



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

Country fiche: Czech Republic

## **EUROPEAN COMMISSION**

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

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## TABLE OF CONTENT

|                                                   |    |
|---------------------------------------------------|----|
| 1. Czech Republic .....                           | 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 .....                     | 11 |
| 1.2 Enforcement and redress .....                 | 11 |
| 2. Bibliography .....                             | 14 |

## TABLES

|                                                                               |   |
|-------------------------------------------------------------------------------|---|
| Table 1: Transposition of Directive 1999/44/EC in the Czech legislation ..... | 8 |
|-------------------------------------------------------------------------------|---|

## BOXES

|                                                                 |    |
|-----------------------------------------------------------------|----|
| Box 1: ECC-net case on application of the legal guarantee ..... | 13 |
|-----------------------------------------------------------------|----|

# 1. Czech Republic

## 1.1 Regulatory background

The initial transposition of the Directive 1999/44/EC in the Czech Republic had raised some concerns at the European Commission which was of the opinion that certain crucial elements were not clear enough in the national law or even not transposed at all, such as, among others, the right of the consumer to ask for a reduction of the price or termination of the contract if the seller has not repaired nor replaced goods without significant inconvenience to the consumer. The Czech Republic was subsequently subject to a Commission infringement proceeding in 2009.

In 2012, the Parliament of the Czech Republic adopted Act No. 89/2012 Coll., the New Civil Code ("Nový občanský zákoník", and NCC hereafter) with effect from 1 January 2014. It is the principal code of private law, which completely replaces the civil code of 1964 (Act. No. 40/1964 Coll.). The fundamental model for the NCC was the Czechoslovak draft Civil Code from 1937. The Czech Civil code has been amended in order to be fully compliant with EU legislation on consumer protection. Directive 1999/44/EC has been fully implemented within the NCC. With the adoption of the NCC the Czech Republic was also the first member state to fully implement the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

Relevant amendments have also been made to the Consumer Protection Act ("Ochrana spotřebitele", CPA)<sup>1</sup>, which regulates national competition law aspects.

### 1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC into Czech Law is complete. The table in the next page demonstrates how each article has been transposed in the Czech national legislation.

#### Definitions

The "*consumer*" definition respected Article 1 of Directive 1999/44/EC (§ 419 NCC). In the case of "*seller*", that the Czech law uses the definition of "*entrepreneur*" instead (§ 420 (1) NCC). This definition is even broader than the one given in the Directive which is why the minimum standard is granted. The definition of "*producer*" is not existent as such in the NCC, but § 420 (2) NCC provides the concept of – *for the purpose of consumer protection* – an entrepreneur, and this concept is clearly linked to trading activities. In this respect the concept of *entrepreneur* clearly aligns with the concept of producer in the sense of the Directive. The definition of "*repair*" is not formally included in the NCC, but in § 2106 (paragraphs a) and b)) the concept of repair is dealt with, with the law stating that the consumer has the right (amongst other remedies) to have defective or missing parts replaced with non-defective parts, as well as the removal of defective items via repair.

Although the NCC does not contain a definition of "*consumer goods*" as such, it is in conformity with the definition set out in the Directive, as its definition of property in that sense also contains tangible movable items (cf. § 489 NCC). The definition of "*guarantee*" is transposed in § 2113 NCC as a *guarantee of the seller for the quality of the product, i.e. that it will be eligible for a certain period of time to be used for the usual purpose or that it will maintain its normal properties*. Also the content of the guarantee shall be indicated on the packaging or advertisement of the respective product.

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<sup>1</sup> Act No. 634/1992 Coll. as of December 16, 1992 Consumer Protection Act. English version accessed on 29<sup>th</sup> November at: <http://www.czechlegislation.com/en/89-2012-sb>

## Remedies and reclamations

Consumers must notify the seller of defects 'without undue delay', but no specific time limit is in place. Remedies and conditions are handled in § 2106 and § 2107 NCC. On making the claim, the consumer has the right to choose whether the seller should repair the good within a reasonable time frame (30 days under § 1850 NCC) or provide a new good. This choice may only be changed later if both parties agree, although an exception is made if the defect is found to be subsequently irreparable. In case the defect is of minor importance or constitutes an insignificant breach of the contract, the consumer may only ask for a repair or replacement of the good. In any case, if the seller does fail to repair or replace the good in that time or refuse to repair or replace, the consumer may demand a reasonable discount on the purchase price or, alternatively, cancellation of the contract. No new guarantee comes into force following any remedy.

The reversal burden of proof is in place in the Czech Republic (for the first six months the seller must prove the defect did not exist at the time of sale, while after six months the consumer must do so).

Second hand goods may have a reduced guarantee period of one year under Article 2168 of the Civil Code<sup>2</sup>.

### 1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and its complete transposition into the Czech legislative system in 2012".

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<sup>2</sup> See 'Notifications according to Article 32 and 33 of the CRD' at [http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/directive/notifications/](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 Czech legislation**

| Areas                        | Art.  | Content                 | Legislation                 | Comment*                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------|-------|-------------------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scope and definitions        | 1.1   | Purpose                 | New Czech civil Code        | Objective: Complete transposition of and conformity with European legislation.                                                                                                                                                                                                                                                                                              |
|                              | 1.2.a | Def. Consumer goods     | § 419                       | <i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)                                                                                                                                                                                                                                            |
|                              | 1.2.b | Def. Consumer           | § 489                       | <i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession                                                                                                                                                                                                                                               |
|                              | 1.2.c | Def. Seller             | § 420 (1)                   | The NCC uses the definition of <i>entrepreneur</i> .                                                                                                                                                                                                                                                                                                                        |
|                              | 1.2.d | Def. Producer           | § 420 (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          | § 2113                      | Direct; the guarantee can be applicable on the individual part of thing.                                                                                                                                                                                                                                                                                                    |
|                              | 1.2.f | Def. Repair             | § 2106 (1)                  | The NCC does not refer specifically to a definition of repair, however, in its articles on remedies, it refers specifically to the concept of repair. Under § 2106 (1) the buyer is entitled to having, in the case of a defective good, the right to:<br>a) have defective or missing parts replaced with non-defective parts<br>the removal of defective items via repair |
|                              | 1.3   | Exclusion second hand   | ---                         |                                                                                                                                                                                                                                                                                                                                                                             |
|                              | 1.4   | Contracts of sale types | § 2085 (1)                  | <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  | § 2099                      | Direct; applicable on incorrect information in the handbook too.                                                                                                                                                                                                                                                                                                            |
|                              | 2.2   | Good conformity         | §, 2099 (1), § 2095, § 2096 | <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      | § 2103 ph. 1                | <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       | § 2103 ph.2, § 2107 (1)     | Direct; the seller has not informed the buyer about the defect.                                                                                                                                                                                                                                                                                                             |
|                              | 2.5   | Installation            | § 2938 (2)                  | <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               | § 2169 (1), § 2161 (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                  | § 2169 (1)                         | <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                | § 2106, § 2107, § 2169 (2)         | <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            | § 2169 (1)                         | The Czech legislation refers to “the buyer has the right to free repair of the defect” but does not detail what is captured in this (i.e. postage, labour etc.).                                                                                                                                                                                                                |
|                  | 3.5 | Reduction of the price    | § 2106 (1) (c) and (d), § 2169 (3) | <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       | § 2107                             | <i>Direct transposition</i> - No contract rescission if the lack of conformity is minor                                                                                                                                                                                                                                                                                         |
| Right of redress | 4   | Final seller liability    | § 2939                             | Direct; the damaged caused by a defective product should be paid only if the amount exceeds EUR 500.                                                                                                                                                                                                                                                                            |
| Time limits      | 5.1 | Time period               | § 2165 (1), §1850 (1)              | Direct, 2 years                                                                                                                                                                                                                                                                                                                                                                 |
|                  | 5.2 | Defect confirmation       | § 1850 (1)                         | 30 days.                                                                                                                                                                                                                                                                                                                                                                        |
|                  | 5.3 | Reversed burden           | § 2161 (2)                         | Compliant with the minimum time period the Directive sets out: six month.                                                                                                                                                                                                                                                                                                       |
| Guarantees       | 6.1 | Legally binding           | § 2113                             | <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 | § 2116 (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          | § 2166 (1) and (3)                 | <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    | § 1811 (1)                         | <i>Direct transposition</i> - The guarantee shall be drafted in one or more languages from among the official languages of the EU                                                                                                                                                                                                                                               |
|                  | 6.5 | Respect 6.2-4             | § 2166 (2)                         | <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 restriction         | § 1813, § 1814 (a), § 1815         | <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) | § 1813, § 1814 (a), § 1815         | In the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter liability period for the seller (not less than one year).                                                                                                                                                                                              |

|                                     |      |                          |          |                                                                                                                                                                      |
|-------------------------------------|------|--------------------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | 7.2  | Measures of protection   | 1814 (a) | <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 |          |                                                                                                                                                                      |

\* 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 remedies under the legal guarantee have to be provided free of charge under § 2169 (1) of the NCC, although the legislation does not go into further detail on what is or is not considered as coming under free of charge.

The prescription period for legal action to be taken by the consumer based on the legal guarantee of conformity is 3 years from when the claim is made, in accordance with the general prescription period<sup>3</sup>.

Although some Member States provide for the possibility of the consumer to bring a claim against the importer or any other intermediary in the chain up to the producer, in the Czech Republic such a possibility is not specified. The seller is the primary point of contact and the consumer can only make a claim against the producer or importer, for example, if they offer their own commercial warranty.

However, the Czech consumer law also contains a concept that is translated as statutory guarantee. Under this statutory guarantee the vendor is responsible not only for the defects the item has at the moment of delivery but also, under certain conditions, for those that may occur subsequently, within the statutory guarantee period. In this respect, the Czech law provides higher level of protection than required by the European legislation<sup>4</sup>.

## 1.2 Enforcement and redress

### Claims process

The vendor is required to duly inform consumers about the scope, terms and conditions of liability for defective products and services. This includes the terms and condition when a discrepancy with the contract occurs along with information about where to submit a claim and the process of warranty repairs.

It is highly recommended by ECC-Net in the Czech Republic to make a claim in writing<sup>5</sup>. To be able to prove the delivery, it is better to send a registered letter and to carefully save the proof of delivery. If the claim is made in store, the seller is obliged to issue a written acknowledgement.

### Czech Trade Inspection Authority

If the entrepreneur does not resolve the claim within the given period, the entrepreneur is committing an offence, for which the Czech Trade Inspection Authority can impose a fine. The Czech Trade Inspection Authority will investigate a customer complaint when the vendor<sup>6</sup>:

- Does not identify the goods or services offered or charges prices incorrectly;
- Offers unlabelled products (such as textiles, shoes or crystal glass without labelling what the items are made of);
- Offers products without instructions and without guides for proper maintenance, in the Czech language;
- Offers products that seem unsafe;

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<sup>3</sup>ECC-Net, Country fiche for Czech Republic (undated), accessed 29th November at [http://www.europe-consommateurs.eu/fileadmin/user\\_upload/eu-consommateurs/PDFs/PDF\\_EN/REPORT-\\_GUARANTEE/country\\_fact\\_sheets/Country\\_fiche\\_CZ.pdf](http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_CZ.pdf)

<sup>4</sup> ECC-Net (June 2012) Guide for consumers visiting the Czech Republic, accessed 29th November at: [http://www.konsumenteuropa.se/globalassets/czech\\_republic\\_-\\_guide\\_for\\_foreign\\_consumers.pdf](http://www.konsumenteuropa.se/globalassets/czech_republic_-_guide_for_foreign_consumers.pdf)

<sup>5</sup> ECC-Net (June 2012) Guide for consumers visiting the Czech Republic, accessed 29th November at: [http://www.konsumenteuropa.se/globalassets/czech\\_republic\\_-\\_guide\\_for\\_foreign\\_consumers.pdf](http://www.konsumenteuropa.se/globalassets/czech_republic_-_guide_for_foreign_consumers.pdf)

<sup>6</sup> Website of the Czech Trade Inspection Authority, accessed 29th November at <http://www.coi.cz/en/for-consumer/advice-information-consumer-rights/complaints-submissions-information-requests/>

- Sells fuel, which does not seem to meet the necessary quality;
- Uses unfair trade practices: for example, gives false information about a product or service provided, conceals information that could significantly affect the consumer's decision – i.e. the consumer purchases a product or service that he/she would not have purchased if he/she had had this information), does take advantage of rights which he/she otherwise could have, etc. Unfair business practice also includes the sale of imitation or counterfeit goods.
- Refuses to issue a proof of purchase with all necessary data;
- Does not inform the consumer about warranty terms;
- Does not issue proof of receipt for a claim, or how the complaint will be resolved;
- Does not resolve the complaint within 30 days, or a longer period if it has been agreed to by both parties; or
- Fails to provide the consumer with assurances that a credit agreement contains all the necessary details and information.

However, it should be noted that these are market level interventions, and not resolution of single consumer disputes. The Czech Trade Inspection Authority makes it clear that it cannot and does not enforce the provisions of the Czech Civil Code<sup>7</sup>.

## Arbitration

In the Czech Republic, arbitration on consumer affairs was possible via the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic (“Arbitration Court”<sup>8</sup>). Arbitration in the Czech Republic is regulated under Act No. 216/1994 Coll<sup>9</sup>, on Arbitration Proceedings and Enforcement of Arbitral Awards, as amended which took effect on 1 January 1995. Arbitration can cover:

- Commercial disputes
- International disputes
- Domestic disputes
- Consumer disputes

However, a note on the Arbitration Court website<sup>10</sup> details that:

*“This form of dispute resolution was only applicable in the scope of the project the Ministry of Industry and Trade of the Czech Republic called Alternative Consumer Disputes Resolution. The project is currently suspended.”*

This was confirmed based on information from the Ministry<sup>11</sup>:

*“The Ministry of Industry and Trade expects that the system of alternative dispute resolution for consumer disputes will be available again, in response to a directive of the European Parliament and the Council on alternative dispute resolution for consumer disputes and a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes. Both documents have already been approved by the European Parliament. According to the Directive, should all Member*

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<sup>7</sup> Website of the Czech Trade Inspection Authority, accessed 29th November at <http://www.coi.cz/en/for-consumer/advice-information-consumer-rights/complaints-about-goods-and-services/>

<sup>8</sup> Website of the Arbitration Court, accessed 29th November 2015 at <http://en.soud.cz/rules/rules-governing-domestic-disputes-1st-may-2002>

<sup>9</sup> Act No. 216/1994 Coll, accessed 29th November 2015 at <http://www.zakonyprolidi.cz/cs/1994-216>

<sup>10</sup> Website of the Arbitration Court, accessed on 22<sup>nd</sup> June 2015, <http://en.soud.cz/arbitration-proceeding>

<sup>11</sup> See website of the Ministry of Industry and Trade, “Information about securing court settlement of consumer disputes” July 9, 2014, accessed on 22<sup>nd</sup> June 2015, <http://www.mpo.cz/dokument127471.html>

*States to ensure that all disputes between a consumer and a trader arising from the sale of goods or provision of services can be submitted to the entity court settlement of consumer disputes, including through online means.”*

## Cases

### Box 1: ECC-net case on application of the legal guarantee<sup>12</sup>

A Czech consumer purchased a waterproof camera from a French seller in July 2012. Shortly after the first use, the camera stopped working and the consumer immediately complained to the seller. The seller's inspection revealed oxidation but the camera passed the waterproofing test. The seller concluded that the consumer did not properly close the camera when using it under water. The consumer disagreed strongly stating that he is a long time user of under-water photographic equipment. Also, the defect appeared within six months of purchase so the reversal of burden of proof was still applicable.

When the ECC-Net contacted the seller, they provided the original quote, which clearly stated that the item was waterproof when correctly used. They also added a photo. The consumer agreed to have a counter examination performed in the Czech Republic and needed the seller to return the camera. They were willing to do so but wanted to charge him for shipping costs of 700 CZK, whereas normal shipping costs would amount to 282 CZK. It turned out that the 700 CZK covered shipping and the issuing of the quote by their technical service. The seller indicated they would provide a refund if the counter expertise proved the item to be unfit for purpose. The seller was informed that this was illegal under Czech case law as handling a product liability claim is a legal obligation under §19 of the Consumer Protection Act. Also, the application of the legal guarantee is free of charge for the consumer. The seller finally agreed to return the item free of charge so that it could undergo the counter examination.

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<sup>12</sup> ECC-net (2014), Commercial Guarantees, are they worth the money? Legal guarantees and commercial warranties on consumer goods in the EU, Iceland and Norway, accessed on 29th November 2015 at <http://www.ukecc.net/news/news.cfm/newsid/57>

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