



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

Country fiche: France

EUROPEAN COMMISSION

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1. France

1.1 Regulatory background

Directive 1999/44/EC on Consumer Sales was transposed via Ordonnance n° 2005-136 du 17 février 2005 relative à la garantie de la conformité du bien au contrat due par le vendeur au consommateur. The Directive should have been transposed by 1st of January 2002 and the French government was sanctioned on July, 1st 2004 by the European Court of Justice for this delay¹.

Following Directive 2011/83/EU on Consumer Rights which modified Directive 93/13/CEE as well as Directive 1999/44/EC and abrogated Directive 85/577/CEE as well as Directive 97/7/CE, this ordonnance was reviewed and completed by *Loi n° 2014-344 du 17 mars 2014 "relative à la consommation"*. However, not all the articles of the law are yet applicable. Finally, an amendment to the 2005 'Ordonnance' related to guarantees will happen by July 2016 and will put into force the "*Code de la consommation*"². These are the three legislative items that will be subsequently discussed.

1.1.1 Transposition of Directive 1999/44/EC

As stated above, Directive 1999/44/EC was transposed into French Law in 2005 with a modification proposed in 2014. Table 1 in the next pages shows how each article has been accommodated in the national legislation³. There are departures from the original provisions at the EU level referring to definitions, the right of the consumer with the introduction of a precise timing for repair and replacement, the ability to claim damages, and the form and the content of the contract.

Definitions and scope

The definitions contained in Article 1 Directive 1999/44/EC are all transposed but one: the concept of "guarantee" has not been defined. However, the "*Code de la Consommation*" uses the concepts of *legal* and *commercial guarantees* as titles for the sections referring to this legislation (Chapter 1, Section 1 and Section 2 respectively)⁴.

A departure from the Directive is the introduction of gas and water under the scope of this regulation when sold in a quantifiable manner (*Loi n° 2014-344 Article L211-1, second paragraph*), but electricity as well as goods sold by public bodies will be excluded from 1st July 2016 (*Article L211-1*). Moreover, under French law, there is no distinction made between the guarantee for new goods and the guarantee for second hand goods.

For all these goods, the coverage period is two years (*Ordonnance n° 2005-136 Art. L. 211-12*). What changes is the time span in relation to the reversal burden of proof, with a new stipulation which is to enter into force in July 2016. The burden of proof is now to be extended to a period of two years (instead of six months) for new goods (modified

¹ Website of the Ministry of Finance and Ministry of Economics. Accessed March 2015. Retrieved from: <http://www.economie.gouv.fr/loi-consommation/application-ou-en-est-on>

² The applicable articles are to be found at: "Titre 1er: Conformité". Available at : http://www.legifrance.gouv.fr/affichCode.do;jsessionid=6A92884DBC94F0E6E5A6A927FEC3B48.tpdila16v_3?idSectionTA=LEGISCTA000006161839&cidTexte=LEGITEXT000006069565&dateTexte=20160701

³ Ordonnance n° 2005-136 du 17 février 2005 relative to « la garantie de la conformité du bien au contrat due par le vendeur au consommateur ». Available at : http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=C0F8BB56443786B7A83EF86B7D0D9780.tpdila16v_3?cidTexte=JORFTEXT000000257818&categorieLien=id

⁴ Available at: <http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000006292204&idSectionTA=LEGISCTA000006161838&cidTexte=LEGITEXT000006069565&dateTexte=20160701>

by *Loi n°2014-344. Article 15 (V)*). However, the reversal of the burden of proof for second hand items ("*biens vendues d'occasion*") will continue to be 6 months.

Right of consumers

There are two main departures from the EU legislation in the transposition made by the French legislation within *Ordonnance n° 2005-136*. Firstly, the remedies of replacement or repair must still be provided to the consumer free of charge; but, this shall not prevent the consumer to eventually claim damages if this action is justified (Article L211-13, in reference to articles 1641 to 1649 from the Civil Code⁵). This concept is preserved from the original stipulations of French law and is similar to the situation in Belgium. Article L211-11 (in the amended *Code de la Consommation*) does not mean that damages are due, but could be payable in case of detriment.

Secondly the French legislation has specified a time period under which any repair or replacement is to be completed on behalf of the consumer, and this time period is one month (as provided for in *Ordonnance n° 2005-136 article L211-10*).

Directive 1999/44/EC establishes a hierarchy in the remedies. In the French legislation this aspect is maintained. Firstly, consumers choose between repair or replacement to be completed within one month of the complaint and given free of charge. As provided in Directive 1999/44/EC, if the difference between replacement and repair is disproportionate, the seller can choose between one of the two options.

Secondly, a refund or a reduction of the purchase price will be due if a repair or replacement is either not possible or not executed within one month. The guarantee period is suspended for the duration of the repair/replacement if there is 'immobilisation' for longer than seven days⁶.

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

Right of redress

While the final seller is liable for any defect in the product under the legal guarantee of conformity (L211-14), recourse action is also possible under the principle of the guarantee against hidden defects. The legal guarantee 'against hidden defect' is legislated in the civil code Art. 1641 à 1649⁷. Under this guarantee, the consumer can take action against any intermediary in the supply chain.

⁵ For the *Ordonnance n° 2005-136*, Article L 211-13, refer to:
<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000257818&dateTexte=&categorieLien=id> ;
For the mentioned articles of the Civil Code (1641-1649), refer to:
<http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070721&idArticle=LEGIARTI00006441924&dateTexte=&categorieLien=cid>

⁶ECC-net, Country Fiche for France, available at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_FR.pdf

⁷ The "garantie légale des vices cachés" refers to the guarantee that the purchased product is free from defects. Code civil: articles 1641 to 1649. Available at:
<http://www.legifrance.gouv.fr/affichCode.do?cidSectionTA=LEGISCTA000006165624&cidTexte=LEGITEXT00006070721>

Under article L211-7, the seller can also challenge the burden of proof duration, “if it is incompatible with the nature of the goods or the nature of the lack of conformity referred to”⁸.

Time limits

The latest consumption law (*n° 2014-344 du 17 mars 2014*) has extended the length of the burden of proof from 6 months to 2 years. This will not be applicable to second hand goods, nonetheless. Concerning the reversed burden of proof, under the legal guarantee of conformity the prescription is 6 months in Directive 1999/44/EC. In France, during the first 6 months the seller has to prove that there was no defect in the product (maintaining the EU approach); after those 6 months it is the consumer who has to prove that there was a defect. This time limit shall be extended to two years for brand new items and for 6 months for second hand goods. Under the ‘hidden defect’ guarantee, the time limit is two years after the discovery of the defect, however, it is the consumer who has to prove that the defect existed at the time of the purchase. Under this particular guarantee, the available remedies are the reduction of price or reimbursement. It is at the discretion of the consumer on how to proceed (i.e. to claim under the legal guarantee or under the ‘hidden effects’ guarantee).

Commercial guarantees

For the commercial guarantee, the contract shall be given in writing. This contract shall mention that the seller is held liable for both the legal guarantee defined in articles L. 211-4 to L.211-13 of the “*code de la consommation*” and the ‘hidden defect’ guarantee defined in articles 1641, 1648 and 2232 of the civil code.

The aforementioned articles (i.e. L211-4, L211-5 and L211-12 from the “*code de la consommation*” and articles 1641, 1648 from the civil code), have to be reproduced within the contract. Article L211-16 should be added to the contract as well. This article refers to the freezing of the guarantee period: it states that when the consumer asks the seller for the remedy to be provided, a 7-days period at least should be added to the coverage of the guarantee. The length of this period should be equivalent to the same amount of days from when the consumer requested the remedy, until its provision. In case of exchange there is no precise information about the guarantee, nonetheless.

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 French legislative system. Most of the articles have been transposed and some of them contain an extension of the scope provided by the European legislation.

⁸ See 'Notifications according to Article 32 and 33 of the CRD' at http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/notifications/. Status as of 19 May 2015, accessed on 14 October 2015

Table 1: Transposition of Directive 1999/44/EC in the French legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose		<i>Direct transposition</i> - The purpose being to ensure a uniform minimum level of consumer protection
	1.2.a	Def. Consumer goods	Article L211-1&2	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)
	1.2.b	Def. Consumer	Article préliminaire	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.c	Def. Seller	Article L221-1	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	Article L221-1	<i>Direct transposition</i> - The purpose being to ensure a uniform minimum level of consumer protection
	1.2.e	Def. Guarantee		Not provided
	1.2.f	Def. Repair		Not provided
	1.3	Exclusion second hand		Second hand item are included in the guarantee
	1.4	Contracts of sale types	L211-1&2	<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	L211-4	<i>Direct transposition</i> - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	L211-5	<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	L211-8	<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	L211-5-6	<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	L211-4	<i>Direct transposition</i> - Incorrect installation considered equivalent to lack of conformity if installation formed part of the sale or if the installation instructions created the shortcomings
Rights of the consumer	3.1	Liability	L211-4	<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	L211-9	<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	L211-10	<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	L211-11	It adds the possibility of damages
	3.5	Reduction of the price	L211-10	The remedy shall be provided within 1 month (instead of a reasonable time)
	3.6	Contract rescission	L211-10	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	L211-14	Final seller liability could be extended to all the supply chain product under legal guarantee against defect products
Time limits	5.1	Time period	L211-12	<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		Not implemented in French law
	5.3	Reversed burden	L211-7	It will be extended for brand new product in 2016 to 2 years. Under the legal guarantee of hidden defect there is no reversed burden of proof and the consumer need to prove that the defect exist before the purchase.
Guarantees	6.1	Legally binding	L211-15	<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	L211-15	<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	L211-15	Written contract who should be given to the consumer, not asked. by him and should mention several articles
	6.4	Language of guarantees		Official languages, French
	6.5	Respect 6.2-4	L211-15	As seen above for 6.3, contract conditions are extended, it impact the respect of 6.2-4
Binding nature	7.1	Right restrictions	L211-17	All convention that limit right of consumer shall be deemed to be unwritten
	7.1	Reduced period (2nd hand)	L211-17	No paragraph dedicated to the second hand goods.
	7.2	Measures of protection	L211-18	Direct transposition - 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		Not implemented in French law
	18	Suspension 2-year period	L211-16	If the remedy takes longer than 7 days in the case of the commercial guarantee, the applicable days are added to the commercial guarantee extension

* 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 French Consumer and User are principally contained in the “*code de la consommation*” which has been recently modified by Law *n° 2014-344 du 17 mars 2014*. This code covers a wide range of aspects related to consumer:

- Information, commercial practices, general conditions of contract;
- Conformity, security;
- Credit, activity of intermediaries, debts;
- Consumer association;
- Institutions

This code makes reference to several other French laws for more specific cases, such as:

Table 2: Additional laws ⁹	
Code du commerce	Code de l'action sociale et des familles
Code pénal	Code monétaire et financier
Code civil	Code rural et de la pêche
Code du travail	Code de la santé publique
Code de la procédure civile	Code générale des impôts
Code de la procédure pénal	Code des transports
Code des assurances	Code de la construction et de l'habitation
Code de la propriété intellectuelle	

Right of information

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

Table 3: Right of information in the national law		
Consumer rights of information	National Law	Comments
Right to obtain clear and comprehensible information	L111-1 & 2	Receive the “correct” information on goods
	L133-3	“in a clear and comprehensible way”
	L121-17	“prior to the contract”

Right of withdrawal

The right of withdrawal for distance and off-premises contract is legislated in the “*Code de la consommation*”, article L121-21, and has recently been implemented by Law *n°2014-1545 of 20 December 20th 2014*, article 54. This right has to be in the contract with details on its requirements (L121-17) and is valid for a minimum period of 14 days, which the seller can nonetheless choose to extend.

The consumer has the obligation to send back the product except if any other agreement between the consumer and the seller exists. Then the seller has to reimburse the client within 14 days.

This right of withdrawal also exists for real estate transactions and some financial services. The article L221-18 provides the list of the products and services under which the right of withdrawal is not applicable.

⁹ All codes available at: <http://www.legifrance.gouv.fr/initRechCodeArticle.do>

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 art. L111-4). The seller might have a department to deal with consultation and claims, but these services are not an obligation for the seller in the case of the goods covered by this law.

The first step for the consumer is to contact the seller. If the answer is inexistent or insufficient, the use of a notice through a bailiff could be a solution. This notice may be a prerequisite for court. Then the consumer can request a requisition from a judge to summon the opponent to answer.

Beside these judiciary procedures, consumers can contact the General Directorate for Competition Policy, Consumer Affairs and Fraud Control or any consumer's association. These associations might help the consumer by providing advice, or referral to a more specialized consumer's association.

Regarding out of court settlement, the first option at hand is mediation. Mediation is legislated in the "Code de la consommation" in its articles L.534-7 à L.534-11 and in the civil code article 1530. The mediation mainly consists of re-establishing a dialog between the consumer and the seller with the help of an outside professional. The mediator does not take any decision but attempts to help the participants agree their own solution.

The second option to come to an agreement is conciliation. The conciliation is similar to mediation except that a third party proposes a solution. However this decision is not binding.

Finally, the option of arbitration is generally the last opportunity to solve the problem before going to the courts. To use arbitration, both parties must agree to refer the dispute to arbitration, or to insert a clause on arbitration into the relevant contract prior to conclusion. In arbitration, the third party, who should be an impartial professional¹⁰, takes a decision which is binding.

Court settlements

Should a dispute go to court, depending on the characteristics of the case, there will be different procedures and different competent jurisdictions. These are:

- Judge of proximity¹¹ ("Juges de proximité") for a dispute under €4,000
- District Court ("Tribunal d'instance") for a dispute over €4,000 and up to €10,000,
- High Court ("Tribunal de grand instance", Chambre civile) for a dispute over €10,000.

Cases

¹⁰ The Code de la Procedure Civil legislates the procedure within its 'Livre IV: L'arbitrage'. It states that the third party must be agreed by the parties participating in the process, but where there is no agreement, the judge or the body which organized the arbitrage will decide on the composition of the arbitral tribunal. Articles 1450-1561, available at:

http://www.legifrance.gouv.fr/affichCode.do;jsessionid=725FA13E6F316162A26E9AB5CA36FB3C.tpdila16v_3?iSectionTA=LEGISCTA000023450938&cidTexte=LEGITEXT000006070716&dateTexte=20150528

¹¹ Loi n° 2011-1862 du 13 décembre 2011, suppressed the 'juridictions de proximité' (i.e. proximity jurisdiction), but transferred the duties to the proximity judges and to the mentioned tribunals. Available at : <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024960344&dateTexte=&categorieLien=id>

Box 1: Court case on the legal guarantee and burden of proof, Local court of Nantes Judgement September 13, 2013¹²

In this court case, a consumer bought an Apple iPhone, but several weeks later the product broke down. The consumer sent his defective iPhone to Apple. The company rejected the guarantee and opposed the request stating that the damages was caused by the consumer. Meanwhile Apple destroyed the iPhone. The court stated that: as the defect appeared during the first 6 months period of the legal guarantee Apple had to prove that there was no defect (i.e. reversed burden of proof). As Apple had destroyed the phone, this was not possible, the court ruled against Apple.

¹² Local court of Nantes (September 13, 2013), 'Case Frédéric T. / Apple'. Judgement. Integral judgment of the case available at: http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3854

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