



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

Country fiche: Portugal

EUROPEAN COMMISSION

Produced by Consumers, Health, Agriculture and Food Executive Agency (Chafea) on behalf of:

Directorate-General for Justice and Consumers
Directorate E — Consumers
Unit E.1 Consumer markets

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Luxembourg: Publications Office of the European Union, 2015

PDF	ISBN 978-92-79-53731-8	doi: 10.2838/75333	DS-02-15-952-EN-N

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1. Portugal

1.1 Regulatory background

Directive 1999/44/EC on Consumer Sales was transposed first mainly via the Decree Law 67/2003, 8th April¹ and finally via the Decree Law 84/2008², 21st May on Guarantees in the Sale of Consumer Goods³.

1.1.1 Transposition of Directive 1999/44/EC

With the first Decree Law 67/2003, the framework was changed to align with the European framework by means of extending the existent one year legal guarantee to the mandatory two years for lack of conformity (although it may be reduced to one year for second-hand goods). In this same Decree the liability was extended from the seller to the producer, and therefore the consumers can exercise their rights by directly claiming against the producer for a lack of conformity.

Other changes were the imposition of a 30-day period within which the seller had to provide repair or replacement of the good to the consumer. In the case of replacement, a new two-year guarantee comes into force⁴.

Finally, the time period of the guarantee is frozen for the duration of time that a consumer may spend attempting to resolve any claim through a resolution process.

Claiming periods

In case of a claim, and within the terms of Decree law 84/2008, there are four solutions which can be equally chosen by the consumer: (i) replacement; (ii) repair; (iii) price reduction; and (iv) rescission of the contract (article 4.1). In article 5.1, it is mentioned that the statutory rights last for two years from the date of delivery. In the case of second-hand goods mentioned in the article 5.2, the seller and the consumer can agree a period which will be of no less than 1 year⁵.

In Portugal there is an upper limit on the duration of the statutory rights: the consumer is entitled to the right to claim for non-conformity for a maximum of 2 years for a movable good and 5 years for an immovable good (article 3.2 and article 5.1.), based on the date the defect is discovered.

In case of a lack of conformity, if the seller doesn't repair or substitute the good in a period of maximum 30 days, the buyer can complain to the competent Authority, in this case "*Autoridade Alimentar e Económica*" (ASAE), Article 12-C.1 Decree-Law 84/2008. Under this action, the seller can be subject to a sanction mentioned in the article 12.A. Beyond this sanction, if the seller is not able to repair or substitute the good within a maximum period of 30 days, the buyer has the right to cancel the contract. However, it is also recognised that in some cases it's impossible to repair or substitute a good and in such

¹ Decreto-Lei n.º 67/2003 de 8 de Abril, available at: <https://dre.pt/application/dir/pdf1sdip/2003/04/083A00/22802283.PDF>

² Decreto-Lei n.º 84/2008 de 21 de Maio, available at: <https://dre.pt/application/dir/pdf1sdip/2008/05/09800/0288802894.PDF>

³ ECC-Net (accessed November 2015), 'Legislação'. Retrieved from: <http://cec.consumidor.pt/legislacao1/listagem-por-tema1.aspx?v=b0c6b8df-e083-427b-985f-c0a6fea87918>

⁴ ECC-net, country fiche for Portugal (Undated), http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-GUARANTEE/country_fact_sheets/Country_fiche_PT.pdf

⁵ Other specifications of the legislation imply the coverage for immovable property, for which the claiming period is 3 years.

a case, such solutions cannot be demanded (Art. 4.5 Decreto-Lei n° 84/2008). The concept of “minor” defect is not transposed.

One of the extensions of Directive 1999/44/EC is found under the event that the remedy is that of substitution: in this case, the Consumer has the right to claim again for 2 years or 5 years depending on the type of good (movable or immovable goods respectively), after delivery of the good.

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 Portuguese legislative system. All the articles but one have been transposed, and some of them contain an extension of the scope provided by the European legislation.

Table 1: Transposition of Directive 1999/44/EC in the Portuguese legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	84/2008	<i>Direct transposition</i> - The purpose being to ensure a uniform minimum level of consumer protection
	1.2.a	Def. Consumer goods	84/2008. Art. 1.B a)	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.b	Def. Consumer	24/96. Art. 2.1 + 84/2008. Art. 1.B b)	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)
	1.2.c	Def. Seller	84/2008. Art. 1.B c)	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	84/2008. Art. 1.B d)	<i>Direct transposition</i> - Producer being the manufacturer or importer of the good, or purporting to be so via trademark
	1.2.e	Def. Guarantee	84/2008. Art. 1.B f)	<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 – However, article 1.B.g, includes the definition of “Voluntary Guarantee”, which uses the same definition, but adding that it can be given free of charge or paid-for
	1.2.f	Def. Repair	84/2008. Art. 1.B h)	<i>Direct transposition</i> - Repair meaning bringing consumer goods into conformity with the contract of sale.
	1.3	Exclusion second hand		Not transposed
	1.4	Contracts of sale types		Not transposed
Conformity with the contract	2.1	Conformity requirement	84/2008 Art.2.1	<i>Direct transposition</i> - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	84/2008 Art.2.2	"Unless due to the circumstances of the case some of the following [requirements] are not applicable"
	2.3	Lack of conformity	84/2008 Art.2.3	<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	84/2008 Art.2.4	<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	84/2008 Art.3.1	<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	84/2008 Art.4.1	<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	84/2008 Art.4.2	Replacement or repair should be done in a maximum period of 30 days

	3.4	Free of charge	84/2008 Art.4.3	<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	84/2008 Art.4.4	<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		Not transposed
Right of redress	4	Final seller liability	24/96 Art.8.1	Information from the contractual chain to the final consumer
Time limits	5.1	Time period	84/2008 Art.5.1	Two years or five years
	5.2	Defect confirmation	84/2008 Art.5A.2	Two months in case of a mobile good and 6 months for a fixed good
	5.3	Reversed burden	84/2008 Art.5.7	Six months
Guarantees	6.1	Legally binding	84/2008 Art.1B.f)	<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	84/2008 Art.9.3 a),b) and d)	The Portuguese legislation goes beyond by specifying that the guarantee has to provide the benefits that are entitled to the consumer with its purchase; whereas it has an onerous nature or it is free of charge; duration and territorial validity of the guarantee; and information on the place that would honour it.
	6.3	Written contract	84/2008 Art.9.2	<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	84/2008 Art.9.3	In Portuguese
	6.5	Respect 6.2-4	84/2008 Art.9.5	<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	Right restrictions	84/2008 Art.10.1	<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.
	7.1	Reduced period (2nd hand)	84/2008 Art. 5.2	<i>Direct transposition</i> - 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).
	7.2	Measures of protection	24/96 Art.9	Right to protection of the economic interests of the consumer
National law and minimum protection	8.1	Supplementary rights		
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Information	9	Inform of the rights		
Modification	10	Directive 98/27/EC		
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Review	12	Jul-06		
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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

The additional rights available to the Portuguese Consumer and User are principally contained in “*Lei do consumidor*” n° 24/96, 31st July, last amended by Law n° 47/2014, 28th July⁶. This law summarises the applicable regime for the Protection of consumers.

General Consumer Rights

Chapter II summarises the main consumer’s rights, which are:

- Right to have goods with quality (Art.4)
- Right to Health protection and physical security (Art.5)
- Right to formation and education (Art.6)
- Right to general information (Art.7)
- Right to particular information (Art.8)
- Right to protection of the consumer’s economic interests (Art.9)
- Right to prevention and injunction (Art.10 & 11)
- Right to repair in case of damage (Art.12)
- Legitimacy (Art.13)
- Legal protection and the right to an accessible and swift justice (Art.14)
- Right to be legally represented (Art.15)

Right to information

With regard other rights, such as the right of information, the Portuguese legislation (Law for the Consumer Protection) describes two types of information:

- Right to *general* information (Art.7)

The State should promote an educational policy for consumers, by inserting in school, as well as in permanent education activities, programs and activities matters related to consumption and consumer rights, using, in particular, IT tools.

The State should develop actions and adopt measures to training and consumer education, in particular by: “the Implementation in the education system, particularly in primary and secondary education programs and educational activities for consumption; supporting initiatives in this field which are promoted by consumer associations promoting education training and awareness actions for consumers in general; promoting national policy for training of trainers and experts in the area of consumption. The establishment of educational programs broadcast on public radio and television incorporate spaces for consumer education and training.”

- Right to *particular* information (Art.8)

The supplier of goods or services should, both in negotiations and in the conclusion of a contract, inform the consumer about the characteristics, composition and price of the good or service, as well as the contract duration, guarantees, deadline delivery and subsequent care. The obligation to inform the consumer is on the producer, manufacturer, importer or distributor.

Right of withdrawal

Finally, the Portuguese law also introduced an expanded right of withdrawal (Art.8 Decree-Law 84/2008). Once a lack of insufficient, unreadable or ambiguous information appears,

⁶ *Lei do consumidor* n° 24/96, 31st July, last amended by Law n° 47/2014, 28th July Available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=726&tabela=leis&so_miolo=

which compromises the normal use of any given goods or service, the consumer has the right to withdraw the contract for the acquisition or provision. This right can be exercised within seven working days from the date of receipt of the goods or the execution date of the contract to provide services for on-premises contracts, and 14 for off-premises.

1.2 Enforcement and redress⁷

In case of a problem with a consumer good, consumers should address their claim to the seller. When checking the consistency of the goods with the contract, consumers should first contact the seller, preferably in person, giving them details of the problem and the intended solution. If the good is not restored within 30 days, the consumer must send a registered letter with acknowledgment of non-receipt addressed to the seller or the producer (both direct liability of the seller and the producer), realizing the existence of disagreement and their claim and requesting a response within a specific time frame. In case the seller doesn't respond, the consumer can escalate the issue in a number of ways⁸.

Arbitration, Mediation and Conciliation

Arbitration is set forth by the Law 63/2011, of 14 December, and is a form of alternative dispute resolution. In arbitration, the parties agree to submit the decision to arbitrators of their choice. Portugal has arbitration centres that, besides providing information and a court of arbitration, also make available mediation and the conciliation services to citizens. Should these services not be successful, then the Arbitration Court of the Arbitration Centre can be used. The Arbitration Centres function within their own territorial jurisdiction (geographic area), according to the subject-matter (type of disputes that they may solve) and, as a rule, according to the value (ceiling set for the disputes). The legal time limit of the cases should not exceed 6 months, although they may take longer if the parties mutually agree⁹.

Court proceedings for small claims¹⁰

A small claims procedure for claims under €3,740 is available in Portugal. The *Julgados de Paz* (justices of the peace) are competent. The small claims procedure is optional. No appeal is possible below €1,870. The procedure takes less than two months. Prior in-court mediation is optional. 30% of cases are settled at the mediation stage. Regulation n° 861/2007 establishing a European Small Claims Procedure provides a simplified court procedure for cross border claims under €2,000. The *Julgados de Paz* are competent to deal with the Small Claims Regulation.

Injunctions¹¹

The Consumers Institute and qualified consumer organisations may seek an injunction before the court (e.g. request a court to stop an illegal practice of a trader that harms the

⁷ List of competent authorities for Mediation in Portugal:

http://ec.europa.eu/justice_home/judicialatlascivil/html/me_competentauthorities_pt.jsp#statePage0

Further information about ADR in Portugal: Office for Alternative Dispute Resolution – GRAL. Website: www.gral.mj.pt

On national consumer organizations from Portugal:

http://ec.europa.eu/consumers/eu_consumer_policy/consumer_consultative_group/national_consumer_organisations/docs/national-consumer-organisations_pt_listing.pdf

⁸ Article 5.A, Decree-Law 84/2008.

⁹ Website of Direcção-Geral da Política de Justiça (DGPJ), accessed on 25th November 2015 at

<http://www.dgpj.mj.pt/sections/english-version/alternative-dispute/gral/voluntary-arbitration/>

¹⁰ European Commission, Directorate General for Health and Consumers (undated), Consumer Redress – Portugal, Available at:

http://ec.europa.eu/consumers/solving_consumer_disputes/docs/ms_fiches_portugal.pdf

¹¹ European Commission, Directorate General for Health and Consumers (undated), Consumer Redress – Portugal, Available at:

http://ec.europa.eu/consumers/solving_consumer_disputes/docs/ms_fiches_portugal.pdf

collective interest of consumers). The court may order the publication of the judgement at the expense of the losing party.

Compensatory collective redress¹²

Portugal has the oldest compensatory collective redress system in the EU since 1995. Consumers, consumer organisations, municipal authorities and individual consumers can bring a collective action for compensation of the individual damage of multiple consumers. It is an opt-out procedure (i.e. you are automatically covered unless you opt-out).

¹² European Commission, Directorate General for Health and Consumers (undated), Consumer Redress – Portugal, Available at:
http://ec.europa.eu/consumers/solving_consumer_disputes/docs/ms_fiches_portugal.pdf

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