



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

Country fiche: Latvia

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1. Latvia

1.1 Regulatory Background

The transposition of Directive 1999/44/EC on Consumer Sales in the Latvian legislative system was achieved via amendments to the Costumer Right Protection Law¹, which was adopted by the Parliament of the Republic of Latvia in 2013. On 13th December 2011 there were amendments to national legislation, introducing additional provisions of the Directive 2011/83/EU aimed to enhance and complement the existing legislative frameworks including Directive 1999/44/EC regarding connected guarantees and consumer protection². In order to meet the standards of EU legislation a number of amendments were made to Costumer Right Protection Law. The Consumer Right Protection Law includes Art. 16 on guarantees, Art. 13 on product conformity, Art. 10 on distance contracts and other laws with regards to 1999/44/EC Directive.

1.1.1 Transposition of Directive 1999/44/EC

The differences between Latvian legislation and Directive 1999/44/EC involve definitions, remedies, communication and measures of protection.

Definitions

The definitions contained in Art. 1 of Directive 1999/44/EC are all transposed, but there are several differences between both legislative instruments regarding the term 'seller'. According to Art. 1 5° of Costumer Right Protection Law, the seller also takes responsibility if it is using an agent or other third party who works on the terms and agreements set by the seller on behalf of the seller. Directive 1999/44/EC defines a seller as any natural or legal person who, in accordance to the contract, sells goods to consumers in the normal course of business. It does not provide for situations involving third part sellers or agents.

Remedies

Remedies in Latvian legislation provide more options for consumers compared to Directive 1999/44/EC. In a situation where the lack of conformity is an issue, Art. 28 1° of the Consumer Rights Protection Law previously³ allowed the consumer to choose their approach on how to address the lack of conformity to the seller. However, as of 1st January 2016 this option will be terminated (see below).

According to Art. 28 1° and 3° of Consumer Right Protection Law the consumer within the first 6 months of purchase can either:

- Ask for repair, price reduction or replacement by equivalent product;
- Terminate the contract and receive a refund of the amount paid;
- Ask the seller to change the contract so the product matches the conformity and/or partially refund the consumer for the lack of conformity. According to Art. 28 3° of the Consumer Right Protection Law after the first 6 months of purchase but within 2 years (Art. 27 1°) of purchase the consumer can ask for repair or replacement by equivalent product. If repair or replacement by equivalent product is not possible then consumer can ask for price reduction or terminate

¹ Consumer Rights Protection Law, Available at: <http://likumi.lv/doc.php?id=23309>

² Latvian Cabinet of Ministers, Changes in Consumer Right Protection Law, Accessed: 05.2015, Retrieved from: <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/EBCCA4CFD5611F48C2257B9600269C87?OpenDocument>

³ ECC-net, Country fiche for Latvia (undated), available at http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_LV.pdf

the contract and receive a refund of the amount paid reduced by product depreciation.

According to Art. 28 3° the consumer is also entitled to request that the seller rectify the goods free of charge with the provisions of the contract or exchange the goods, except for the case where this is not possible or is disproportionately costly. Secondly, in case the seller cannot rectify or exchange the goods, the consumer has the right to ask for a price reduction or a refund of the money for the goods. Compensation for failing to eliminate a defect in 30 days is also possible⁴.

As of 1st January 2016 the Consumer Right Protection Law regulation will change. At this point, the consumer may request (according to new Art.28 2°) that the seller rectify the goods free of charge with the provisions of the contract or exchange the goods, except for the case where this is not possible or (according to new Art.28 3°) is disproportionately costly. Secondly, (according to new Art.28 5°) in case the seller will not be able to rectify or exchange the goods, the consumer will have the right to ask for a price reduction or a refund of the money for the goods reduced by product depreciation⁵.

Communication

According to Art. 16 2° of the Consumer Right Protection Law the guarantee shall be given in writing and it shall clearly set out conditions for the submission of a claim and the period of guarantee, as well as the seller name and address of the guarantor.

Measures of protection

Latvian legislation gives additional options to consumers if other regulation is more favourable to the consumer. According to Art. 4² 1° of Consumer Rights Protection Law, contracting parties are entitled to agree that the legal norms of a state other than a European Economic Area Member State are applicable in discussing the legal relations, if both of the following provisions are observed:

- The performance of the contractual obligations or other contractual provision is directly related to any European Economic Area Member State and
- The applicable legal norms provide for more favourable rights protection for a consumer than Consumer Right Protection Law.

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 Latvian legislative system. All the articles have been transposed except for three, and some of them contain an extension of the scope provided by the European legislation.

⁴ECC-net, Country fiche for Latvia (undated), available at http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_LV.pdf

⁵ Consumer Rights Protection Law, Available at: http://likumi.lv/doc.php?id=23309&version_date=01.01.2016. Note, this is the version of the law coming into force as of 1st January 2016

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

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	LCP: Art. 1.	<i>Extended:</i> objectives and nature of the law.
	1.2.a	Def. Consumer	LCP: Art. 2.11/ CC: Art. 6.228.3	<i>Extended:</i> electricity is in scope of the definition.
	1.2.b	Def. Consumer goods	LCP: Art. 2.15/ CC: Art. 6.228.1	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.c	Def. Seller	LCP: Art. 2.5/ CC: Art. 6.228.2	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	LCP: Art. 2.1	<i>Extended:</i> additional characteristics of the Producer.
	1.2.e	Def. Guarantee	CC: Art. 6.228.14	<i>Extended:</i> the Consumer has a right to commercial guarantee even if the guarantee does not comply with the requirements defined in this article.
	1.2.f	Def. Repair		Not transposed
	1.3	Exclusion second hand		Not transposed
	1.4	Contracts of sale types	CC: Art. 6.228.1	<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	LCP: Art. 14.1/ CC: Art. 6.363.2	<i>Extended:</i> the Consumer goods should be in the conformity not only with the contract, but also with additional regulations.
	2.2	Good conformity	CC: Art. 6.333.4, Art. 6.363.3	<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	CC: Art. 6.228	<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	-	Not transposed
	2.5	Installation	LCP: Art. 14.3	<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	CC: Art. 6.363.1	<i>Direct transposition</i> - Establishes that the seller is liable for any lack of conformity which exists at the time the good is delivered
	3.2	Remedies	CC: Art. 6.363.4	<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	CC: Art. 6.363.8	<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	CC: Art. 6.363.7	<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	CC: Art. 6.363.7	<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	CC: Art. 6.364.7	<i>Extended:</i> the Consumer can have the contract rescinded.
Right of redress	4	Final seller liability	CC: Art. 6.363.2	<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	CC: Art. 6.338.2	Two years
	5.2	Defect confirmation	CC: Art. 6.327.5	Within a reasonable time
	5.3	Reversed burden	LCP: Art. 14.2	Six months
Guarantees	6.1	Legally binding	LCP: Art. 16.1	<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	LCP: Art. 16.2	<i>Direct transposition</i> - The guarantee shall state that the consumer has legal rights under applicable national legislation, make clear that those rights are not affected by the guarantee; give the guarantee details and process for claiming, plus name, address of guarantor plus scope and duration.
	6.3	Written contract	LCP: Art. 16.3	<i>Direct transposition</i> - On request by the consumer, the guarantee shall be made available in writing or another accessible durable medium
	6.4	Language of guarantees	-	Not transposed
	6.5	Respect 6.2-4	LCP: Art. 16.4	<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	Reduced period (2nd hand)	-	Not transposed
	7.2	Measures of protection		Not transposed
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



Options at the discretion of the Member State

1.1.3 Additional Rights

Consumer Right Protection Law includes additional rights in order to protect and improve consumer participation in the market.

Right of information

Every consumer has the right to receive information about a product or service before the consumer is bound by a contract or any corresponding offer, according to the Consumer Right Protection Law Art.17 1°⁶. The trader or service provider shall provide the consumer with the following information in a clear and comprehensible manner, including:

- a) information about characteristics of goods or services to the extent appropriate to the type of provision;
- b) data on trader or service provider, including trading name, address and telephone number;
- c) total price of goods or services inclusive of taxes or fees (where the nature of the goods or services is such that the price cannot be calculated in advance, the manner in which the price is to be calculated shall be indicated);
- d) where applicable, delivery or postal charges (where those charges cannot be calculated in advance, the fact that such additional charges may be payable shall be notified);
- e) where applicable, the arrangements for payment, delivery of goods or performance of a service, the time by which goods shall be delivered or the service performed, and complaint handling policy;
- f) information regarding lawful rights of consumer, if goods or services do not conform to the provisions of the contract, as well as information regarding guarantee, the conditions thereof and after-sales services, where applicable;
- g) duration of contract or conditions for terminating the contract for the contract entered into for indeterminate duration or to be extended automatically;
- h) where applicable, the digital content and use thereof (functionality), including types of use, technical restrictions and technical protection measures;
- i) where applicable, any relevant interoperability of digital content with hardware and software, if the trader or the service provider is aware of or can reasonably be expected to have been aware of.

According to Latvian legislation, consumers have quite wide possibilities to obtain information about the product or service. However, Art. 17 4° of the Consumer Rights Protection Law subsequently stipulates that none of items of Art. 17 1° shall apply to contracts that are either performed immediately or agreed outside the permanent location of the economic or professional activity (i.e. off-premises contracts). However, this is due to the fact that the distance contracts are regulated separately under Regulation No. 207 Adopted 28 May 2002⁷, which prescribe the information to be included in distance contracts, separate provisions for the performance of the contracts, and procedures and time periods for exercising the right of withdrawal.

⁶ Consumer Rights Protection Law, Available at: <http://likumi.lv/doc.php?id=23309>

⁷ Regulation No. 207 Adopted 28 May 2002, Regulations Regarding Distance Contracts, Issued pursuant to Section 10, Paragraph four of the Consumer Rights Protection Law, see http://www.ptac.gov.lv/upload/normativi_en/distences_noteikumi.pdf, accessed 25 November 2015

Right of withdrawal

There are several instances where the consumer has the right to withdraw in Latvia, including the right of withdrawing from a distance contract and contract entered into outside of the location of the economic or professional activity. Art. 12 1° of the Consumer Right Protection Law states the consumer may use the right of withdrawal within a specified time period and without giving any reason. With regards to the rights of withdrawal in relation to a consumer credit contract, the consumer shall have a period of 14 calendar days in which to withdraw from a consumer credit contract without specifying any reason based on Art. 12¹ 1° of Consumer Right Protection Law.

1.1.4 Enforcement and redress

According to Art. 27 1° of the Consumer Right Protection Law, in case of a problem with a consumer good, the consumer is supposed to submit a claim to the seller within two months of finding the defect or non-conformity.

Mediation

If conciliation (mutual or written agreement) between the parties has not settled the conflict, then alternative dispute resolution includes the option of mediation⁸. According to Mediation law Art.3 both sides have the right to participate in the mediation process together with a mediator and they decide unilaterally when to finish the process of mediation. According to Art. 7 the Latvian consumer can chose a mediator that has a corresponding certificate for mediation. The mediation is an out-of-court settlement, but is different from the arbitration process, as it consists of conciliating the positions from both the consumer and seller.

Besides mediation, consumers can also go to the Consumer Rights Protection Centre (CRPC) in case the mutual or written complaint is denied by the seller. Similar to mediation, the CRPC will send an approved expert who will attempt to solve the problem. The consumer may have to pay fees if the expert believes the seller is not at fault, while if it is the seller who is at fault, the seller must deliver within 7 days⁹ what the consumer has requested as it is shown in CRPC claim handling procedure table¹⁰.

Arbitration

Arbitration is another way to settle claims. The arbitration system is regulated through Arbitration Law¹¹. As of May 2015 there were 124 registered arbitration boards across Latvia¹².

Court settlements

The consumer can also take the case to court. The Latvian court system consists of district (city) courts, regional courts and at the hierarchy's top the Supreme Court. In the Latvian court system, cases related to civil violations are solved in civil court. However, if the consumer or seller finds no common solution and wants to appeal the sentence, the Latvian court system ensures that the decision of the court of the first instance can be appealed

⁸ Mediation Law. Available at: <http://likumi.lv/doc.php?id=266615>

⁹ Consumer Right Protection Centre, Strīdu Risināšana, Accessed: 05.2015, Retrieved from: <http://www.ptac.gov.lv/lv/content/str-du-risin-ana>

¹⁰ Consumer Right Protection Centre, Strīdu Risināšana, Accessed: 05.2015, Retrieved from: <http://www.ptac.gov.lv/lv/content/str-du-risin-ana>

¹¹ Arbitration Law. Available at: <http://likumi.lv/doc.php?id=269189>

¹² Uzņēmumu Reģistrs, Šķīrējtiesas. Accessed: 05.2015, Retrieved from: <http://www.ur.gov.lv/skirejtiesas.html>

and reviewed by a cassation appeal. If the case is reviewed on appeal case, it will be transferred from district (city) courts to regional court, however when the case is reviewed by a cassation appeal it is transferred to the Supreme Court. From an administrative standpoint, the Supreme Court is connected neither to district (city) courts nor to regional courts¹³.

Cases

One case is summarized below with a respective interpretation by the Consumer Protection Law.

Box 1 Court case regarding a defective mobile phone 23rd April, 2013¹⁴

On 20th of September, 2011 a consumer bought a mobile phone and found out that the newly bought mobile phone had a defect and could not be turned on. On the same day the consumer gave his mobile phone back for guarantee, however the retailer did not provide the exact date when the mobile phone would be repaired and subsequently told the consumer that the mobile phone could not be repaired in reasonable time. The court decided that the guarantor was guilty and since no guarantee repair was made according to Art. 28 of Consumer Protection Law, the consumer had the right to ask for full refund based on lack of conformity for the product. The retailer paid the full price for the defective mobile phone back to the consumer.

¹³ Republic of Latvia Supreme Court, The Supreme Court and the Latvian Court System, Accessed: 05.2015 Retrieved from: <http://at.gov.lv/en/about-the-supreme-court/organization/the-supreme-court-and-the-latvian-court-system/>

¹⁴ Regional Court of Administrative Cases, Case Nr.A420408112, Accessed: 05.2015, Retrieved From: http://www.tiesas.lv/Media/Default/Admin.tiesu%20spriedumi/Admin.raj.tiesas%20spriedumi/2013/Aprilis/23.04.2013/AL_2304_raj_A-01287-13_42.pdf

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European consumer information centre: <http://www.ecclatvia.lv/index.php/en/about-ecc-net>

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Enterprise Register: <http://www.ur.gov.lv/skirejtiasas.html>

Republic of Latvia Supreme Court: <http://at.gov.lv/en/about-the-supreme-court/organization/the-supreme-court-and-the-latvian-court-system/>

