



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

Country fiche: Slovenia

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1. Slovenia

1.1 Regulatory background

This section describes the transposition of Directive 1999/44/EC on Consumer Sales in the Slovenian legislative system. This Directive was transposed on 17th January 2003 via the Act Amending the Consumer Protection Act¹. This act amended the general Consumer Protection Act² (hereinafter CPA) as of 28th March 1998, which had been since then the main legislative framework for Consumer Protection rules. This Act regulates the rights of consumers at the offering, selling and other forms of marketing of goods and services by companies and sets out the duties of public authorities and other entities that guarantee these rights. Section IV., entitled “Guarantee”, of the CPA contains articles which stipulate the consumer’s protection associated to guarantees.

In Slovenian legislation guarantees are mentioned as “mandatory guarantees” and “guarantees that cover clerical errors”. The liability for these “clerical errors”, seller’s obligations and some further general consumers rights, are nonetheless covered with Code of Obligation³ as of 1st January 2002. Furthermore, the Private International Law and Procedure Act⁴ as of 28 July 1991, is the law of reference for consumer rights in an international environment.

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC into the Slovenian Law can be considered complete. Table 27 in the next pages shows how each article has been accommodated in the national legislation. There are nonetheless some departures from the original provisions at the EU level: these refer to the definitions, the regulation for the remedies and the right of redress that the Slovenian law establishes. Each point is subsequently commented on below.

Definitions

The definitions contained in Article 1 of Directive 1999/44/EC are all transposed, with the exclusion of “repair”. Some of the transposed definitions are slightly modified, which is described in detail below.

The definition of “consumer” does not include “(...) any natural person who, in the contracts covered by this Directive, is acting for purposes which are not related to his trade, business or profession”, but instead the consumer according to Article 1 of CPA relates to a “natural person who acquires or uses goods and services for purposes which are not related to his trade or profession”. This introduces specifically the concept of consumption within the definition.

The definition of “consumer goods” is defined in the CPA in Article 1 as “goods” but also includes digital content⁵, expanding therefore the scope of the Directive.

¹ Act Amending the Consumer Protection Act. Link:

<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1408>. Accessed 17th November 2015.

² Consumer Protection Act. Link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO513>. Accessed 17th November 2015.

³ Code of Obligation. Link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263>. Accessed 17th November 2015.

⁴ Private International Law and Procedure Act. Link:

<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1258>. Accessed 17th November 2015.

⁵ Digital content is according to Consumer Protection Act all data which is produced and supplied in digital form.

The definition of “seller” is in Slovenian legislation understood as the concept of “company”. And the concept of company is according to Article 1 of CPA understood to be: “any legal or natural person who is engaged in a profitable activity, irrespective of its legal form or ownership structure”, maintaining nonetheless the core meaning set in the Directive. The CPA stipulates that the company is obliged to repair the goods.

The definition of “producer” is extended within the Slovenian legislation. According to Article 1 of CPA a producer is “a company that manufactures finished products or components or acquires basic raw material, or a person that with his name, trade mark or other distinctive mark on the product presents himself as its producer”. The importer and distributor of the product, the manufacturer's representative office in Slovenia or any other person purporting to be a producer by placing his name, trade mark or other distinctive mark can also be interpreted as being the producer.

The standard two-year guarantee applies for new goods, and one year for second hand goods, and the consumer must notify the seller of a defect within two months of discovery⁶.

Remedies

The remedies are not directly transposed, but they are extensively legislated in the case of Slovenia relative to the provisions of Directive 1999/44/EC.

The reference to Article 3.2 of Directive 1999/44/EC is Article 37.c of the Consumer Protection Act which stipulates: “The consumer who properly informed the company of the clerical error, has the right to require from the company either to:

- eliminate the defect in the goods or
- to return the amount paid in proportion to the error or
- to replace the defective goods with new flawless goods or
- to return the amount paid by the consumer.

In any case, the consumer has the right to demand a reimbursement for damage, particularly costs for materials, spare parts, labour, transfer and transport of products resulting from the fulfilment of obligations from the previous paragraph”. Remedies must be provided within 8 days, and in case of In the case of a replacement product or product part, a new legal guarantee period starts.⁷

The CPA does not therefore determine the hierarchy of requests, meaning that the consumer may require the seller to repair the goods or may require the seller to replace them, in either case, free of charge, unless this is impossible or disproportionate where upon the solution will be withdrawal or reduction of price. According to one commentator, the failure of transposition of the third paragraph of Article 3 of the Directive does not directly mean that the level of consumer protection is deteriorating, but it means that the “fair balance” between the rights of the seller and the consumer that the Directive wants to establish, is slightly tilted in favour of the consumer⁸.

⁶ See 'Notifications according to Article 32 and 33 of the CRD' at http://ec.europa.eu/justice/consumer-marketing/files/si_notification_art._33-csgd.pdf /. Status as of 19 May 2015, accessed on 14 October 2015

⁷ECC-Net, Country Fiche for Slovenia, accessed on 30th November at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_SL.pdf

⁸ Damjan Možina, Ph.D., (2012), Consumers rights on the basis of clerical error with contract of sale. Link: <http://www.pf.uni-lj.si/media/pravice.kupca.na.podlagi.stvarne.napake.pri.prodajni.pogodbi.pravni.letopis.2012.pdf>. Accessed 17th November 2015.

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 Slovenian legislative system. Not all articles 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 Slovenian legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	CPA. Art. 1	Not transposed directly ("Act regulates the rights of consumers at the offering, selling and other forms of marketing of goods and services by companies and sets out the duties of public authorities and other entities that guarantee these rights.")
	1.2.a	Def. Consumer goods	CPA. Art. 1	Concept of "goods"
	1.2.b	Def. Consumer	CPA. Art. 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	CPA. Art. 1	Concept of "company"
	1.2.d	Def. Producer	CPA. Art. 1	Expanded (see previous section)
	1.2.e	Def. Guarantee	CPA. Art. 15.b	<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		Not transposed
	1.3	Exclusion second hand		Not transposed
	1.4	Contracts of sale types	CPA. Art. 1	"Contract of sales is contract that commits company to give consumer the goods into his ownership and consumer commits to pay the purchase price to the company. Object of the contract of sales are both goods and services."
Conformity with the contract	2.1	Conformity requirement	CPA. Art. 37	(<i>direct</i> , merges article 2.1. and 3.1. of the Directive) - Direct transposition - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	CPA. Art. 37	Clerical error if good is not conformed
	2.3	Lack of conformity	Code of Obligation. Art. 460	<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	CPA. Art. 38	<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	CPA. Art. 37 Code of Obligation. Art. 458	(<i>direct</i> , merges article 2.1. and 3.1. of the Directive) - Direct transposition - Establishes that the seller is liable for any lack of conformity which exists at the time the good is delivered
	3.2	Remedies	CPA. Art. 37.c	Not transposed directly
	3.3	Conditions		Not transposed
	3.4	Free of charge	CPA. Art. 37.c	Not transposed directly

	3.5	Reduction of the price	CPA. Art. 21.b and 37.c Code of Obligation. Art. 484	Not transposed directly: "Consumer who properly informed company of the clerical error, has the right to require from the company either to eliminate the defect in the goods or to return the amount paid in proportion to the error or to replace defective goods with a new flawless goods or to return amount paid by the consumer. In any case, the consumer has the right to demand a reimbursement for damage, particularly costs for materials, spare parts, labour, transfer and transport of products resulting from the fulfilment of obligations from the previous paragraph."
	3.6	Contract rescission	Code of Obligation. Art. 458.3	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability		Not transposed
Time limits	5.1	Time period	CPA. Art. 37.b.1	Two years
	5.2	Defect confirmation	CPA. Art. 37.a.1	Two months
	5.3	Reversed burden	CPA. Art. 37.b.3	Six months
Guarantees	6.1	Legally binding	CPA. Art. 17	<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	CPA. Art. 16 and 18	<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	CPA. Art 18.1	<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	CPA. Art. 18.1	"Guarantee for goods sold in Republic of Slovenia must be issued in Slovenian language"
	6.5	Respect 6.2-4	CPA. Art. 18.2	<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		
	7.1	Reduced period (2nd hand)	CPA. Art. 37.b	One year for second-hand products
	7.2	Measures of protection	Private International Law and Procedure Act. Art. 22.4-5	"The agreement on the choice of law cannot exclude the mandatory rules on the protection of consumers' rights contained in the law of the country in which the consumer is domiciled "
	8.1	Supplementary rights		

National law and minimum protection	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 Slovenian Consumer and User are principally contained in the CPA. Article 4 of CPA stipulates the liability of the producer in case that goods produced by him cause death, physical injury, damages to health or causes damage to other objects. The producer is in this case obliged to reimburse the damages. Article 12.b stipulates that unfair advertising represents unfair commercial practices and is thus not allowed.

Regulations on goods, for which a conformity guarantee shall be issued

The Minister of Economy defines a list of goods for which the conformity guarantee (i.e. a guarantee for flawless operation of purchased goods, for which both the seller and producer are liable) is to be issued. The most recent list of goods was defined in the legislation called Regulations on goods, for conformity Guarantee Which Shall Be Issued as of 10 March 2012⁹.

Article 2 stipulates that conformity guarantee shall be issued for at least one year for the following types of goods:

- Products for household and similar use,
- Products in the automotive and similar industries,
- Machinery and equipment for agriculture and for the processing small areas,
- Information technology products,
- Sports equipment and props,
- Products in the area of radio communications, audio and video techniques and devices connected to them,
- Electro-medical devices intended for personal use,
- Devices for protection against fire,
- Wastewater treatment plants.

Article 3 stipulates that conformity guarantee shall be issued for a minimum period of one month for the following types of goods:

- Motorized road vehicles,
- Trailers,
- Vehicles with auxiliary motor.

1.2 Enforcement and redress

In case of imperfect goods, and if applying the conformity guarantee, according to Article 21.b of the CPA the consumer may demand repair of the goods from the seller. If goods are not repaired within 45 days from the day that a manufacturer, seller or authorized service received a request for repair, he/she must replace the goods with the same, new and flawless goods free of charge. If the seller does not repair or replace the goods within 45 days, the consumer may cancel the contract of sale or request a price reduction.

The inspection authority in charge of supervising implementation of the CPA and has been granted the right to impose the measures in accordance with the Law is the Market Inspectorate¹⁰. If the seller unjustifiably rejects the consumer's request, the Market Inspectorate may according to Article 71 of CPA issue a Decision which orders the seller to grant the request. Such a Decision is issued only if:

- the parties are not in dispute on the existence of a defect

⁹ Regulations on goods, for conformity Guarantee Which Shall Be Issued. Link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10954>. Accessed on 17th November 2015.

¹⁰ Official website: <http://www.ti.gov.si/>. Accessed on 17th November 2015.

- the consumer submits expert opinion on the existence of a defect
- the defect is clearly proven in another way.

If these conditions are not met, then the Market Inspectorate is not competent to issue a Decision.

In case of a consumer's claim for reimbursement of the part of the sales price as compensation for a defect, the Inspectorate may issue a Decision only if the partial defect in the goods is unambiguously determined.

Mediation

Slovenian consumers can also start the process of resolving dispute through the European Centre for Dispute Resolution¹¹ (ECDR). The process of resolving consumer disputes is a confidential, specialized procedure that is used to resolve contractual disputes between traders and consumers on the sale of goods or services that have not been resolved by negotiation between the parties. The process, which is free of charge to the consumer, is a combination of mediation and arbitration, headed by active or former judge-mediators. The process is easy and in writing, with a maximum duration of 30 days, but in any case ends with a final decision on the settlement of the dispute which is a final judgment. The process is as follows:

- Submission of request via web site¹²
- Obtaining the consent of the opposing party by ECDR. In the case that consent is not given, the procedure is not carried out;
- Submission of documentation;
- An attempt at mediation is tried;
- If mediation is not successful a written decision is issued.
- A second option at hand for the consumer is mediation by the Slovene Consumer's Association¹³.

Arbitration

If the consumer is not satisfied at the end of this process or in how the problem was resolved, it can go to other bodies of the public administration to ask for an arbitration process which is mainly regulated by the Arbitration Act¹⁴ as of 9 August 2008, Section IX. Consumer disputes covered under Articles 44 to 47 stipulate basic rules on arbitration between seller and consumer.

The participation in the process is voluntarily, but decisions are binding and have the effect of judgments. If still not satisfied by this process, or alternatively to it, consumers can opt for a court settlement.

Court settlements

Consumers also have the right to claim through a court. The principle Law involved under this process is the Civil Law (or more precisely the Obligation Law which is a branch of Civil Law). Jurisprudence is published on the web site of the Judiciary of Republic of Slovenia. A number of claims are related to situations where a customer's demand for reimbursement of part of the amount or entire amount paid for the goods has been refused while some sellers' claims relate to objections of the Inspectorate's Decisions to repair the goods or to fully or partially reimburse the customer.

¹¹ Official website: <http://www.ecdr.si/>. Accessed on 17th November 2015.

¹² Official website: <http://www.ecdr.si/slo/potrosniski-spori/>. Accessed on 17th November 2015.

¹³ For members of the Association only..Official website: <https://www.zps.si/>. Accessed on 17th November 2015.

¹⁴ Arbitration Act. Link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5288>. Accessed on 17th November 2015.

Cases

Box 1: Court case on lack of conformity from CPU¹⁵

Court case on demand for reimbursement of amount paid for the goods, Ljubljana 2013.

In the case, a consumer had purchased tiles which they later found to be defective. The consumer applied to the seller for replacement tiles of the same type but free from defects, and made this request within 8 days. However, the company did not wish to provide the requested remedy. A court found in favour of the consumer, but the company appealed.

In the appeal No VS15684 of 9 October, the court rejected company's complaint over the Market inspector's decision that it has to reimburse customer the amount paid for the defective goods.

¹⁵ Web site of the Judiciary of Republic of Slovenia. Accessed 17th November 2015. Available at: http://www.arhiv.uvp.gov.si/si/potrosniski_praktikum/sodna_praksa_sl/index.html

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