



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

Country fiche: Croatia

EUROPEAN COMMISSION

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1. Croatia

1.1 Regulatory background

Directive 1999/44/EC ('the Directive') on Consumer Sales Directive was transposed via two acts: Consumer Protection Act, (National Gazette 41/2014) of 31 March 2014¹ and the Civil Obligations Act, (National Gazette 35/2005) of 4 March 2005. The Civil Obligations Act (from now on COA) regulates "the principles of obligations (general part) and contractual and non-contractual obligations (special part)."² The Consumer Protection Act (from now on CPA), on the other side, is governing "the protection of the basic rights of consumers when buying goods and services and in other forms of acquisition of products and services on the market. This includes: the right to the protection of the economic interests of consumers; the right to the protection from threats to life, health or property; the right to legal protection of consumers; the right to consumer information and education; the right of consumers to organize themselves for the protection of their interests; the right to consumer representation and participation of the consumer representatives in the work of bodies dealing with issues of interest to consumers."³

Besides these two laws, there are also many other laws that regulate the area of consumer protection. These are General Product Safety Act, 30/2009; Consumer Credit Act, 75/2009; Right of Access to Information Act, 25/2013; Technical Requirements for Products and on Conformity Assessment Act, 80/2013; Personal Data Protection Act, 103/2013 etc.⁴

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC in the CPA can be considered to be complete. Table 1 in the next pages shows how each article has been accommodated in the national legislation. There are nonetheless some departures from the original provisions at the EU level: this refers to the definitions, the conformity with the contract, rights of the consumer, guarantees and binding nature. However, the right of final seller liability was not transposed into Croatian Law. Each point is subsequently commented on below.

Definitions

Article 1 of the Consumer Protection Act introduces the aim of the law: "this Act shall govern the protection of the basic rights of consumers when buying goods and services and in other forms of acquisition of products and services on the market, including other rights (e.g. the right to legal protection of consumers, the right to consumer information and education etc.)"

The option to leave out of scope second hand goods sold at public auction, article 1.3 of Directive 1999/44/EC, is not transposed into the CPA, leaving second hand goods within scope of the law.

The definition of Public Auction Sales is, as cited in CPA, Article 5.5 is when "the trader offers goods or services to consumers, in which consumers participate personally or have the opportunity to attend, which is carried out through a transparent tender procedure

¹ The Croatian Parliament (2014), Consumer Protection Act, Accessed on: March, 2014. Retrieved from: http://narodne-novine.nn.hr/clanci/sluzbeni/2014_03_41_723.html

² The Croatian Parliament (2005), Civil Obligations Act, Article 1.

³ The Croatian Parliament (2014), Consumer Protection Act, Article 1.

⁴ The Ministry of Economy, 'Review of Laws and Regulations'. Accessed: May, 2015. Retrieved from: <http://potrosac.mingo.hr/hr/potrosac/clanak.php?id=12349>

conducted by the head of the auction, in which the most successful participant of the auction is obliged to buy the goods or services.”

Indeed, the scope of this legislation on guarantees is even wider than the coverage of all types of second-hand goods under Article 1.4 of Directive 1999/44/EC. Under Article 39 of the CPA it is stated that the relevant provisions of the CPA refer to “Any contract concluded between traders and consumers, including contracts for the supply of water, gas and electricity, regardless of whether they sell it in a limited volume or limited quantities or not, and to contracts for the supply of thermal energy, if not otherwise stated”.

Finally, in the terms of the definition of commercial guarantees, in CPA, the term “free of charge” is neither defined nor transposed. According to this, it can be concluded that this term is assumed when talking about conditions, i.e. in COA, Article 424, Request for Repair or Replacement is cited but it is not mentioned if it should be free of charge. In paragraph 2 of the same Article it is stated that the “buyer shall be entitled to compensation for damage suffered by not being able to use the thing, starting from the moment he/she requested repair or replacement until they were effected”.

Remedies

Regarding remedies, they are as follows⁵:

- Firstly, repair or replacement according to the consumer’s wishes, within a reasonable time frame and free of charge.
- Secondly, refund or reduction of the purchase price if repair or replacement is not possible within a reasonable time frame. There is no deadline for implementing a solution.

The seller’s liability is defined especially for material defects on goods and is not general as in Directive 1999/44/EC. In COA Article 400.1 and 400.2 it is cited that the seller (1) “shall be liable for material defects of a good at the moment of the transfer of risk to the buyer, *regardless whether he was aware of them or not*” (italics not in the original), and (2) “shall also be liable for all material defects arising after the transfer of risk to the buyer if they arose as a result of the cause that existed prior to it. “

Termination of the contract or price reduction within the CPA is only defined “if the seller has not completed the remedy without significant inconvenience to the consumer”⁶, but it is not defined what ‘significant inconvenience’ covers, nor the reduction of the price or how the cancellation of the contract can occur. Repaired or replaced items have a new 2 year guarantee⁷.

Minor defects

⁵ECC-Net country fiche for Croatia, accessed 23 November 2015, http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_HR.pdf

⁶The European Parliament (1999), Directive 44/1999/EC, Article 3.5

⁷ECC-Net country fiche for Croatia, accessed 23 November 2015, http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_HR.pdf

Regarding minor defects, where a defect is negligible, the customer may not have the contract rescinded; however, he shall be entitled to the other rights related to material defects, including the right to have damage repaired⁸.

Claiming periods

Regarding guarantees, CPA refers to Section VI of the COA, which is dedicated to guarantees. Article 104 states: “by entering into a contract of guarantee the guarantor undertakes to the creditor to perform a valid and due obligation of the debtor if the latter fails to do so”. In COA, Article 404 it is stated that the seller needs to respond for losses made two years from the date of delivery, and in case of used goods the limit is set to one year. Those limits can be prolonged with a contract.

However, under Article 407, the following is stated: “A customer shall not lose the right to invoke a defect even in the event that he failed to perform his obligation of inspecting goods without delay or notifying the seller of the existence of a defect within a set period of time, or that such defect appeared after more than two years after the goods were delivered, or six months in the case of a commercial contract, if the seller was aware or could not have been unaware of such defect.” This appears to give the consumer a longer guarantee duration, but it is predicated on the consumer being able to prove that the seller could not possibly been unaware of the defect⁹.

Following COA, Article 404 (1) the consumer must inform the seller of identified defects within a period of two months from the date the defect was discovered.

Article 6.4 of the Directive ‘Language of guarantees’ is defined in CPA, in Article 6 where it is stated that guarantees, technical instructions, etc. have to be the same as the original, written clearly, visible and readable in Croatian language and Latin letters.

Under Article 404 (3), the guarantee period for second hand goods is up to one year¹⁰.

Binding nature

The Article 7.1 of the Directive is not transposed in COA, in Article 404(1), as “after the buyer receives a thing, it becomes apparent that the thing has a defect that could not have been discovered by usual inspection when the delivery was taken, the buyer shall, under threat of losing the right, notify the seller thereof within the period of two months, not including the day when the defect was discovered, or without delay in respect of a commercial contract”.

1.1.2 Table of the transposition

The next page displays the articles from Directive 44/1999/EC on Consumer Sales and its transposition into the Croatian legislative system. Some of the articles have not been transposed, and some of them contain an extension of the scope provided by the European legislation. This is briefly described in the table (“Comment”).

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

⁹ 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

¹⁰ 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 Croatian legislation

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	CPA. Art. 1.	Expanded - "This Act shall govern the protection of the basic rights of consumers when buying goods and services and in other forms of acquisition of products and services on the market, including other rights (e.g. the right to legal protection of consumers, the right to consumer information and education etc.)"
	1.2.a	Def. Consumer goods	CPA Art. 5.22.	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)
	1.2.b	Def. Consumer	CPA Art. 5.15.	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.c	Def. Seller	CPA Art. 5.26.	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	CPA Art. 4.5.	"Any other natural or legal person in the supply chain, to the extent that his/her activities may affect the safety properties of the product."
	1.2.e	Def. Guarantee	CPA Art. 5.4.	<i>Direct transposition</i> - Guarantee being any undertaking by the seller/producer to offer a given remedy free of charge if the consumer good does not meet the advertised specifications
	1.2.f	Def. Repair	COA Art. 1085. Par. 1	"Restoration of previous condition, where the responsible person is obliged to bring the object back to the state equal to the state before the damage had incurred."
	1.3	Exclusion second hand	CPA Art. 5.5.	"Public auction sales at which the trader offers goods or services to consumers, in which consumers participate personally or have the opportunity to attend, which is carried out through a transparent tender procedure conducted by the head of the auction, in which the most successful participant of the auction is obliged to buy goods or services."
	1.4	Contracts of sale types	CPA Art. 39.	(direct, but somewhat expanded) - This law "applies to any contract concluded between traders and consumers, including contracts for the supply of water, gas and electricity, regardless of whether they sell it in a limited volume or limited quantities or not, and to contracts for the supply of thermal energy".
Conformity with the contract	2.1	Conformity requirement	CPA Art. 43.(1)	"The seller shall meet the consumer contract in accordance with the provisions of this Act and the Act on Civil Obligations."
	2.2	Good conformity	n/a	n/a
	2.3	Lack of conformity	n/a	n/a
	2.4	Seller statements	n/a	n/a
	2.5	Installation	n/a	n/a
Rights of the consumer	3.1	Liability	COA Art. 400.1. and 400.2.	Material defects which the seller is liable for.
	3.2	Remedies	COA Art. 410.1. and 410.2.	(direct)

	3.3	Conditions	COA Art. 424.	Request for Repair or Replacement
	3.4	Free of charge	n/a	n/a
	3.5	Reduction of the price	COA Art. 411, 426	Direct for “...if the consumer is entitled to neither repair nor replacement or if the seller has not completed the remedy within a reasonable time...”
	3.6	Contract rescission	COA Art. 400.4.	“The seller does not correspond to a minor material defect.”
Right of redress	4	Final seller liability	n/a	n/a
Time limits	5.1	Time period	COA Art. 404.2.	Two years, expanded for commercial contracts
	5.2	Defect confirmation	COA Art. 404.1.	Two months, expanded for commercial contracts
	5.3	Reversed burden	COA Art. 400.3.	Six months
Guarantees	6.1	Legally binding	CPA Art. 5.4. COA Art. 104.	(partially 1.2.(e) of the Directive) “By entering into a contract of guarantee the guarantor undertakes to the creditor to perform a valid and due obligation of the debtor if the latter fails to do.”
	6.2	State rights and contents	COA Art. 423.3. and 423.4.	<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	COA Art. 105.	“A contract of guarantee shall be binding for the guarantor only if the guarantor has given a statement of guarantee in writing.”
	6.4	Language of guarantees	n/a.	n/a
	6.5	Respect 6.2-4	n/a	n/a
Binding nature	7.1	Rights restriction	n/a	n/a
	7.1	Reduced period (2nd hand)	COA Art. 404.3.	“Where used things are sold the contractual parties may agree a time limit of one year, or shorter in respect of commercial contracts.”
	7.2	Measures of protection	n/a	n/a
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

As mentioned before, the Consumer Protection Act is governing “(...) the right to the protection of the economic interests of consumers; the right to the protection from threats to life, health or property; the right to legal protection of consumers; the right to consumer information and education; the right of consumers to organize themselves for the protection of their interests; the right to consumer representation and participation of the consumer representatives in the work of bodies dealing with issues of interest to consumers.” In CPA, Article 36, aggressive business practice is considered as “disturbing, compulsion, physical force or threat and undue influence inducing customer to make a decision that otherwise would not be made.” ¹¹

Right to unilateral termination of the contract

The following table displays some of the articles found in the CPA, which are related to unilateral termination of the contract:

Table 2: Right of information in the national legislation		
Consumer right of information	National Law	Comments
Right to unilateral termination of the contract	CPA Art. 73	Failure to fulfil the obligation of notification of the right to unilateral termination of the contract
	CPA Art. 74	Execution of the right to unilaterally terminate the contract
	CPA Art. 75	The effect of unilateral termination
	CPA Art. 76	Commitments dealer in the event of unilateral termination
	CPA Art. 77	Obligations of the consumer in the event of unilateral termination

According to above Articles, if the seller didn't inform the consumer of his right to unilateral termination of the contract, the consumer can unilaterally terminate the contract within 12 months, and if the seller did inform the consumer, the consumer has 14 days to unilaterally terminate the contract from the moment when the consumer received the notification.

1.2 Enforcement and redress

The Ministry of Economy created a website called “Consumer” where they recommend three ways for consumers to seek their rights¹².

The first way, in case of a problem with a consumer good, consumers should address their written claim to the seller (CPA, Article 10). The seller must place in the business space a visibly prominent notice on filing a written complaint and respond in writing to the complaints within 15 days upon their receipt. According to Article 25.3 and 25.6, a seller who provides public services (electricity service, water supply service etc.) shall establish a commission for consumer complaints, whose members must include a representative of the Consumer Protection Association. The Commission must respond to consumer complaints received within 30 days of receipt of the complaint.

The second way, according to the Article 105 of the CPA, for consumers who failed to exercise their consumer rights through a written complaint, or in the case of a dispute

¹¹ The Croatian Parliament (2014), Consumer Protection Act, Article 36.

¹² Ministry of Economy, 'Consumer Protection Webpage'. Accessed: May, 2015. Retrieved from: <http://potrosac.mingo.hr/hr/potrosac/>

between the consumer and the seller, is to submit an application to the Court of Honor of the Croatian Chamber of Economy, the Court of Honour of the Croatian Chamber of Commerce or a proposal for conciliation in Mediation centres.

Croatian consumers can start a mediation process within the mediation centres such as Mediation Center at the Croatian Chamber of Trades and Crafts. The main objective is to conclude a settlement between parties in dispute, with emphasis on confidentiality and preservation of business relations between parties. The mediation process in the Mediation centres is completely voluntary, the process is in the hands of the parties, and the parties conclude a resolution jointly based on their business interests, while continuing their business collaboration. The mediation process is mostly handled in a few days, the settlement is not publicly available and the costs are substantially lower.¹³

If the parties cannot come to an agreement during the mediation process, the dispute is continued before Court Council, consisting of three members, of which one has to be a jurist, one represents commerce and crafts and one represents consumers. The procedure before the Court of Honour begins with a report, which has to be filed within 6 months from the learning of the infringement of commerce and business practices, or one year from the infringement data. The report itself has to contain a description and evidence of infringement, and other data and circumstances of importance to the infringement. The Croatian Chamber of Commerce and Crafts and the Croatian Chamber of Economy will reach a verdict before the Court of Honor, with approval of the Minister in charge of consumer protection. If the parties are not satisfied with the decision, they can appeal and the Honorable Court shall sit in panels of five members, whose decision is final. However, the parties can turn to a regular court.¹⁴

A third option is offered within Article 135 of the CPA to report to the Market Inspector of the Ministry of Economy. The Market Inspector carries out inspection and other duties related to the application of laws and regulations in the field of consumer protection. The market inspector will consider the application of the consumer only after the consumer has exhausted the procedures for submitting written complaints or complaints to the commission for consumer complaints

Cases

Box 1: Court case on lack of conformity from CPA¹⁵

Court case on the citizen's complaint against mobile operator T-HT, Zagreb 2013

Due to a combination of circumstances, T-HT cancelled a contract with a consumer a few months before the date of contract expiry, yet decided to charge him the amount of remaining months to expiry date. The consumer objected based on the Consumer Protection Act and stated that the telecom operator was billing him for a service that was not provided. A judgment was made against the operator, based on the logic that telephone and mobile operators may charge the citizens only for the services they provide, but they have no right to demand that a citizen, who signed a contract with them for 12 or 24 months, pay a subscription for the duration of the contract, if the citizen or operator has meanwhile terminated the subscription.

¹³ Croatian Chamber of Commerce and Crafts, 'Mediation Center'. Accessed: June 2015. Retrieved from http://www.hok.hr/centar_zamirenje

¹⁴ Croatian Chamber of Commerce and Crafts, 'Proceeding before the Court of Honor'. Accessed : June 2015, Retrieved from: http://www.hok.hr/sud_casti/pokretanje_postupka_pred_sudom_casti

¹⁵ Večernji list, 'Pobijedio sam T-HT, a nisam imao ni advokata'. Accessed: May 2015. Retrieved from: <http://www.vecernji.hr/hrvatska/pobijedio-sam-t-ht-a-nisam-imao-ni-advokata-548391>

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