



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

Country fiche: Estonia

EUROPEAN COMMISSION

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1. Estonia

1.1 Regulatory background

This section describes the transposition of Directive 1999/44/EC on Consumer Sales and associated guarantees in the Estonian legislative system. There are several Acts which one has to refer to, in order to map the transposition of this Directive.

Firstly, the Consumer Protection Act, 21st April 2004¹ (CPA hereafter) amended via legal instrument RT I, 13th March 2014. These modifications aimed at transposing also Directive 2011/83/EC on Consumer Rights. As the text of this Act specifically comments, this law aims at being the “safeguard”² of consumer rights, and it is therefore one of the basic legislative references on consumer protection.

The second source of legislation on guarantees is to be found in the Law of Obligations Act (“*Võlaõiguse seadus*”) from 26th September 2001 amended 13th June 2014. This last amendment addressed the complexity of this law, by reducing its length. It currently has over 1,000 articles³.

Among other relevant legislative Acts which both influence consumer protection in Estonia and incorporate some articles from Directive 1999/44/EC, one has to refer to the Trading Act (“*Kaubandustegevuse seadus*”, 11th February 2004), Tourism Act (“*Turismiseadus*”, 15th November 2000), Advertising Act (“*Reklaamiseadus*”, 12th March 2008) and the Product Conformity Act (“*Toote nõuetele vastavuse seadus*”, 20th May 2010). These mentioned Acts have been lately amended, in order to update their provisions according to the European standards contained in different Directives⁴.

1.1.1 Transposition of Directive 1999/44/EC

The transposition of Directive 1999/44/EC into Estonian Law can be considered to be complete. The Acts not only incorporate but also extensively detail many of the Directive provisions.

Definitions

The Estonian legislation does not refer to “consumer goods”, but “goods” alone, conceiving them as any “thing or right offered, sold, or marketed (...), by a trader” (Ch. 1 §2(3) CPA). However, article §11(5) specifies that only movable goods are affected by this Act⁵, which implies that services such as electricity, for instance, are not to be

¹ Tarbijakaitse seadus (“Consumer Protection Act”), RT I 2004, 41, 278, and entered into force 1st June 2004. Available at: <https://www.riigiteataja.ee/akt/115032014055>

² Consumer Protection Act, Chapter 1 Scope of application of Act. §1(1) on the purpose of the act.

³ ECC (2014), ‘Commercial warranties: are they worth the money?’. Pag. 106.

⁴ For instance, Directive 2001/95/EC of the European Parliament and of the Council on general product safety; Council Directive 84/450/EEC relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.09.1984, pp. 17–20), as amended by Directive 97/55/EC of European Parliament and of the Council amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ L 290, 23.10.1997, pp. 18–23); Directive 2005/29/EC of the European Parliament and of the Council 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) (OJ L 149, 11.06.2005, pp. 22–39).

⁵ However, not all the articles of the Consumer Protection Act are applicable to both two good types (i.e. movable and immovable), as the articles which define ‘defective goods’ (§11(5)), only apply to movable items (§10(5)). See CPA, English version at: <http://www.wipo.int/edocs/lexdocs/laws/en/ee/ee096en.pdf>

covered by the dispositions on guarantees (following exceptions as mentioned in article 1.2(b) of the Directive).

For the concept of “guarantee” itself, one has to refer to the Law of Obligations Act. Whereas the Directive uses the term *guarantee*, in Estonia the concept is “warranty against defects”, and it can be both offered without or for a charge (§230).

Time limit

The Estonian legislation maintains two years as the time coverage of the statutory rights for lack of conformity, and the six months for the reversed burden of proof. Additionally, the legislator decided to embrace the option set in article 5.2 Directive 1999/44/EC, whereas “the consumer must inform the seller of the lack of conformity within a period of two months”. Therefore, the consumer, and as specified in Law of Obligations §220(3) “shall not rely on the lack of conformity”, if the notification is done outside this time period.

This is not the only scenario under which the consumer can lose the chance to claim against defective products, as can be seen within the articles which legislates for remedies (below).

Remedies

The consumer must notify the seller within two months of noticing the defect. The liability for defects is with the seller and the articles regulating remedies contain no significant departures from the Directive provisions (e.g. the consumer is entitled to a hierarchy of four remedies free of charge). However, §220(3) Law of Obligations Act, establishes an exception on the exercise of these rights of remedy, even under the presence of a lack of conformity. According to this article:

“(3) The purchaser shall not rely on the lack of conformity of a thing if the purchaser does not notify the seller thereof on time or, in the case of a contract entered into by the purchaser in the course of the professional or economic activity thereof, if the purchaser does not provide a sufficiently detailed description of the lack of conformity. If a purchaser has a reasonable excuse for the failure to give notice, the purchaser may, relying on the lack of conformity, reduce the purchase price or claim compensation for damages from the seller, except for any loss of profit.”

This article suggests that two scenarios can result in the consumer losing the right to remedies. These are: (a) when they fail to communicate to the seller the lack of conformity within the legal time period; or (b) if they fail to communicate properly (i.e. “sufficiently detailed”) information about the defect. In the case of scenario (a), the consumer shall provide proof, therefore, that there was a reason to miss the legal period to communicate the claim (i.e. two months), in order to retain their statutory rights in this regard.

Following repair or replacement a new guarantee comes into force⁶.

⁶ ECC-Net country fiche on Estonia, accessed 25th November 2015, http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_EE.pdf

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 Estonian legislative system. 11 articles were not transposed and several more were not transposed as such or were incorporated into the existing text. These cases are described in the table (“Comments”).

Table 1: Transposition of Directive 1999/44/EC in the Estonian legislation

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Consumer Protection Act Ch. 1 §1(1)	"The purpose of this Act is to safeguard consumer rights"
	1.2.a	Def. Consumer goods	Consumer Protection Act Ch. 1 §2(1)	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)
	1.2.b	Def. Consumer	Consumer Protection Act Ch. 1 §2(3)	Consumer goods is not used, but only "goods", and it is "a thing or right offered, sold, or marketed in any other manner, by a trader".
	1.2.c	Def. Seller	Consumer Protection Act Ch. 1 §2(1)	The definition is maintained, but the concept in use is "trader". This terminology has been made uniform across the legislative framework (e.g. in the Product Conformity Act, for instance).
	1.2.d	Def. Producer	"Producer" in Law of Obligations Act §1062 "Manufacturer" in Product Conformity Act Ch. 1 §4(9)	A similar but more precise definition of "producer" is found in Law of Obligations Act §1062, and it is the definition deemed as applicable according to §217(7) of the same act. The Product Conformity Act defines "manufacturer": "an importer or distributor who places a product on the market under their name or trademark or who, in a manner that may affect the conformity of the product with the applicable requirements, alters the product that has already been placed on the market, is also considered a manufacturer". Manufacturer equals the concept of seller, as for Ch.1§2(1) of the Trading Act.
	1.2.e	Def. Guarantee	Law of Obligations act Ch. 11 §230(1)	The guarantee is named "warranty against defects (...) without charge or for a charge"
	1.2.f	Def. Repair		
	1.3	Exclusion second hand		No mention, therefore, second hand goods sold at public auctions are covered by these Laws
	1.4	Contracts of sale types	Law of Obligations Act Ch. 1 §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	Law of Obligations Act Ch. 11 §217(1)	"Things delivered to a purchased shall conform to the contract"
	2.2	Good conformity	Law of Obligations Act Ch. 11 §217(2)	Uses a negative definition, instead of the criteria in the Directive: i.e. "a thing does <i>not</i> conform to a contract if (...)" (italics added).
	2.3	Lack of conformity	Consumer Protection Act Ch. 3 §11(2)	"Defective goods may be offered and sold to consumers only if the goods are harmless to life, health and property and if the consumers are notified of the defects of the goods."
	2.4	Seller statements	Law of Obligations Act Ch. 11 §217(3)	<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	Law of Obligations Act Ch. 11 §217(5)	<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	Law of Obligations Act Ch. 11 §218	The Law of Obligations Act maintains seller's liability, but it makes more precise statements relative to the article of the Directive.
	3.2	Remedies	Law of Obligations Act Ch. 11 §222(1)	The Estonian corresponding articles to remedies are nonetheless slightly more detailed in comparison to the wording used in Directive 1999/44/EC. Hierarchy among remedies is respected.
	3.3	Conditions	Law of Obligations Act Ch. 11 §222(1)	<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	Law of Obligations Act Ch. 11 §222(4)	<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	Law of Obligations Act Ch. 11 §222(3)	But Law of Obligations Act Ch. 11 §224, specifies restrictions on the reduction of purchase price. According to which: "The purchaser shall not reduce the purchase price: 1) if the seller repairs the thing or delivers a substitute thing which conforms to the contract; 2) if the purchaser unreasonably refuses to accept the proposal of the seller concerning the repair of the thing or delivery of a substitute thing; 3) upon the purchase of a used thing which is sold by public auction."
	3.6	Contract rescission	Law of Obligations Act Ch. 11 §218	"Minor" not used, but Law of Obligations Act Ch. 11 §218 cancels the right of withdrawal only when the consumer was aware of the defect at the moment of entering the contract with the seller.
Right of redress	4	Final seller liability	Law of Obligations Act Ch. 11 §228	<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	Law of Obligations Act Ch. 11 §218(2)	Two years
	5.2	Defect confirmation	Law of Obligations Act Ch. 11 §220(1)	Estonian law decided to introduce the time limit of 2 months within which "the consumer shall notify the seller of any lack of conformity of a thing (...) after becoming aware of the lack of conformity".
	5.3	Reversed burden	Law of Obligations Act Ch. 11 §218(2)	<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	Law of Obligations Act Ch. 11 §230(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	Law of Obligations Act Ch. 11 §231(1)	"A warranty shall set out, inter alia, the following: 1) the name and address of the warrantor; 2) the person to address to exercise the rights arising from the warranty; 3) the rights granted to the consumer by the warranty; 4) the procedure for exercising the rights arising from the warranty; 5) the warranty period; 6) the scope of the warranty; 7) an explanation that, in addition to the rights arising from the warranty, the consumer has other rights arising from law."
	6.3	Written contract	Law of Obligations Act Ch. 11 §231(2)	"At the request of the consumer, the warranty shall be presented (...) in writing".
	6.4	Language of guarantees		Not transposed, but it is an obligation for the trader, so it shall not have the "failure to provide or concealment of truthful information <i>in Estonian</i> concerning the characteristics, price or origin of goods or services", on Consumer Protection Act article §47 as "Deceiving consumers". [italics added]
	6.5	Respect 6.2-4	Law of Obligations Act Ch. 11 §231(3)	<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		Not transposed
	7.1	Reduced period (2nd hand)		Not transposed
	7.2	Measures of protection	Law of Obligations Act §39	"State supervision over the safeguarding of the rights granted to consumers on the basis of this Act and other legislation shall be exercised by the Consumer Protection Board.
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		
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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 Consumer are found in the articles of the Consumer Protection Act, given that it is the legislation which transposes Directive 2011/83/EC on Consumer Rights.

Right of information⁷

Estonian consumers have the right to obtain “necessary and truthful information (...) and on any risk” on the goods and services that want to purchase (Consumer Protection Act, Ch. 1 §3(2)). The concept of risk/safety is further developed in Chapter 2 §4(1), whereas the consumer is entitled the right to “obtain information on the safety of goods and services”. In this line, the provision of an instruction manual is mandatory for “Goods which are technically complex, contain hazardous substances or require special skills when using them” (Ch. 2 §6(1)): this document is meant to contain the information to use the goods according to their intended purpose.

On Chapter 2 §4(3), it is specified which is the information that shall be provided in the pre-contractual stage, and this is related to the characteristics and conditions of use of the goods, and specifically, should the good to have an associated “warranty”, the trader has to provide “detailed information” on it. But the extent of the *detail* is not further legislated within the terms of this Act. Finally, any of this information shall be provided in Estonian, unless the consumer and the trader have agreed on another language (Chapter 2 §4(4)), or translated to Estonian (Ch. 2 §6(3) in the case of instruction manuals not originally in the national language.

However, according to the Law of Obligations Act, the existence, terms and conditions of commercial guarantees, have to be provided by the trader not only in case of entering into contract with a consumer (§14¹.1(9)), but also “prior to entry into a contract” (§48(19)).

Right of withdrawal

For distance contracts, the right of withdrawal is ensured within the Law of Obligations Act, 26th September 2001 published 13th June 2014⁸, on its Division 3 on “Off-premises Contract”, article §49. The period respects the European legislation, by allowing the consumer to withdraw from the contract within a period of 14 days (§49(1)), “without giving any reason”. The further specifications of this right are in relation to different contract types (e.g. sale of water, gas, electricity or heating; contract of services; etc.).

1.2 Enforcement and redress

In case of a problem with a consumer good, the consumer has to claim initially to the trader⁹. The CPA suggests first the possibility to reach an agreement through an oral complaint or to use a written format in case the first action is not successful¹⁰.

The Consumer Protection Act, in its article 1§1(5), points to the Administrative Procedure Act as the regulatory framework for administrative proceedings, but it specifically mentions that “settlement of disputes between a consumer and a trader are not deemed to be an

⁷ Whereas the right of information as in this Country fiche is presented in light of the Consumer Protection Act, other legislation provides further dispositions regarding this entitlement, as for instance is the case of Law of Obligations Act. Refer to its article §14 for pre-contractual information in case of on-premises contracts, and §48 for off-premises contracts, or the general provisions of article §54. Available in its English version at: <https://www.riigiteataja.ee/en/eli/513062014001/consolide>

⁸ RT I, 31.12.2013, 1. Entry into force 13th June 2014.

⁹ Chapter 5 on settlement of consumer complaints, §19(1), “in any form”.

¹⁰ Consumer Protection Act, Articles under Chapter 5: Settlement of consumer complaints. Division 1. General Procedure for Settlement of Consumer Complaints.

administrative proceeding". The trader shall review the complaint within a period of 15 days - or justify its delay if failing to meet this requirement (§19(6)).

According to article §21 of the Consumer Protection Act:

"If a trader refuses to settle a complaint from a consumer or the consumer does not consent to the solution proposed by the trader and finds that his or her rights have been violated or his or her interests have been damaged, the consumer may submit a complaint to the person or institution which settles corresponding disputes, to the consumer complaints committee through the Consumer Protection Board or to a court. The consumer may submit the complaint himself or herself or through a representative."

The Consumer Protection Board is the body which can provide an out-of-court settlement to the consumer, in case there is no agreement reached with the trader. This body is under the Ministry of Economic Affairs and Communications of Estonia.

To have access to this service, the dispute has to arise from a good or service which cost a minimum of €20 (§22(2)), but cannot under any terms deal with a claim arisen from "an event of death, physical injury or damage to health" (§22(3)). In any case, in the event that the complaint can be admitted to the Board, it can be initiated not only by the consumer, but also through a representative (§21). The decision of the Board will take place within 5 working days after the day of the hearing (§34), and this decision will be binding, and shall be "complied with within one month" (§37(1)). In the case the decision is not respected, the Board "has the right, with the consent of the consumer and as the representative of the consumer", to address the case to the eligible court (§37(4)).

Table 2: Maximum amount of fees by violation and violator types to be issued by the Consumer Protection Board¹¹	
Violation of requirements for providing information concerning characteristics, conditions of use or warranty of goods or services or for indicating prices	If committed by a trader, 100 fine units
	If committed by a legal person, fine up to €2,000
Violation of requirements for goods, sale of goods or provision of services.	If committed by a trader, 200 fine units
	If committed by a legal person, fine up to €2,600
Deceiving consumers: 1) inaccurate weighting, inaccurate measuring, or miscalculation; 2) failure to adhere to the approved rates or the prices agreed upon or indicated; or 3) failure to provide or concealment of truthful information in Estonian concerning the characteristics, price or origin of goods or services.	If committed by a trader, 100 fine units
	If committed by a legal person, fine up to €2,000
Violation of prohibition to use unfair commercial practices	If committed by a trader, 300 fine units
	If committed by a legal person, fine up to €3,200

Court settlements

In case the decision made by the Consumer Protection Board's Commission does not satisfy the consumer, the consumer may turn to the court.

Estonia has a three-level court system. The first instance courts are called County Courts where all civil, criminal and misdemeanour matters are being heard. The second instance courts which review judgments of county courts on the basis of appeals against rulings and

¹¹ Chapter 7 Liability, articles §45-47 Consumer Protection Act

judgements are called Circuit Courts. The highest level court in Estonia is the Supreme Court of Estonia which only accepts cases by way of cassation proceedings, which have already been heard in all previous instances¹².

Therefore, in case of a consumer dispute that has not been solved desirably for the consumer by the Consumer Protection Board's Commission, the consumer must first file a claim to the county court. If the consumer is not happy with the decision or ruling, it can thereafter appeal to the district court. In the last instance, the consumer may appeal in cassation to the Supreme Court.

Court proceedings are time consuming and costly compared to the Consumer Protection Board Commission's proceedings. However, as the decision of the Consumer Protection Board's Commission is not binding, filing a claim to the court may be the only option for the consumer to receive damages. Nevertheless, companies that do not comply with the rulings in favour of the consumer will be blacklisted and the name of the company will be published on the Consumer Protection Board's website¹³.

In addition, it is also important to know that some matters can only be discussed in courts, e.g. the Consumer Protection Board has no right to settle disputes if the claim is resulting from death or physical injury, if the claim is related to health or legal services or if the consumer is demanding reimbursement for moral damages caused.

Cases

Box 1: Consumer Protection Board Commission decision 7-1-10088-09-14¹⁴, January 2014

The consumer filed a claim to the Consumer Protection Board on 1 November 2013. According to the claim, the consumer bought Adidas boys' running shoes on 9 August 2013 from Sikupilli mall for €37.95. The consumer filed a written complaint to the trader on 9 September 2013, in which he wanted to receive the money back as the left shoe's sole was loose. On 8 October 2013 the consumer received the shoes back from the trader together with the shoe manufacturer's expertise decision which stated that the shoe broke due to the wrong maintenance. The consumer then paid an independent expert analysis provider €15, who stated that the shoe broke due to poor assembly by the shoe manufacturer. As the subsequent decision of the Consumer Protection Board did not satisfy the consumer, the customer filed the claim to the Consumer Protection Board's Complaints Commission. After assessing the evidence, examining the results of the expertise and hearing both parties' explanations, the Complaints Commission concluded that the claim was valid and according to paragraphs 218 (2) of the Law of Obligations Act the seller was liable for any lack of conformity of a thing which becomes apparent within two years as of the date of delivery. Therefore, according to the Law of Obligations Act the seller must reimburse the shoes and pay the consumer 15 Euros for the independent expertise.

¹² Supreme Court of Estonia's website, accessed June 2015, retrieved from: www.riigikohus.ee

¹³ Estonian Consumer Protection Board, accessed June 2015, retrieved from: <http://www.tarbijakaitseamet.ee/et/ametist/tarbijakaebuste-komisjon>

¹⁴ Estonian Consumer Protection Board Complaints Commission's Decision no 7-1-10088-09-14, 15 January 2014, retrieved from: http://www.tarbijakaitseamet.ee/sites/default/files/veebihaldus/artikkel/files/otsus_7-1-10088-09-14_jalatsid.pdf

Box 2: Consumer Protection Board Commission decision 7-1-007603-023-15¹⁵, January 2014

The consumer concluded a package tour agreement with the tour operator for €2813.13 Euros. The consumer was offered a stay at a 3-star hotel with bath/shower, air conditioner, TV and a minibar. Beach chairs and parasols were free of charge on the beach. In reality the conditions were not as advertised. The consumer filed a complaint to the tour operator who suggested looking for a better accommodation on consumer's personal expense. The consumer claimed for a reimbursement in amount of 1300 Euros. The Commission agreed that the actual tour conditions were not the ones initially offered. According to the paragraph 112 of the Law of Obligations Act if a party accepts defective performance, the party may reduce the price payable by the party by the proportion of the ratio of the value of defective performance to the value of conforming performance. Therefore, considering the conditions the consumer was not entitled to recover the full 1300 Euros as claimed, but 600 Euros instead.

¹⁵ Estonian Consumer Protection Board Complaints Commission's Decision no 7-1-007603-023-15, 21 January 2015, retrieved from: <https://takis.tarbijakaitseamet.ee/avalik/otsused/45309/file71810/Otsus%2029.01.2015%207-1-007603-023-15.pdf>

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