



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

Country fiche: Netherlands

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Contact: Marilena Di Stasi

E-mail: JUST-CONSULT-E1@ec.europa.eu

*European Commission
B-1049 Brussels*

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1. Netherlands

1.1 Regulatory background

Directive 1999/44/EC on Consumer Sales was transposed into Dutch law with the bill "Sales and guarantees for consumer goods"¹. The bill is an adaptation of Book 7 of the Civil Code. The bill entered into force on May 1st 2003.

With Law 12th April 2014 *Staatsblad*² 2014, 140 (Bill 33 520)³, Directive 2011/83/EU on consumer rights has been implemented into the Dutch civil code⁴ and changes have been made to *Burgelijk Wetboek* (BW) 6 and 7. This change affected Directives 1999/44/EC and 93/13/EEG and repealed Directives 85/577/EEG and 97/7/EG⁵. The five main changes to the previous directives are⁶:

- to harmonize the rules within the EU member states;
- existing definitions are amended and supplemented, especially in regards to the developments in the digital world;
- right of recall has been changed to 14 calendar days;
- uniform rules in regards to delivery time, risk and remedies to untimely deliveries;
- clearer regime for digital products (e-books, online video, audiobooks, online courses).

A number of changes were implement, including the deletion of rule⁷ in regards to distance selling and an amendment to the law on customer protection.⁸ Several other amendments were also made⁹.

1.1.1 Transposition of Directive 1999/44/EC

Almost all of the articles of Directive 1999/44/EC have been in accommodated into the legislative system¹⁰. In general, the majority of the articles have been transposed respecting the terminology of the Directive. However, there are some deviations and extensions from the European standards.

Definitions

Whereas the definitions of consumer, seller and producer do not deviate, the scope of the Directive is expanded by means of the definition that the Dutch legislator gave to "consumer goods". According to article 5 Bill 27 809, all goods offered by professional sellers for private use are considered "consumer goods". The legislation specifically mentions, nonetheless, that this does not apply to services such as travel booking,

¹ Bill 27 809 is the solution adopted by Dutch sales law.

²Staatsblad is the government gazette of the Netherlands

³ <https://zoek.officielebekendmakingen.nl/stb-2014-140.html>

⁴ The English version of the Dutch Civil Code is available at : <http://www.dutchcivillaw.com/legislation/dcctitle7711.htm>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

⁶ <http://njb.nl/wetgeving/staatsbladen/implementatie-consumentenrechten.6454.lynkx>

⁷ Article 46a from Book 7 of the Civil code and chapter 4.25 of the Dutch Financial Supervision Act

⁸ The following are the parliamentary papers that describe the amendments TK 2012/13, 33 520, nr. 1, TK 2012/13, 33 520, nr. 2, TK 2012/13, 33 520, nr. 3, TK 2012/13, 33 520, nr. 4, TK 2012/13, 33 520, nr. 5, TK 2012/13, 33 520, nr. 7

⁹ In the law of 12-04-2014 published in the government gazette 2014, 140 the amendments to the consumer rights were implemented into Book 7 article 230 g-z of the civil code. There were also amendments of art. 7:5, 6, 7, 9, 11, 13 BW, as well as a new rule in art. 7:19a BW;

¹⁰ All articles were transposed except article 6.5 Directive 1999/44/EC as commented in the following paragraphs.

insurances, entering into a loan, or those products which are transported through pipes, like water and gas¹¹. The principle of the Dutch law is that a consumer good has to meet the expected properties you can reasonable expect (i.e. conformity) and therefore the seller remains liable even after the guarantee has expired. For example you can expect that a new TV will last longer than 3 years.¹²

Conformity

The code also introduces that the product has to also meet the expectations of the consumer, based on the statements received from the seller.

More specifically according to the code¹³

1. The supplied object must be in conformity with the sale agreement.
2. The object is not in conformity with the agreement if it does not have the qualities that the buyer could have expected on the basis of the agreement or if the buyer cannot use it in the normal way
3. If another object has been substituted or the amount in weight etc. has been changed.
4. If the object is not the same as a sample object shown previously to the buyer

However, if the buyer was aware of the lack of conformity at the time of buying (or could not reasonably have been unaware), the buyer cannot then make a claim. The same applies if defects are caused by unsuitable raw materials originating from the buyer, unless the seller should have warned the buyer about this and failed to do so.

Burden of proof

Under Article 18 "In a consumer sale, a lack of conformity of the goods that becomes apparent within six months of delivery shall be presumed to have existed at the time the contract was concluded, unless this would be contrary to the nature of the goods or of the non-conformity"¹⁴. This is the standard reversed burden of proof concept.

Additionally, the buyer must inform the consumer within a reasonable period of time regarding the presence of defects. While two months will always be considered reasonable, the law does not go so far as to state that notification must be made within two months¹⁵.

Time limits

If there is a point to focus specifically on in the Netherlands, this is how they deal with the legal guarantee time coverage (i.e. part of the statutory rights) entitled to the consumer. Although the two year period given in the Directive is found in the Dutch legislation¹⁶, this protection is improved upon by the previous legislation specified in the Civil Code in its Book 7¹⁷. This states that the guarantee depends on the average

¹¹ Other exceptions apply on distance selling and if the product still has to be produced see Book 7A Art. 1639 through 1651.

¹² <http://www.conformiteit.nl/index.html>

¹³ Book 7, Civil Code, Article 18

¹⁴ 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 2

¹⁵ Book 7, Civil Code, Article 23

¹⁶ See Article 5.1 transposed in Bill 27 809, Art. 23, Lid 2

¹⁷ See Afd.2, Article 17, Lid 2

expected lifespan of a product in normal use. This means, for instance, if a washing machine is expected to have an average 10 year life span, the statutory rights are available to the consumer for the same amount of time.

Remedies

In the Netherlands the consumer can claim against the importer or manufacturer, or another agent in the chain if this applies¹⁸. A hierarchy of remedies applies. 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 impossible, but only under certain conditions. There is no deadline for implementing a solution.

1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and its subsequent transposition into the Dutch legislative system.

¹⁸ECC-net, Country Fiche for Netherlands (undated), accessed 1st December at http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_NL.pdf

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

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Bill 27 809	To guarantee the implementation of the European directive
	1.2.a	Def. Consumer goods	Bill 27 809, Art. 5	Concept of “Consumer”; a natural person who is not buying on behalf of a profession or company
	1.2.b	Def. Consumer	Bill 27 809, Art. 5	Concept of “Product”; all goods offered by professional sellers for private use. It does not apply to services such as booking travel, taking out an insurance, entering into a loan, all products that travel through pipes like water and gas. Other exceptions apply on distance selling and if the product still has to be produced see Book 7A Art. 1639 through 1651.
	1.2.c	Def. Seller	WB 7, Art. 1, Lid 1	Sell goods as a profession
	1.2.d	Def. Producer	Bill 27 809, Art. 6a, Lid 5b	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.e	Def. Guarantee	Bill 27 809, Art. 6a, Lid 1-5	<i>Direct transposition</i> - Producer being the manufacturer or importer of the good, or purporting to be so via trademark
	1.2.f	Def. Repair		Not transposed
	1.3	Exclusion second hand	WB 7, Afd.2, Art. 18	Product has to be in working order and have no hidden defects. There is a window of 6 months but buyer has burden of proof.
	1.4	Contracts of sale types	WB 7, Afd.7. Art. 400	<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	Bill 27 809, Art. 17,Lid 1	Product has to meet the expectation of the buyer formed on the statements of the seller
	2.2	Good conformity	Bill 27 809, Art. 18,Lid 1	<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	Bill 27 809, Art. 18,Lid 2	If a product shows defects within 6 months
	2.4	Seller statements	Bill 27 809, Art. 18,Lid 1	<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	Bill 27 809, Art. 18,Lid 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	Bill 27 809, Art. 19,Lid 2	Exception are goods bought at an auction
	3.2	Remedies	Bill 27 809, Art. 21,Lid 1	<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	Bill 27 809, Art. 21,Lid 5	<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	Bill 27 809, Art. 21,Lid 2	<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	Bill 27 809, Art. 21,Lid 3,4,5	Or alternatively, money will be refunded
	3.6	Contract rescission	Bill 27 809, Art. 22,Lid 2	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	WB 7, Art. 24, Lid 4	<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	Bill 27 809, Art. 23,Lid 2	Two years limitation period from the notification of the defect
	5.2	Defect confirmation	Bill 27 809, Art. 23,Lid 1	<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	Bill 27 809, Art. 23,Lid 2,3	Added that the time period starts from the moment the buyer can use the product
Guarantees	6.1	Legally binding	Bill 27 809, Art. 6a,Lid 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	Bill 27 809, Art. 6a,Lid 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	n/a	
	6.4	Language of guarantees	Bill 27 809, Art. 6a,Lid 3	<i>Direct transposition</i> - The guarantee shall be drafted in one or more languages from among the official languages of the EU
	6.5	Respect 6.2-4	n/a	
Binding nature	7.1	Right restrictions	Bill 27 809, Art. 6a, Lid 4	<i>Direct transposition</i> - Stating that previously agreed conditions between seller and consumer which are agreed before a lack of conformity is known will not be binding if they reduce the consumer rights under this Directive. In the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter liability period for the seller (not less than one year).
	7.1	Reduced period (2nd hand)	WB 7, Afd.2, Art. 18	Product has to be in working order and have no hidden defects. There is a window of 6 months but buyer has burden of proof.
	7.2	Measures of protection	WB 7, Afd.2, Art. 17,Lid 2	Dutch law states that the guarantee depends on the average expected lifespan of a product in normal use.

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	WB 7, Afd.2, Art. 17,Lid 2	Dutch law states that the guarantee depends on the average expected lifespan of a product in normal use.
	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 consumers and users are mainly contained in the Civil Code. In this section, we describe two of the rights introduced with Directive 2011/83/EC on Consumer rights, which partially influence the functioning of the guarantee market from the consumer point of view.

Right of information

The right of information is granted by the Civil Law Code¹⁹. At the same time it is also stated that “a guarantee²⁰ must set out in plain and intelligible language which of the legal rights and legal remedies ... are granted to the buyer”. It is also made clear that the buyer has these legal rights and legal remedies without prejudice to the legal rights (actions) and legal remedies provided to him by law. Additionally, the commercial guarantee must set out the name and address of the seller or producer who has provided the guarantee, as well as the duration and territorial scope of the guarantee”²¹.

Right of withdrawal

The right of withdrawal for off-premises contracts is of 14 days, according to Bill 33 520 Art 320 section o. The Bill states that the customer does not have to provide a reason for cancellation.

The Netherlands Authority for Consumers and Markets” (ACM) as of 13 June 2014 has published new consumer rules that were a result of Bill 33 520²², and affect the right of withdrawal. The new rules will apply to all agreements that will be concluded on or after 13 June 2014. Agreements that have been concluded before 13 June will continue to fall under the ‘old’ rules.

The most important changes are:

- the cooling-off period for agreements that consumers enter into online or by phone is extended to 14 days;
- the cooling-off period of 14 days is also applicable to door-to-door sales and street vending in case of purchases of more than EUR 50;
- if sellers do not properly inform consumers about the cooling-off period, this period will then be extended to a maximum of 12 months;
- agreements concerning a constant service, like telephone subscriptions or energy contracts, are only valid if consumers have agreed to such services in writing;
- a ceiling will be introduced for the costs of calls to customer service lines using 090x-numbers; the maximum rate for such calls will be EUR 1 plus the normal charges.

1.2 Enforcement and redress

In case of a problem with a consumer good, consumers should address their claim to the seller. If the seller does not respond as expected, the next stage can be to claim in an out-

¹⁹ See Bill 27 809 Art. 18 Lid 1 and Bill 33 520 Par. 1 Art. 230g k : http://njb.nl/Uploads/2013/10/tk1213_33520_2.pdf

²⁰ See the Dutch Civil Code (BW 7:6a Lid 2) which however does not distinguish between a legal or commercial guarantee

²¹ <http://www.dutchcivillaw.com/legislation/dccitle7711.htm>

²² They are listed on ACM webpage. ACM (Accessed, June 2015), ‘Nieuwe regels voor verkoop aan consumenten’. Retrieved from:

<https://www.acm.nl/nl/onderwerpen/verkoopmethode/consumentenregels/nieuwe-regels-voor-verkoop-aan-consumenten/> .

of-court settlement, which will be held by the *Geschillencommissie*, the Foundation for Consumer Complaints Board.

Out-of-court settlement

This type of procedure entails four steps. First a consumer has to submit a complaint, secondly the consumer waits for an answer of the party that they have a complaint against, thirdly an investigation by an expert is completed and lastly there will be a hearing and a ruling.²³ The hearing is heard by an independent Chairman who is experienced with the law, a representative of the retail brand and a representative of a consumer body. The ruling is binding and the consumer cannot appeal the ruling.

Court settlements

If the claim is taken to the courts in the Netherlands there are two different ways to proceed. The consumer can appeal to the sub district judge or he can settle the case summarily. The sub district Judge settles civil as well as criminal cases and deals with cases below €25,000. To settle a case summarily is a procedure to obtain a fast ruling of the courts. This ruling is a provisional ruling. Afterwards the parties can decide to take the case before the courts, however in practice this seldom happens. In most cases the parties comply with the provisional ruling.

Cases

There have been a number of court cases dealing with conflicts with regard to guarantees for consumer goods in the Netherlands.

Box 1: Case on expiry of a guarantee²⁴

The seller and buyer agreed in a sales agreement that after two years the guarantee would expire, which in this case was 1 April 2010. The buyer submitted a claim on 31 March 2010, which was disputed by the seller. The court ruled that the buyer was within his right and had a valid claim. The court was of the opinion that the warranty period and the duration of the time to file a complaint were the same. The court ruled that there could be no period of time to file a complaint that could be shorter than the warranty period.

Box 2: Case on delivery obligations²⁵

The seller promised delivery at the buyer's home address, but did not want to deliver to the second floor of an apartment building.

In article 6.1 it clearly states that delivery will be at the home address of the buyer unless otherwise agreed. In article 6.4 it is mentioned that delivery will be done by the terms mentioned on the website. By refusing to deliver to the front door, the seller didn't comply with the commitment to deliver. The seller told the buyer that the seller was not liable for the product during transport to the front door and therefore the buyer refused the delivery.

The claim was denied and the seller was ruled against.

²³ <https://www.degeschillencommissie.nl/consumenten/klachtenprocedure/>

²⁴ Pronto & Haland/Alvreshof22xRb. Rotterdam 5 oktober 2011, LJN. Court of Rotterdam <https://www.rechtspraak.nl/Naar-de-rechter/Uw-situatie/RechtszaakBeginnen/Pages/RechtszaakBeginnen4-3-1.aspx>, and http://www.openaccessadvocate.nl/tijdschrift/vennootschappenonderneming/2013/5/VenO_0925-9643_2013_023_005_003

²⁵ Court of Haarlem Case N° ECLI:NL:RBHAA:2010:BN1041, <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBHAA:2010:BN1041&keyword=consumentenrecht>

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