



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

Country fiche: Poland

EUROPEAN COMMISSION

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1. Poland

1.1 Regulatory background

Directive 1999/44/EC was firstly transposed into national law through the Act on special terms and conditions of consumer affairs and amending the Civil Code dated 27 July 2002 (2002/141). This piece of legislation was recently repealed with the Act on Consumer Rights ("the Act") dated 30 May 2014 (2014/827)¹. The Act is in force as from 25 December 2014. The Act was meant also to transpose Directive 2011/83/EC on Consumer rights within the Polish legislative system.

The Act amended the Polish Civil Code dated 12 April 1964 ("the Code") and in particular Chapter III, Title 11 of the Code on Sales. Resulting from this amendment of the Code, the legislator created a single regime on guarantees both for consumers and professional traders. With this regulatory framework at hand, Act 2014/827 becomes therefore the legislation of reference for consumer protection in Poland.

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC into Polish law is comprehensive. Table 23 in the next pages shows how each article has been transposed into the national legislation. Due to the fact that Directive 1999/44/EC was implemented into the existing Polish legislation on guarantees, there are several departures from the original provisions and the legislation has accommodated many of the additional aspects mentioned in the recitals. Each point is subsequently commented on below².

Definitions

The concept of "Consumer" was originally found in Article 22, which stated that a consumer was "any natural person performing a legal act which is not directly related to his business or professional activity". This is now referenced in Article 44 and corresponds to the definition that can be found in Directive 1999/44/EC. Further to Article 577, the consumer should receive a guarantee notice, which should indicate the duties of the seller in case of non-conformities with the contract (such as the requirement to repay the price and replace or repair the goods). It should be noted that the legislator decided to leave out the requirement that the guarantee is provided free of charge in line with the Consumer Rights Directive. As a result, the provisions of the Code apply also to additional guarantees for which consumers pay separately.

Polish law uses the concept of "things"³ rather than "goods". Thus, the definition of consumer goods was not implemented in the Code. Furthermore, according to the commentators, as provisions on the sale of goods by execution are included in a different part of the Code, it is clear that provisions implementing Directive 1999/44/EC will not be applicable to these kind of transactions. In addition, under Polish law, water, gas and

¹ Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

² All the articles mentioned in the discussion relate to Civil Code, unless otherwise stated.

³ See Article 45 in the full (English) version of the Civil Code, accessed 29th November 2015 at <https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf>

electricity can be considered as “things” only to the extent they come in defined quantity, which is also in line with the definition included in Directive 1999/44/EC.⁴

Article 43 of the Civil code refers to ‘entrepreneurs’ rather than a seller, but Act 2014/827 in 44 9) § 2⁵ included an amendment that a “manufacturer or his representative, the person who brings the benefit of the market in terms of its economic activity, and the person who by putting on goods sold its name, trademark or other distinctive sign presents itself as a producer”.

Conformity with the contract

Article 2.2 of Directive 1999/44/EC lists four cases where goods are presumed to be in conformity with the contract. In turn, further to the amendment of the Code, Art. 556(1) §1⁶ lists four scenarios where the goods sold are deemed not to be in conformity with the contract:

- When the goods do not have the qualities that the consumer was informed of by the seller;
- When the goods cannot be used for the purpose communicated by the consumer to the seller;
- When the goods do not have the qualities that goods of such type should have; and
- When the goods are incomplete.

Nonetheless, these four examples are in essence reverse versions of the examples in Directive 1999/44/EC and thus one can consider that Directive 1999/44/EC was fully implemented in this regard.

Further to Art. 2.3 of Directive 1999/44/EC, there shall be deemed not to be a lack of conformity if the consumer (i) was aware, or (ii) could not reasonably be unaware of, the lack of conformity, or (iii) if the lack of conformity has its origin in materials supplied by the consumer. However, in Polish legislation, it should be noted that Art. 557 §1 covers only case (i)⁷.

Rights of the consumer

Art. 560 and 561 implement the provisions of Directive 1999/44/EC regarding the remedies available to the consumer. Following these articles, in case of a defective item, the buyer may demand a reduction of the price or to have the contract rescinded, unless the seller repairs or replaces the goods without excessive inconvenience to the buyer.

One of the most important novelties introduced by the Act is that the seller may repair or replace the item only once. In case of further defects, he will be obliged to accept the buyer's demand to reduce the price or to have the contract rescinded (i.e. the consumer can demand a refund).

⁴ Government Legislation Centre, ‘Convergence table’. See commentary linked to “*b) towary konsumpcyjne oznaczają wszystkie materialne rzeczy ruchome, z wyjątkiem*” Accessed: June, 2014. Retrieved from: <http://legislacja.rcl.gov.pl/docs//2/178552/178573/178574/dokument88136.doc>

⁵See amending provisions of Chapter 6 at Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

⁶See amending provisions of Chapter 6 at Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

⁷See Article 577 in the full (English) version of the Civil Code, accessed 29th November 2015 at <https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf>

In other respects the regular hierarchy of remedies is in place. 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. In case of replacement, and new 2 year guarantee comes into force⁸.

Time limits

In the older version of the Civil Code, the warranty period was only one year, however, in the amending provisions, and in line with Art. 5.1 of Directive 1999/44/EC, the seller is liable if the lack of conformity of the goods becomes apparent within two years from delivery⁹.

1.1.2 Table of the transposition

The next page displays the transposition of Directive 1999/44/EC in Poland.

⁸ECC-net Country fiche for Poland (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_PL.pdf

⁹See amending provisions of Section III, Warranty, at Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

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

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose		Not transposed
	1.2.a	Def. Consumer goods	Art. 45	General definition of 'things', not consumer goods, under the Code introduced by the Act. The scope of goods covered is delimited by the scope of the provisions of the Civil Code applicable to consumer sales (thus, it is delimited by the notion 'consumer').
	1.2.b	Def. Consumer	Art. 22	General definition under the Code.
	1.2.c	Def. Seller	Art. 535 and 43.1 of the Code	General definition under the Code (no express definition of seller – the definition provided is that of a trader, a business person)
	1.2.d	Def. Producer	Art. 43.1	General definition under the Code (again, no express definition of producer in the Article).
	1.2.e	Def. Guarantee	Art. 577 of the Code	Not mentioned that the guarantee needs to be free of charge (i.e. application of the provisions also to guarantees for which an extra fee is charged).
	1.2.f	Def. Repair		No definition of repair in the Code.
	1.3	Exclusion second hand	Art. 568 §1 of the Code	For second hand goods the seller is liable for at least one year as from the date the goods are placed at the disposal of the consumer. No other exclusion has been prescribed for second-hand goods.
	1.4	Contracts of sale types	Art. 636(1) and Art. 638 of the Code	Extension of the provisions on guarantees to contracts for the supply of consumer goods to be manufactured or produced.
Conformity with the contract	2.1	Conformity requirement	Art. 556 of the Code	"The seller is liable towards the buyer if the product sold has a legal or physical fault (guarantee)"
	2.2	Good conformity	Art. 556(1) §1 of the Code	In contrast to the Directive, the Code defines 4 cases when the faulty goods are deemed not to be in conformity with the contract (however this corresponds to the 4 cases mentioned in the Directive).
	2.3	Lack of conformity	Art. 557 §1 of the Code	Covers situation only when the consumer was aware of the non-conformity.
	2.4	Seller statements	Art. 557 §3 of the Code	<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	Art. 556(1) §3 of the Code	<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		Not transposed – liability is implied in Art. 560 of the Code Transposed in Article 559 of the Civil Code.
	3.2	Remedies		Remedies are explained in Art. 560 of the Code

	3.3	Conditions	Art. 560 §1 and §2, Art. 561 §2 of the Code	Further to Art. 560 §1, in case of non-conforming goods, buyer may demand reduction of the price or to have the contract rescinded, unless the seller repairs or replaces the goods without excessive inconvenience for the buyer. Further to Art. 560 §2, if the buyer is a consumer, he may demand replacement instead of repair of the goods (or the other way round), to the extent that this is not impossible or would not result in excessive costs for the seller. Further to Art. 561 §2, seller is required to replace or repair the goods in reasonable time and without excessive inconvenience for the buyer.
	3.4	Free of charge	Art. 561(1) – 561(5) of the Code	Generally speaking, seller bears the costs of repair or replacement. Seller is also responsible for the postage, labour and material costs
	3.5	Reduction of the price	Art. 560 of the Code	Comment as for 3.3.
	3.6	Contract rescission	Art. 560 §4 of the Code	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	Art. 576(1) -576(4) of the Code	Provision of the Directive transposed in Art. 576(1). Art. 576(2) – 576(3) provide detail on the application of this article.
Time limits	5.1	Time period	Art. 568 of the Code	Liability for real estate is extended to 5 years. In case a consumer buys a second hand good, the liability can be limited, but it should be at least 1 year
	5.2	Defect confirmation		No transposition.
	5.3	Reversed burden	Art. 556(2) of the Code	Extension of the period from 6 months to 1 year as compared to the provision of the Directive.
Guarantees	6.1	Legally binding	Art. 577 §1 of the Code	<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	Art 577(1) §1 of the Code	<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	Art 577(2) of the Code	<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	Art. 577(1) §1 of the Code	If the goods are sold in the territory of the Republic of Poland, the guarantee statement should be in the Polish language
	6.5	Respect 6.2-4	Art. 577(1) §3	<i>Direct transposition</i> - Specifying the validity of the guarantee contract for consumer even if it infringes on the above three paragraph
Binding nature	7.1	Right restrictions	Art. 7 of the Act, Art. 568 of the Code	The principle that the consumer cannot wave his rights is mentioned in Art. 7 of the Act (no corresponding article in the Code).
	7.1	Reduced period (2nd hand)	Art. 7 of the Act, Art. 568 of the Code	Further to Art. 568 of the Code, liability of the seller for second hand goods should be at least 1 year.

	7.2	Measures of protection	Art. 30 of the Act on private international law dated 4 February 2011 (2011/80)	<i>Direct transposition</i> - 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		
	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

In Poland, protection of consumers is safeguarded in the Constitution in Art. 76 which reads: “public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute”¹⁰.

The most important documents involve the Act mentioned in the sections above: being this the Act on consumer rights dated 30 May 2014 (2014/827). The Act transposes Directive 2011/83/EU and covers various rights of consumers, including information and withdrawal rights.

The Act¹¹ details rights of consumers according to different transaction types, which are as follows:

- Traditional transactions between the seller and consumer;
- Distance sales (e.g. online sales) and transactions outside the premises of the seller; and
- Transactions involving financial services.

One act that should also be mentioned is the *Act on protection of competition and consumers* dated 16 February 2007 (50/2007)¹², which, among others, deals with the collective consumer rights and rules and procedures regarding the Office of Competition and Consumer Protection (“UOKiK”).

Information rights

Further to the Act on Consumer Rights, the seller is obliged to inform the consumer of, among others, the following¹³:

- Details of the transaction, i.e. the object, the price (or the method of calculation thereof) and identification details of the seller;
- Details of the guarantee, the relevant procedure and seller’s liability; and
- The duration of the agreement and withdrawal rights.

Withdrawal rights

The Act extended the right of consumers to withdraw from distance sales or off-premises contracts from 10 days to 14 days, in conformity with the European standards. It should be noted that in case the seller does not inform the consumer of this right, the period is in fact extended to 12 months¹⁴.

In case of withdrawal, the seller is obliged to refund all payments made by the consumer (including payments for shipping of the goods to the consumer) within 14 days from the date of receipt of the withdrawal notice¹⁵. However, the consumer bears the costs of

¹⁰ The Constitution of the Republic of Poland of 2nd April, 1997, as published in Dziennik Ustaw No. 78, item 483, English version accessed on 29th November at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

¹¹ See Article 1 of the Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

¹² Act on protection of competition and consumers dated 16 February 2007 (50/2007), English version accessed 29th November at https://uokik.gov.pl/competition_protection.php

¹³ See Article 12 of the Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

¹⁴ See Article 27 and 29 of the Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

¹⁵ See Article 32 of the Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

returning the goods to the seller, unless agreed otherwise or the seller has not informed the consumer that he will be responsible for such costs¹⁶.

Similar withdrawal rights are available to consumers in case of financial transactions. It should be noted that the withdrawal right is extended from 14 days to 30 days in case of insurance contracts¹⁷.

1.2 Enforcement and redress

Further to the communication published on the website of the Office of Competition and Consumer Protection ("UOKIK"), in case a complaint of the consumer has been rejected by the seller and the consumer disagrees with this decision, there are several alternative dispute resolution ("ADR") methods that are preferred to actual court proceedings (to the extent that both parties agree).

The most common ADR methods used by Polish consumers are the following:

- Mediations: procedure where the mediator acts as an intermediary between the consumer and the seller, but does not solve the conflict as such;
- Arbitrage: procedure where the competences of the court are taken over by an arbiter; and

Complaints commissions created by sellers' or consumers' organizations. The verdicts of these commissions are not legally binding but may have an impact on seller's reputation.¹⁸

While UOKIK is responsible for the protection of collective rights of consumers, individual consumers may seek help from the consumer ombudsman. The ombudsman may negotiate with sellers in the name of consumers. He may also initiate court proceedings and join ongoing proceedings which affect consumer's rights (to the extent the consumer agrees). In cases involving infringement of consumers' rights the ombudsman acts as a public prosecutor.¹⁹

Consumer may of course decide to settle his case in a civil law procedure in court, at the regional level. In case of claims regarding guarantees or non-conformities with the contract it is also possible to start a simplified litigation procedure to the extent that the value of the goods does not exceed PLN 10.000. The consumer should also bear in mind that he will need to pay a litigation fee (5% of the value of the goods, not less than PLN 30 and not more than PLN 100.000), which will be refunded by the seller in case the litigation is successful for the consumer.²⁰

Cases

The case described below²¹ concerns the liability of the seller for the lack of conformity of goods.

¹⁶See Article 34 (2) of the Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

¹⁷See Article 40 (2) of the Civil Code, Dz.U.2014.827 amending provisions, accessed 29th November at: <http://www.abc.com.pl/du-akt/-/akt/dz-u-2014-827>

¹⁸ Urząd Ochrony Konkurencji i Konsumenta, 'Spory konsumenckie'. Accessed: June, 2014. Retrieved from: https://uokik.gov.pl/spory_konsumenckie.php#faq1365

¹⁹ Urząd Ochrony Konkurencji i Konsumenta, 'Rzecznicy konsumentów'. Accessed: June, 2014. Retrieved from: https://uokik.gov.pl/spory_konsumenckie.php#faq1365https://uokik.gov.pl/rzecznicy_konsumentow.php

²⁰ Urząd Miasta Szczecin, 'Droga sadowa'. Accessed: June, 2014. Retrieved from: http://konsument.um.szczecin.pl/bmrk/chapter_127006.asp?soid=F28DAF48224246E58DC7132E878F2AF8

²¹Szczegóły Wyrok z 8 października 2010 r sygnatura akt I ACa 242/10 accessed 29th November at http://www.rzeszow.sa.gov.pl/index.php?option=com_docman&task=doc_details&gid=12&Itemid=180

Box 1: Court case on car sale, 8 October 2010, ACA, 242/10²²

The claimant acquired a second hand car from the seller. The acquisition was financed by a loan. Shortly after the acquisition, the claimant paid the transaction tax and the car tax. After some time, he also bought a full insurance for the car. Upon inspection of the car, two non-conformities became apparent. The production date of the car was in fact different than indicated by the seller (car was older). Secondly, the seller did not inform the claimant that the car had been damaged and repaired. The Court held that, based on the provisions of the Code on guarantees, either of the non-conformities was enough to allow the claimant to withdraw from the contract. As a result, the Court ruled that the seller should refund the whole price paid for the car. Similarly, further to the ruling, the seller should pay to the claimant an amount corresponding to the transaction and car taxes. However, the ruling did not require the seller to pay back the interest incurred by the claimant, or the costs of insurance. Regarding the latter, the Court ruled that the claimant entered into the insurance contract after he notified the seller of his withdrawal from the contract and hence he was not entitled to the refund of these costs.

²² Szczegóły Wyrok z 8 października 2010 r sygnatura akt I ACa 242/10 accessed 29th November at:
http://www.rzeszow.sa.gov.pl/index.php?option=com_docman&task=doc_details&gid=12&Itemid=180

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Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council – Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

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