



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

Country fiche: Finland

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1. Finland

1.1 Regulatory background

Directive 1999/44/EC was transposed into national law through the amendment 2001/1258 to the already existing Consumer Protection Act 1978/38¹. The act was previously overhauled with the amendment 1994/16.

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC into Finnish Law is comprehensive. Table 9 in the next pages shows how each article has been accommodated in the national legislation. Due to the existing Finnish legislation, deriving from the original act 1978/38 and the amendment 1994/16, several departures from the original provisions are present and some other additional aspects are covered. Each point is subsequently commented on below².

Definitions

None of the first four definitions contained in Article 1 of Directive 1999/44/EC were transposed into Finnish law as such. However, the Finnish law already had definitions of consumer (very similar to that used in the Directive), consumer utility (i.e. in addition to the Directive's "goods", the Finnish definition also encompasses non-tangible services) and the selling party³.

In regards to the latter, the Finnish law uses the terms "*elinkeinonharjoittaja*" (in Finnish) and "*näringsidkare*" (in Swedish), meaning "the person who conducts business", or "businessman" in 1 Ch. 5 §, rather than seller/vendor as used in the Directive. The concept of the 'producer', or any other related concept, is not defined in Finnish law.

The definition of guarantee was transposed into 5 Ch. 15 a §, under the part spanning several paragraphs dealing with non-conformity in general. However, the actual sentence with the definition is also about non-conformity, i.e. "has the seller committed himself for a certain amount of time to be responsible for the good's usability or other features (guarantee), the good is considered at fault, if the good during the set period deteriorates in the manner defined in the guarantee". Nothing regarding "without extra charge", as mentioned in the Directive, was added in the transposition.

Remedies and reclamations

The remedies and conditions of Art. 3.2 of the Directive were transposed into 18 §., whereas Article 3.3 of the Directive was amended to be included in the existing text of the Finnish law. Following the paragraph, the Finnish consumer has the right to demand that the seller, within a reasonable time frame, rectifies what is at fault, or provides a correct good, without the consumer incurring costs or unreasonable inconvenience. The consumer has the right to compensation when the good is non-conforming⁴. If the fault cannot be rectified and a correct good cannot be provided, the consumer has the right to demand a price reduction in proportion to the fault or to cancel the purchase outright, unless the fault is minor⁵.

¹Kuluttajansuojalaki in Finnish and Konsumentskyddslag in Swedish. Accessed on 25th November at <http://www.finlex.fi/fi/laki/ajantasa/1978/19780038>

²All the articles mentioned in the discussion relate to Act 1978/38, unless otherwise stated.

³See 1 Ch. 3-5 §.

⁴See 5 Ch. 20 §

⁵See 5 Ch. 19 §

Significantly, these rights lie with the consumer under Finnish law, while in other countries, the seller may offer these remedies (although an unsatisfied consumer may be able to dispute the offered solutions). Also, a price reduction *in proportion* to the fault or defect goes some way to indicate the appropriate compensation to be paid, while in other countries no guidance is given.

Regarding whether a new guarantee should apply following repair or replacement, no explicit rule is in place.

The burden of proof is determined based on the transfer of the good. If a fault emerges within six months, the fault is determined to have been existing upon the transfer and the seller is accountable⁶. For any fault detected after six months the seller is only accountable in case of a breach of contract for which the seller is liable.

Art. 5.2 of the Directive⁷ regarding the timeline of defect confirmation was directly incorporated dealing with reclamations⁸. The Finnish law states that “a reclamation may however always be submitted within two months after the consumer first noticed the deficiency”.

From the amendment 1994/16⁹ the paragraph says that the consumer may, without being limited by the aforementioned two month timeline, refer to a non-conformity of the good if:

- the seller has acted recklessly or contrary to good faith and fair dealing;
- the fault pertains to attributes regulated by the Consumer Security Act (*Kuluttajaturvallisuuslaki / Konsumentssäkerhetslag 2011/920*);
- through other edicts regarding health or property protection; or
- if the fault of the good is otherwise hazardous to health or property.

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 Finnish legislative system. Five articles were not transposed and several more were not transposed as such or were incorporated into the existing text.

⁶ See 5 Ch. 15 §

⁷ Art. 5.2 of Directive 1999/44/EC reads: ‘Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity’.

⁸ See 5 Ch. 16 §

⁹ This refers to the amendment of the CPA. The text reads as follows: Ostaja saa 1 momentin estämättä vedota tavarán virheeseen, jos: 1) myyjä on menetellyt törkeän huolimattomasti tai kunnianvastaisesti ja arvottomasti; 2) virhe perustuu siihen, että tavara ei ominaisuuksiltaan täytä vaatimuksia, jotka sille on asetettu tuoteturvallisuuslain (914/86) nojalla taikka muissa terveyden tai omaisuuden suojelemiseksi annetuissa säännöksissä tai määräyksissä; tai 3) virhe perustuu siihen, että tavara on muuten terveydelle tai omaisuudelle vaarallinen. Tuoteturvallisuus L914/1986 on kumottu L:lla kulutustavaroiden ja kuluttajapalvelusten turvallisuudesta 75/2004, ks. Kuluttajaturvallisuus L 920/2011.

Table 1: Transposition of Directive 1999/44/EC in the Finish legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	1978/38 1 Ch. 1 §	Not transposed as such. The first description from 1978 is still in place, i.e. "this law concerns supply, sale and other marketing of consumer goods by businesses to consumers".
	1.2.a	Def. Consumer goods	1978/38 1 Ch. 4 §	Not transposed, the Finnish term is however similar to that of the Directive. A consumer is defined as a natural person acquiring a consumer utility (see below) primarily for a non-business usage.
	1.2.b	Def. Consumer	1978/38 1 Ch. 3 §	The Finnish paragraph uses the term " <i>kulutushyödykkeet</i> " (in Finnish) and " <i>konsumentnyttigheter</i> " (in Swedish), meaning "consumer utilities" and specifies that this includes both goods and services. According to the law the utilities are offered to natural persons and that they predominantly acquire them for personal use. The Directive's three exceptions, i.e.; goods sold by way of execution or otherwise by authority of law (1), water (2), gas and electricity (3), are not explicitly exempted.
	1.2.c	Def. Seller	1978/38 1 Ch. 5 §	Not transposed as such. The Finnish law uses the term " <i>elinkeinonharjoittaja</i> " (in Finnish) and " <i>näringsidkare</i> " (in Swedish), meaning "the one who conducts business", or "businessman". The meaning vis-à-vis the Directive is the same as this businessman is defined as a natural or legal person who seeks income or other economic gain by professionally offering for sale, sells or otherwise offers consumer utilities for compensation.
	1.2.d	Def. Producer	-	Not transposed, producer not defined.
	1.2.e	Def. Guarantee	1978/38 5 Ch. 15 a §	Defined as a commitment by the seller to the consumer to guarantee the usability of the good and its features
	1.2.f	Def. Repair		
	1.3	Exclusion second hand	1978/38 5 Ch. 1 §	<i>Direct transposition</i> - Exclusion of second-hand goods sold at a public auction which the consumer can attend
	1.4	Contracts of sale types	1978/38 5 Ch. 1 §	Not directly transposed. The relevant paragraph states that the same conditions apply to orders of consumer goods to be manufactured or produced. That is, orders are referenced instead of contracts.
Conformity with the contract	2.1	Conformity requirement	1978/38 5 Ch. 12 § 2	Not transposed as such, the applicable § was amended slightly to fit the Directive.
	2.2	Good conformity	1978/38 5 Ch. 12 § 3	Not transposed as such, the applicable § was amended slightly to fit the Directive.
	2.3	Lack of conformity	1978/38 5 Ch. 12 § 5	<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	1978/38 5 Ch. 13 §	<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	1978/38 5 Ch. 12 a §	<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	1978/38 5 Ch. 15 §	"Whether or not the good is faulty will be determined with regards to its condition the moment the risk is transferred to the consumer".

	3.2	Remedies	1978/38 5 Ch. 18 §	"The consumer has the right to demand that the seller, within a reasonable time frame, rectifies what is at fault, or provides a correct good, without the consumer incurring costs or unreasonable inconvenience".
	3.3	Conditions	1978/38 5 Ch. 18 §	Not transposed as such, the applicable § was amended slightly to fit the Directive.
	3.4	Free of charge	-	Not specified. The Finnish law uses in 5 Ch. 18 § the term "no incurred costs" rather than free of charge.
	3.5	Reduction of the price	1978/38 5 Ch. 19 §	<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	1978/38 5 Ch. 19 §	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	1978/38 5 Ch. 31 §	"The consumer has the right to also direct demands to a previous seller in the chain of contracts for a faulty good".
Time limits	5.1	Time period	-	Not transposed
	5.2	Defect confirmation	1978/38 5 Ch. 16 §	<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)
	5.3	Reversed burden	1978/38 5 Ch. 15 §	<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	-	Not transposed
	6.2	State rights and contents	1978/38 5 Ch. 15 b §	<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	1978/38 5 Ch. 15 b §	<i>Direct transposition</i> - On request by the consumer, the guarantee shall be made available in writing or another accessible durable medium
	6.4	Language of guarantees	-	Not specified
	6.5	Respect 6.2-4	1978/38 5 Ch. 15 b §	<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	Restricted rights	1978/38 5 Ch. 2 §	"Terms and condition to the consumer's disadvantage differing from the statutes of this law are null and void, unless otherwise stated below"
	7.1	Reduced period (2nd hand)	1978/38 5 Ch. 2 §	Not applicable for second-hand goods as per 1 §.

	7.2	Measures of protection	1978/38 5 Ch. 29 a §	"Statutory references in the contract, which shall apply in regards to a country outside the European Economic Area, cannot side-step the statutory references to use regarding consumer purchase in force in a country within the European Economic Area, when such a reference to the law is missing, if they protect the consumer more efficiently than the statutory references in the law".
National law and minimum protection	8.1	Supplementary rights	1978/38 5 Ch. 7 § & 17 §	"Upon delay of delivery by the seller the consumer has the right to withhold payment. The withheld payment may not clearly transcend the value claimable for the delay." & "The consumer has the right to withhold payment if the good is inadequate. The withheld payment may not clearly transcend the value claimable for the fault."
	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 additional rights available to the Finnish consumer/user are contained in the Consumer Protection Act 1978/38: it is in its Chapter V and as of the amendment to Act 1994/16 where it deals with consumer purchases. The Directive was mainly incorporated into this chapter where applicable. Other Directives, such as e.g. 2011/83/EU on consumer rights, are also in part transposed and a part of chapter V.

Right of delivery

The amendment 1994/16 stipulates through 5 Ch 6 § that the seller is to bear costs of transportation and other costs incurred prior to the handover of the good to the consumer. This is unless the costs are otherwise agreed, or if the consumer causes a delay in the handover (which incurs a cost). The amendment also covers the risk transfer between seller and consumer and the rights of the consumer. As mentioned in the table, a Finnish consumer has per 5 Ch 7 § the right to withhold payment if the delivery of the good is delayed and if the delay is caused by the seller. The consumer also has the right, within reason, to demand that the seller delivers the good as per 5 Ch 8 §.

Rights when the good is delayed

In addition, with the amendment 1994/16, the circumstances and the proper process for the consumer to use when requesting damage compensation were specified. The consumer has per 5. Ch. 10 § the right to compensation for damage caused by the seller's delay, unless this delay was prompted by events beyond the seller's control, or if the seller within reason could not have taken the events into account the moment the sale took place, nor avoid/control the repercussions of the events. This also applies if the seller used a third party and this third party is responsible for the delay, i.e. the events were beyond the control of the third party, etc. Damage is defined as a loss of income, physical damage and loss of usefulness of the good not directly related to a loss of income.

As per 11 §, in force as of the amendment 1994/16, the buyer has the right to cancel the purchase if the good is delivered too late, as long as the buyer duly notifies the seller of this.

Extra conformity requirements

The conformity of the goods is furthermore specified in 5 Ch 12 §. The relevant parts of the Directive (art. 2.1 – 2.2) were incorporated into sub-paragraphs 2) and 3) of this paragraph. There are derived from the amendment 1994/16 and include additional conformity requirements as compared to the Directive.

12 § 1) states that the good is to be intended for the same usage as other goods of the same kind are generally used for. 12 § 4) specifies that the good is to be packaged properly in order to preserve its content and the last sub-paragraph, 12 § 5), states that the duration of the good is to comply with the general perception of duration for such a good. Goods are furthermore to comply with requirements put forth in law, regulation or decisions by public authority, unless the intent of the consumer is to use the good in such a way that the requirements are irrelevant. Directive Art. 2.3 regarding a lack of conformity is fully transposed in the end of the paragraph.

Conformity of auctioned goods

When a good is sold at an auction, it is considered to have been sold “as it currently is” or in its “current form” (Finnish: “*sellaisena kuin se on*”, Swedish: “*befintligt skick*”). 14 §, in force as of the amendment 1994/16, stipulates that even a good sold as such is considered to be faulty if the good does not correspond to the features attributed to it prior to the purchase, and under assumption that this information could have affected the acquisition. If there is any negligence by the seller in regards to informing the buyer about the

conditions of the good, also under the assumption that this could have affected the purchase, then the good is also considered as at fault. The third reason mentioned in the paragraph is in accordance with the Directive, i.e. if the good turns out to be in a worse condition than what could have been assumed by the consumer, based on the price and other circumstances.

Obligations of the buyer and rights of the seller

Chapter 5 of the Consumer Protection Act, 23 – 28 §, following the amendment 1994/16, also specifies the obligations of the consumer and consequences of breaching the contract. This involves paying a reasonable price, paying when asked to do so by the seller and to compensate the seller if the latter is caused damage by the consumer breaching the contract or cancelling an order. The Consumer Protection Act makes in 26 § reference to the Interest Rate Act 1982/633, where it is defined that the seller has the right to apply penal interest if the consumer fails to pay on time. The seller's rights to cancel the contract and to receive damage compensation are also defined, in 27 § and 28 § respectively.

Damage, compensation and conciliation

30 §, incorporated into the law with the amendment 1994/16, states that the parties are to take appropriate actions to minimise damage. If this action is neglected, the party is to bear an equivalent share of the loss. The paragraph furthermore states that in case of a breach of contract, the damage compensation can be adjusted if it is unreasonable vis-à-vis the cause for the breach, the counterparty's potential complicity to the damage, the economic relationship between the parties, the price of the good, the party at fault's possibilities to foresee and prevent the cause of damage and the general circumstances. The third section of the paragraph also states that in case the buyer is to pay damage compensation, this can be particularly adjusted if said buyer has difficulties paying and that these difficulties are caused by sickness, unemployment, or other special circumstances for which the buyer is not primarily liable.

1.2 Enforcement and redress

In case of a problem with a consumer good, the appropriate governmental agency, *Kilpailu- ja kuluttajaviraston* (KKV, the Finnish Competition and Consumer Authority), instructs consumers to address their initial complaint to the vendor/seller. The Authority provides the consumer with instructions and complaint forms to use in the process. If the complaint is unsuccessful, the consumer is advised to seek council from the local Register Office's consumer advisors, who report to the Competition and Consumer Authority. In case the good e.g. is defective, these advisors can make a preliminary evaluation of the defectiveness of the good based on the consumer's information, such as verbal descriptions or photographs. The consumer may also have an impartial expert examine the product. They may furthermore mediate in disputes between the company and the consumer.¹⁰

If no agreement can be reached, the consumer may then free of charge turn to the impartial third party Consumer Disputes Board (*Kuluttajariitalautakunta / Konsumenttvistenämnden*). The decision of the Consumer Disputes Board is not legally binding, but companies tend to comply with its recommendations in over 80 % of the cases. If the consumer so chooses, there is a possibility to bring the issue to the courts as a further escalation.

The Consumer Ombudsman may assist the consumer in this process. The main responsibility of the consumer ombudsman is to supervise that the Consumer Protection Act is adhered to. If a company doesn't comply with the law, the first objective of the

¹⁰KKV (9 October 2014). "Contact details for consumer advice". Available at: <http://www.kkv.fi/en/online-consumer-services/contact-details-for-consumer-advice/>

ombudsman is to influence the company and advise them to change their practices. If the practices don't change the ombudsman can take enforcement actions or refer the issue to court. In non-significant issues not requiring further interpretation of the law, the ombudsman can, jointly with the Market Court, impose a prohibition and reinforce it with a penalty payment.¹¹

Cases

Only a few court cases and ombudsman rulings are published on the website of the KKV. The case described in box 1 involves non-conformity of a good.

Box 1: Court case on car sale and fault responsibility, Hyvinkään käräjäoikeus / Hyvinge tingsrätt, 2014¹²

Extensive moisture damage was found in a second hand car sold by the company Hämeen Cartrade Oy. The consumer filed a complaint to the company, but the latter refused both to repair the damage and to nullify the contract. Because of this the consumer referred the issue to the Consumer Disputes Board. The Board recommended to nullify the purchase and to return the entire amount of the sale. Since the company did not adhere to this recommendation, the consumer Ombudsman decided to help the consumer in the procedure. The district court of Hyvinkää decided to nullify the contract and ordered Hämeen Cartrade Oy to return the purchasing amount of EUR 33 800.

One ombudsman ruling relating to marketing of guarantees is also available on the KKV's website.

Box 2: Case on the sale price, emission and consumer information, plus the marketing of guarantee, the Consumer Ombudsman, 2014.¹³

As previously mentioned, the consumer ombudsman may take action without a court process if the issue is "non-significant". In this case, the company Metroauto Oy had published an advert in newspapers marketing cars without fully informing the consumers about the price and without fully or properly specifying emissions. The company also marketed the 12 month obligatory guarantee as their own and without specification that it referenced this, making it possible for the consumer to assume that the guarantee was unlawfully payable and included in the price. Based on all the above, the ombudsman concluded that Metroauto Oy was conducting inappropriate and false marketing.

¹¹KKV (9 July 2014). "The Consumer Ombudsman". Available at: <http://www.kkv.fi/en/about-us/the-consumer-ombudsman/>

¹²KKV (16 May 2014). "Autokaupan virhevastuu". Available at: <http://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2014/muut-kuluttaja-asiat/Hameen-Car-Trade/>

¹³KKV (5 May 2014). "Myyntihinnasta, päästö- ja kulutustiedoista sekä takuusta ilmoittaminen". Available at: <http://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2014/kuluttaja-asiamiehen-ratkaisut/myyntihinnasta/>

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