a distance contract concluded without compensation or penalty and without giving any reason within a period of seven working days. However, this is extended to 14 days for financial services contracts. Additionally, under Article 161f, the consumer shall have a right, without compensation or penalty and without giving any reason, to withdraw from the timeshare contract, long-term holiday product contract, resale contract or exchange contract as concluded within fourteen calendar days. This right needs to be mentioned on the contract, if the seller omits to 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 plus 14 days (the initial timing for the right of withdrawal).

1.2 Enforcement and redress

In case of a problem with a good, consumers should address their claim to the seller (i.e. seller liability). As per Article 127 (4), the consumer is entitled an “unlimited right of choice” of the place for addressing the complaint. However, the legislation does not specify what

⁵ The terms 'consumer and user' are used in the legislation.

by *unlimited* is meant, but it does mention the “place of management of the trader or at another place named by the trader from the mentioned seller liabilities”, as claiming places.

Following the claim addressed to the seller, as per Article 178 of the Consumer Protection Act, the consumer can address the claim to the Commission for Consumer Protection if unsatisfied with the seller's response. Alternative action involves going either to court or to an alternative procedure. Consumer groups can also establish a contact with the seller to try to solve the problem on behalf of the consumer.

Mediation

The first option at hand is mediation (article 182 (3)). The mediation is an out-of-court arrangement where two parties (or more) decide to ask for the advice and counsel of a third party. It 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. The use of this procedure does not prevent the parties from subsequently going on to court or to later agree to conciliation or arbitration procedures. In Bulgaria, the procedures for conciliation are defined by the Rules of Operation of the mediators.

Conciliation commissions

The second option is conciliation. As per articles 182 to 185, this out of court procedure could be used if no amicable solution is found or if the mediation did not lead to a solution to the satisfaction of the consumer. Conciliation will lead to a decision being issued by a third party, however, the decision does not have to be respected by any of the parties to the dispute. In Bulgaria, the procedures for conciliation are defined by the Rules of Operation of the conciliation committees. Reliance on this procedure does not preclude the parties from going to court or later agreeing to an arbitration process.

Court proceedings

The consumer also has the right to claim through a court. For case of unfair commercial practices, the Minister of Economic Affairs, consumer organisations, professional and inter-professional organisations as well as individual consumers can seek injunctions to stop an alleged illegal practice by a trader.

Similar to injunctions, consumers can also jointly complain. This can be undertaken when a company does not respect their contractual obligations or when it does not respect the right of the consumer. A class action requires at least two complainants, and consumer organisations can also act as a civil party in criminal proceedings and claim damages for violation of the collective interest of consumers.

Cases

Box 1: Court case on reimbursement to a consumer due to quality concerns⁶

In one cross border case, the consumer received back the amount he has paid to the seller with the assistance provided by ECC Bulgaria. After having ordered cosmetic products from a Bulgarian trader, a UK consumer received a product with questionable quality and origin. Via the mediation of the ECC Bulgaria, the consumer was reimbursed with the total amount paid to the seller.

⁶ Source ECC Bulgaria, available at:

http://www.ecc.bg/%D1%83%D1%81%D0%BF%D0%B5%D1%88%D0%BD%D0%B8-%D1%81%D0%BB%D1%83%D1%87%D0%B0%D0%B8/2/%D0%BE%D0%BD%D0%BB%D0%B0%D0%B9%D0%BD-%D0%BF%D0%BE%D1%80%D1%8A%D1%87%D0%BA%D0%B0_%D0%B5%D0%B7%D0%B8%D0%BA-2.htm

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