



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

Country fiche: Romania

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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. Romania

1.1 Regulatory background

Directive 1999/44/EC was transposed into the Romanian national law through the legislation 449/2003 from 12th November 2003¹, which entered into force on the 1st January 2007 (the date of the entry of Romania into the European Union). On that day legislation 449/2003 repealed:

- Art. 14 §1 and Art. 20 §2 from the government amendment from ("*Ordonanța Guvernului*") 21/1992 related to the protection of the consumer
- The government amendment 394/1995 ("*Hotărârea Guvernului*") regarding the vendors obligations.
- The government amendment 665/1995 ("*Hotărârea Guvernului*") related to the guarantee of replacement/reimbursement/repair of products non-conforming.

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of the Directive 1999/44/EC into the Romanian law is complete. The table below shows how each article has been transposed in the national legislation and their respective Articles into the local law. Each significant change is commented on.

Scope and definitions

With some exceptions and modifications, the definitions contained in Article 1 of Directive 1999/44/EC have all been transposed. The exceptions relate mainly to the definition of the term "producer", as well as some new definitions added.

In Romanian law the "producer" makes reference to the person who operates the sale, which might be the manufacturer, the importer or the distributor. This term also refers to the business operator or distributor who modifies the characteristics of the product by their activity. Additionally, the definition categorizes the distributor as "producer" if the importer is unknown, or if the distributor does not inform the consumer about the identity of the importer within 30 days. This article also introduces the term of "representative of the business operator", meaning that if the business operator/importer is not located in Romania, the representative registered in Romania is considered to be a "producer".

In addition to the definitions presented in the European Directive, the Romanian legislation also specifies the meaning of the following terms: 'latent defects' and 'average period of use'. A latent defect is "the qualitative deficiency of a product/service which cannot be detected by the consumer using the usual means of verification"².

For the average period of use, the legislation considers that it is "a timeframe mentioned by the producer or in the technical documents of the product or agreed between consumer and producer, during which the long-time utilization products must maintain their functional characteristics if the conditions of shipping/handling/stocking/use have been met." (Article 2 h), Law 449/2003)

¹Law No. 449/2003 on sales of consumer goods and the associated guarantees (article 2 d, 1-9). The full text is available at the following link: <http://www.alb-leasing.ro/en/documents/legislation/Legea%20449%20ANPC%20EN.pdf> (Last time accessed 4/11/2015)

²Notifications according to Article 32 and 33 of the CRD, available at http://ec.europa.eu/justice/consumer-marketing/files/ro_notification_art.33-csgd.pdf (Last time accessed 25/11/2015)

Rights of the consumer

In what concerns the conditions of replacement/repair of a product, the Romanian legislation goes beyond the article 3 (3) of the European Directive 1999/44/EC regarding delays and the means of replacement/repair. In addition to the Directive, the Romanian legislation also mentions that:

- A repair or replacement is considered as impossible if the seller cannot ensure the replacement with the same product or spare parts for the repair, as a consequence of a lack of supply or a lack of the concerned technology. (Article 11(3), Law 449/2003)
- The delay of repair/replacement cannot exceed 15 days starting from the date the consumer informed the seller about the lack of conformity of the product. (Article 11(4), Law 449/2003)
- In the case the product is repaired, the parts replaced in the product must be new. (Article 11(5), Law 449/2003)

Regarding the term “free of charge”, Article 12 tries to avoid any confusion and refers “to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials”.

Time limits

Besides the Directive, the Romanian legislator introduces in this article (Article 16, Law 449/2003) the terms of “*latent defect*” and “*average time of use*”. In addition to the period of 2 years:

- In the case of a latent (hidden) defect the consumer has the right to demand replacement/repair of the product even after 2 years (however the burden of proof is on the consumer).
- In case the average time of use of the product is less than 2 year, the delay of time applied by the Directive is reduced to this period of time. Therefore the coverage is tailored to the product expected lifespan.

Sanctions

This law (Art. 23, Law 449/2003) also specifies the sanctions applicable if the legislation is not respected and the fines applicable to these sanctions (ranging from 1,000 to 25,000 lei depending on the infraction).

1.1.2 Table of the transposition

Table 1 presents how each article of the Directive has been transferred into the Romanian legislation. Nonetheless, in respect to certain articles, there are some extensions/variations. Each of them is commented on below.

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

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Art. 1	Purpose of the present legislation: to protect the consumer.
	1.2.a	Def. Consumer goods	Art. 2. a)	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)
	1.2.b	Def. Consumer	Art. 2. b)	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.c	Def. Seller	Art. 2. c)	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	Art. 2. d)	Not transposed as such. The definition of producer is more complex and descriptive than the one in the Directive. Additionally to the Directive, the “producer” also makes reference to : Business operator or distributor who modifies the characteristics of a product by its activity The representative of the business operator/importer if they are not located in Romania The distributor if the importer is not known even if the producer is mentioned or if the distributor does not inform the consumer about the identity of the importer within 30 days Business operator who imports good in order to sell/rent/lease them.
	1.2.e	Def. Guarantee	Art. 2. e)	<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	Art. 2. f)	<i>Direct transposition</i> - Repair meaning bringing consumer goods into conformity with the contract of sale.
	1.3	Exclusion second hand	Art. 3.	<i>Direct transposition</i> - Exclusion of second-hand goods sold at a public auction which the consumer can attend
	1.4	Contracts of sale types	Art. 4.	<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	Art. 5.(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	Art. 5.(2)	<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	Art. 6.	<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	Art. 7.	<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. 8.	<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	Art. 9.	<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	Art. 10.	<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	Art. 11.	Not transposed as such. Additionally, to the Directive, the Romanian legislation also mentions that: A repair or replacement is considered as impossible if the seller cannot ensure the replacement by the same product or spare parts for the repair, as a consequence of a lack of supply or a lack of the concerned technology. The delay of repair/replacement cannot exceed 15 days starting from the date the consumer informed the seller about the lack of conformity of the product. In the case the product is repaired, the parts replaced in the product must be new.
	3.4	Free of charge	Art. 12.	Transposed, but the labour costs incurred are more detailed including also: costs of fault finding, use of experts, removal, and packaging.
	3.5	Reduction of the price	Art. 13.	<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	Art. 14.	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	Art. 15.	The person or persons liable against whom the final seller may pursue remedies are the producer or the business operator.
Time limits	5.1	Time period	Art. 16, Art. 16 ¹ , Art. 16 ²	Besides the Directive, the Romanian legislator introduces in this article the terms of “ <i>latent defect</i> ” and “ <i>average time of use</i> ”. In addition to the period of 2 years: In the case of a latent default the consumer has the right demand replacement/repair of the product even after 2 years. In case the average time of use of the product is less than 2 year, the delay of time applied by the Directive is reduced to this period of time.
	5.2	Defect confirmation	Art. 17.	<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	Art. 18.	<i>Direct transposition</i> - Any lack of conformity detected within six months of delivery of the goods is presumed to have existed at the time of delivery unless incompatible with the nature of the goods or the lack of conformity
Guarantees	6.1	Legally binding	Art. 19.	<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. 20.	<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. 21.(1)	<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 specified

	6.5	Respect 6.2-4	Art. 21.(2)	<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	Art. 22.	<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)	Art. 22.	<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	Art. 25.(2)	<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

The additional rights available to the Romanian consumer are given in the law 21/1992 on the protection of the consumers. This law regulates the goods and services markets and the main rights that should allow the consumer to have all the information they need when buying a product or service. Law nr. 296/2004 regarding the “Code of the consumer” stipulates the main principles that should support the consumers’ rights and the obligations of vendors³. The EU Directive 2011/83/EU on consumer rights was transposed into the Romanian law through the law 34/2014⁴ which entered into force on 13th June 2014.

For distance contracts and off-premises contracts, Articles 6 and 7 of the law 34/2014 describe the information that a consumer should receive. The trader shall provide the consumer with the following information in a clear and comprehensible manner:

- the main characteristics of the goods or services;
- the identity of the trader, such as his trading name, the geographical address and the telephone number;
- the total price of the goods or services inclusive of taxes, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges.
- the arrangements for payment, delivery, performance, the time which the trader takes to deliver the goods or to perform the service, and the trader’s complaint handling policy;
- in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees;
- the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- the functionality, including applicable technical protection measures, of digital content;
- any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

Right of withdrawal

The right of withdrawal and the conditions to exercise it are described in Articles 9-13 of the law 34/2014, which mentions that the consumer should have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any additional costs, other than those established by the law. The withdrawal right expires after 14 days in the case of:

- service contracts, from the day of the conclusion of the contract;
- sales contracts, from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:
- multiple goods ordered by the consumer in one order and delivered separately, from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;
- delivery of a good consisting of multiple lots or pieces, from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;

³ Retrieved from: http://www.dreptonline.ro/legislatie/codul_consumului.php

⁴ Ordonanța de urgență Nr. 34/2014 privind drepturile consumatorilor în cadrul contractelor încheiate cu profesioniștii, precum și pentru modificarea și completarea unor acte normative: Retrieved from http://www.anpc.gov.ro/anpcftp/legislatie/oug_34_140616.pdf

- contracts for regular delivery of goods during defined period of time, from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good;
- contracts for the supply of water, gas or electricity (where they are not put up for sale in a limited volume or set quantity) of district heating or of digital content which is not supplied on a tangible medium, from the day of the conclusion of the contract.

1.2 Enforcement and redress

Consumers can address a complaint to *Autoritatea Nationala pentru Protectia Consumatorilor* (ANPC), or rely on arbitration or mediation. The Romanian Civil Procedure Code provides the possibility for Parties to settle their disputes outside the courts of law when the rights and obligations in question can be subject to an extra judiciary settlement⁵.

Addressing a complaint via the ANPC

Generally consumer complaints are solved through administrative procedures⁶. The consumer may address a complaint to the ANPC⁷ or to the territorial Commissariats for Consumer Protection. The ANPC commissars have to analyse and solve the matter within 30 days. If the complaint is well-grounded, the commissars can take measures according to the legal rules, including the redress or the reparation for the non-conformity of the product or service. If the complaint is considered as unfounded, the reasons are communicated by the ANPC or by the territorial Commissariats for Consumer Protection to the consumer⁸.

In the section “How to file a complaint” the ANPC⁹ provides the consumer with instructions and complaint forms to use in this process. The claims addressed through the authority can only be initiated by consumers, with respect to the Art.2, 2 of the law nr. 21/1992, in which the consumer is defined as “any physical person or group of physical persons who act for purposes which are not related to his trade, business or profession”. The complaint will be treated by the authority as defined in the law nr. 27/2002, with the condition that the complaint be backed with all the necessary proof (receipt, fiscal record, contract or guarantee etc.).

Arbitration

The Civil Procedure Code (Book IV “About arbitration”, modified and completed by the law 59/1993) states that Parties can settle by arbitration any dispute regarding rights upon which they have waiving capacity except for the matters for which the court of law is the only jurisdiction allowed. In this case parties can resort to Arbitration Courts for the dispute settlement. The most widely known Arbitration Court is held by the Romanian Chamber of Commerce and Industries, whose competence is limited to Commercial matters. The general arbitration procedure is that claims can be submitted to arbitration only if the parties agree by means of arbitration clauses (“compromise clause”) included in the agreement which is the source of the dispute. Another alternative is by a separate

⁵ Law Europe International, 2009, Alternative Dispute Resolution in Romania, accessed 25th November 2015, http://www.laweurope-international.com/articles_pdf/Romania/Alternative_dispute_Romania.pdf

⁶ European Commission, National Consumer Organisations Country Files, Country File Romania (undated), accessed on 25 November 2015, http://www.laweurope-international.com/articles_pdf/Romania/Alternative_dispute_Romania.pdf

⁷ <http://www.anpc.gov.ro/>

⁸ European Commission, National Consumer Organisations Country Files, Country File Romania (undated), accessed on 25 November 2015, http://www.laweurope-international.com/articles_pdf/Romania/Alternative_dispute_Romania.pdf

⁹ <http://www.anpc.gov.ro/>

arbitration agreement (“compromise convention”) in which the parties recognise the jurisdiction of the Arbitration Court¹⁰.

Mediation

In Romania, the law of mediation has a distinct and unitary statute since 2006, enacted by Law nr. 192/2006 on mediation. The concept is not new in the national judicial system (the first alternative rules sought to solve commercial and labour disputes). As a general principle, mediation is not mandatory for the parties, being considered by the Romanian judicial system as a voluntary, impartial, neutral and confidential procedure meant to settle the dispute both without a court action. There is an obligation for the authorities with jurisdictional competences to inform the parties on the possibilities and advantages of using mediation procedure¹¹.

The general rule provided by the Romanian Civil Procedure Code (CPC) calls for an active role of the judge in trying the reconciliation of the parties on an amicable base, in any stage of a trial. The judge will invite the parties in a meeting of presenting the advantages of the mediation procedure (this meeting is free of charge for the parties). The law also provides civil fines if the parties fail to participate in an accepted meeting. The judge will dismiss the case if the parties are satisfied with a legally accepted transaction (i.e. a concluded transaction of sale)¹².

Court of Justice

If the economic operator or consumer is not satisfied by the ANPC decision or other modes of dispute resolution, he may appeal to the court of justice. In relation to the subject-matter, the court may be¹³:

- the administrative court,
- the court of general jurisdiction.

¹⁰ Law Europe International, 2009, Alternative Dispute Resolution in Romania, accessed 25th November 2015, http://www.laweurope-international.com/articles_pdf/Romania/Alternative_dispute_Romania.pdf

¹¹ Law Europe International, 2009, Alternative Dispute Resolution in Romania, accessed 25th November 2015, http://www.laweurope-international.com/articles_pdf/Romania/Alternative_dispute_Romania.pdf

¹² Law Europe International, 2009, Alternative Dispute Resolution in Romania, accessed 25th November 2015, http://www.laweurope-international.com/articles_pdf/Romania/Alternative_dispute_Romania.pdf

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Ordonanța Nr. 21/1992 privind protecția consumatorilor, available at: [http://www.anpc.gov.ro/anpcftp/legislatie/Ordonanta%20nr.%2021\(r2\)%20din%201992.html](http://www.anpc.gov.ro/anpcftp/legislatie/Ordonanta%20nr.%2021(r2)%20din%201992.html)

LEGEA Nr. 296/2004 privind Codul consumului, available at: http://www.dreptonline.ro/legislatie/codul_consumului.php

Ordonanța de urgență Nr. 34/2014 privind drepturile consumatorilor în cadrul contractelor încheiate cu profesioniștii, precum și pentru modificarea și completarea unor acte normative, available at: http://www.anpc.gov.ro/anpcftp/legislatie/ouu_34_140616.pdf

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Autoritatea Nationala pentru Protectia Consumatorilor, ANPC, <http://www.anpc.gov.ro/>

European Consumer Centre Romania: <http://www.eccromania.ro/EN>

