



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

Country fiche: Slovakia

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 978-92-79-53736-3	doi: 10.2838/612391	DS-02-15-954-EN-N

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1. Slovakia

1.1 Regulatory background

This section describes the transposition of Directive 1999/44/EC on Consumer Sales in the Slovak legislative system. Today, the main regulatory framework in the area of consumer protection in Slovakia is formed by the legislation and organizations presented below¹:

- Act on consumer protection²
- The Civil Code³
- The Commercial Code⁴
- Act on state control of the internal market in matters of consumer protection⁵
- Advertising Act⁶
- Act on consumer protection in case of doorstep selling and distance selling⁷
- Act on consumer credits⁸
- Act on general safety of goods⁹
- Act on Consumer Protection related to selling or providing of services based on a distance contract, or a contract concluded outside operational premises of the seller¹⁰

The National strategy for consumer policy 2014-2020 suggests that a unified legislation in the area of consumer protection will be formed within a prepared “Consumer codex”, or “Consumer code”. This codex will encompass the whole range of national and European legislation on consumer protection, which is actually dispersed across the aforementioned acts. The idea of a consumer codex was first introduced in 2012/13. However, it wasn't until mid-2014 the codex was formalized within the National strategy of consumer policy 2014-2020 as one of the goals for this period. Preliminary entry into force was set for 2015¹¹.

1.1.1 Transposition of Directive 1999/44/EC

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (further referred to as “The Directive”) was implemented into the Slovak legislation through the

¹ The mentioned legislation can be found on the following webpage:

http://www.sbagency.sk/sites/default/files/file/ochranna_spotrebiteľa.pdf

² Zákon č. 250/2007 Z.z. o ochrane spotrebiteľa v znení neskorších predpisov (available at: <http://www.zakonypreludi.sk/zz/2007-250>)

³ Predpis č. 40/1964 Zb. Občiansky zákonník (available at: <http://www.zakonypreludi.sk/zz/1964-40>)

⁴ Predpis č. 513/1991 Zb. Obchodný zákonník (available at: <http://www.zakonypreludi.sk/zz/1991-513>)

⁵ Zákon č. 128/2002 Z.z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa (SOI) (available at: <http://www.zakonypreludi.sk/zz/2002-128>)

⁶ Zákon č. 147/2001 Z.z. o reklame (available at: <http://www.zakonypreludi.sk/zz/2001-147>)

⁷ Zákon č. 108/2000 Z.z. o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji (available at: <http://www.zakonypreludi.sk/zz/2000-108>)

⁸ Zákon č. 129/2010 Z.z. o spotrebiteľských úveroch (available at: <http://www.zakonypreludi.sk/zz/2010-129>)

⁹ Nariadenie č. 404/2007 vlády o všeobecnej bezpečnosti výrobkov (available at: <http://www.zakonypreludi.sk/zz/2007-404>)

¹⁰ Zákon č. 102/2014 Z.z. o ochrane spotrebiteľa pri predaji tovaru alebo poskytovaní služieb na základe zmluvy uzavretej na diaľku alebo zmluvy uzavretej mimo prevádzkových priestorov predávajúceho a o zmene a doplnení niektorých zákonov (available at: <http://www.zakonypreludi.sk/zz/2014-102>)

¹¹ Ministry of economy (2014). “Návrh Stratégie spotrebiteľskej politiky Slovenskej republiky na roky 2014 – 2020”.

amendment of the Civil Code by adopting Act No. 150/2004, which entered into force on 1st April 2004.

Definitions

First of all, during the transposition of the Directive into the Slovak legislative system, the definition of “consumer goods” was broadened in comparison to the Directive, considering that in the Slovak implementation the consumer goods also include electricity, gas, water and heat supplied to consumers¹².

Moreover, there has been some criticism to the manner in which the Directive was transposed. For example, despite the fact that the Directive discusses mainly classic *liability for defects* (goods already damaged at the time of sale), this matter was transposed into the area of *quality guarantee* (preventing goods to have flaws after the sale). As such, this made the requirements stricter for the sellers. This transposition is deemed “mechanical”¹³, as all time limits in guarantees and in contracts for the supply of goods were automatically prolonged to 24 months. No specific deadline was introduced for the notification of the defect, so this also became a de facto 24 month time limit (i.e. equal to the legal guarantee period). For second hand goods, the purchaser and seller may agree a shorter period of not less than one year¹⁴.

Another aspect is that sellers may always decide to offer a new replacement good, instead of repairing the defective good, if it does not impose serious difficulties (§622 (3) of the Civil Code). This is however, in contrast to the Directive, which gives a choice to the consumer (Article 3-3 of the Directive).

Moreover, during the transposition into Slovak legislation, part of the Directive concerned with the Right of redress (Article 4) was omitted. This area of consumer protection is the subject of trade law and covered in Commercial Code (Act No. 513/1991). As such, it is possible that it will be necessary to interpret the norms of Slovak Commercial Code in matters dealing with the Article 4 of the Directive¹⁵.

Remedies

If the good has been replaced, a new 2-year legal guarantee begins¹⁶.

1.1.2 Table of the transposition

The following table provides an overview of the transposition of the Directive into the Slovak legislative system.

¹² §2 (f) of the Act on Consumer Protection

¹³ Source: Dobrovičová (2007). “Vplyv medzinárodného a európskeho práva na právny poriadok Slovenskej republiky”. Almanac of contributions.

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 Source: Dobrovičová (2007). “Vplyv medzinárodného a európskeho práva na právny poriadok Slovenskej republiky”. Almanac of contributions.

¹⁶ ECC-net, Country Fiche for Slovakia (undated), available at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_SK.pdf

Table 1: Transposition of Directive 1999/44/EC in the Slovakian legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose		Not transposed
	1.2.a	Def. Consumer goods	§2 (a) of the Act on Consumer Protection	"Natural person, which in relation to the consumer contract does not act within the scope of their business activity, employment, or profession"
	1.2.b	Def. Consumer	§2 (f) of the Act on Consumer Protection	Definition includes also electricity, gas, water and heat supplied to consumers
	1.2.c	Def. Seller	§2 (b) of the Act on Consumer Protection	"a person, which in relation to the consumer contract acts within the scope of their business activity, or profession, or person who acts in their name, or in their account"
	1.2.d	Def. Producer	§2 (c) of the Act on Consumer Protection	Definition includes also persons within the supply chain, who's activity may impact the safety characteristics of the product
	1.2.e	Def. Guarantee	§502 of the Civil Code	There is no explicit definition of a guarantee. The concept of a guarantee is more generally described.
	1.2.f	Def. Repair	-	Not identified
	1.3	Exclusion second hand	-	Option of exclusion not used
	1.4	Contracts of sale types	§613 of the Civil Code	<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	§4 (1) of the Act on Consumer Protection §616 of the Civil Code	This paragraph states the obligations and requirements on the seller, including the obligation to sell products that conform to quality standards and agreed price. It does not explicitly state "conformity with the contract of sale" as mentioned in the Directive. However, the Civil Code requires that goods must correspond with the seller's description and possess the quality stipulated by contract or legal regulations.
	2.2	Good conformity	84/2008 Art.2.1	<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	-	
	2.4	Seller statements	§496 of the Civil Code	This part of the Directive was not identified in the transposition to Slovak legislation. The Civil Code only states that "an agreement on the characteristics, purpose and quality in contracts of sale is considered such fulfilment, about which the consumer demonstrated interest and which is consistent with the description provided by the supplier, manufacturer or his representative in any publicly accessible form, in particular advertising, promotion and labelling of goods".
	2.5	Installation	-	Not identified

Rights of the consumer	3.1	Liability	§619 of the Civil Code	<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	§622 (1,2) of the Civil Code	<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	§622 (3) of the Civil Code	The seller may always decide to replace the defective goods, instead of fixing the defect, if this does not impose serious inconvenience. The Directive states that such choice is to be made only by the consumer.
	3.4	Free of charge	§622 (1) of the Civil Code	<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	§623 (2) and §624 of the Civil Code	<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	§618 and §623 (1) of the Civil Code	Paragraph §618 states that consumers are entitled to a lower price if the goods have minor issues, which do not impact the use of the goods. However, there is no mention of contract rescission. On the other hand, paragraph §623 (1) states that consumers are entitled to rescind the contract only if the issues on goods disable their proper use. Thus it is indirectly in compliance with the Directive.
Right of redress	4	Final seller liability	-	Not identified
Time limits	5.1	Time period	§620 of the Civil Code	<i>Direct transposition</i> - The seller shall be held liable if the lack of conformity becomes apparent within two years from delivery of the good
	5.2	Defect confirmation	§599 and §626 (3) of the Civil Code	Option of 2 month period not used.
	5.3	Reversed burden	§508 of the Civil Code	<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	§619 of the Civil 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	§502 (3) of the Civil 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	§620 (4) of the Civil 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	-	Option of specific language requirement not used.
	6.5	Respect 6.2-4	§502 (3) of the Civil Code	<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	§53 of the Civil Code and §620 (2) of the Civil Code	<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)	§53 of the Civil Code and §620 (2) of the Civil Code	<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		Not transposed
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

As it was mentioned before, the Consumer Protection Act describes a consumer as any “natural person, who in relation to the consumer contract does not act within the scope of their business activity, employment, or profession”¹⁷. The rights of consumers in Slovakia are described in the Consumer Protection Act (§3 1-6)¹⁸:

- Every consumer has the right to products and services “in general quality”¹⁹, to make a complaint, to compensation, to education, to information, to protect their health, safety and economic interests and the right to submit motions and complaints to supervising authorities.
- The consumer's right to information is ensured by the responsibility of a public authority to publish final decisions on matters related to the provisions of the Consumer Protection Act, as well as other specific rules governing consumer rights. If the consumer exercises his right to be present at the final decision made at the headquarters of the issuing public authority, they have the right to make notes and transcripts of that decision. The consumer also has the right to request that the public authority make a copy of the decision. The costs of producing a copy are borne by the consumer.
- Every consumer has the right to protection against unfair terms in consumer contracts.
- Every consumer has the right to join with other consumers into associations and through these associations, in accordance with the law, may protect and promote legitimate interests of consumers, as well as to apply the law against persons who have caused damage to consumer rights.
- Consumers have a right to seek protection of their rights at court against the violation of these rights and other obligations provided by the law. Consumers who successfully prove infringement of rights or obligations stipulated in the Consumer Protection Act and special regulations in court, have the right to obtain financial compensation.²⁰

Other identified additional rights related to guarantees include the following:

- Except for quickly perishable or used goods, the seller is liable for defects that occur within the warranty period (guarantee) (§ 619 (2) of the Civil Code).
- In case there is a replacement of goods, the guarantee period shall begin to run again from the date the new goods were received. The same applies for replacement parts or components which are covered by guarantee (§ 627 (2) of the Civil Code).

1.2 Enforcement and redress

Consumers should address their claims at first to the seller through means of an administrative claim. The process of administrative claims is described in the § 18 of the Act on Consumer Protection. The seller is obliged to inform the customer about the conditions and means of an administrative claim. The consumer has a right to file his claim in any premises of the seller. The administrative claim has to be handled within 30 days. In the first twelve months after product purchase, the seller is able to refuse dealing with

¹⁷ §2 (a) of the Act on Consumer Protection

¹⁸ Cited as given in the law

¹⁹ This term is as written in the Act, §3 number (1)

²⁰ An additional right was conferred to consumers regarding introduction of the Euro: “Every consumer has the right to increased protection of their economic interests in the process of the introduction of the Euro in the Slovak Republic. Consumers have the right to information on prices in the Slovak currency as well as in Euro under special regulations and they have the right to access goods and services at prices that are not increased due to costs and expenses related to the introduction of the Euro.”

a claim only based on technical expertise. The seller cannot charge the cost of this to the consumer²¹.

Mediation

The use of mediation is defined by Act No. 420/2004 Coll. on Mediation. The concerned parties solve the conflict through their legal relationship with a mediator. It is used instead of court action and the fee is usually 10 per cent of the disputed amount²². A list of all mediators can be found on the web page of the Ministry of Justice or the Slovak Chamber of Mediators²³.

Court

Consumers also have the right to settle their claims through a court. This could be done after the negotiation with the seller was not efficient or if the consumer chose not to proceed with an out-of-court settlement. Claims are settled through a local court (first level court), while appeals are settled through a regional court (second level court)²⁴. The main legislative acts involved in consumer rights protection are Act No. 250/2007 Coll. on Consumer Protection and Act No. 40/1964 Coll. Civil code.

Cases

There have been some court cases due to buyer-seller conflicts regarding guarantees for consumer goods in Slovakia.

Box 1: Court case about period of guarantee²⁵

Court case 3 Cdo 210/2010 about period of guarantee - The period of guarantee begins with the acceptance of the product and not with the conclusion of the sales contract.

According to the § 621 of the Civil code the period of guarantee begins with the acceptance of the product by the buyer and thus the day the buyer took possession of the item is the beginning day of the period of guarantee.

Box 2: Court case about guarantee claims²⁶

Court case 4 Cdo 10/2009 about guarantee claims - Right of the buyer to choose between replacement of the good and the recession from the contract in case of a removable defect.

According to § 623 of the Civil code, the buyer has a right to recede from the contract in the case that the defect is not removable. However, the same rights apply for the buyer even in the case that the defect is removable but the buyer is not able to use the product properly due to repeated defects after the repair or due to more defects.

²¹ § 18 of the Act on Consumer Protection

²² Act No. 420/2004 Coll. on Mediation

²³ <http://www.komoramediatorov.sk/>

²⁴ § 9 and § 10 of the Act No. 99/1963 Coll, Civil Court Code

²⁵ Supreme Court of the Slovak republic (2010). "Decision of the Supreme Court of the Slovak republic number 3 Cdo 210/2010" (available at: http://www.supcourt.gov.sk/data/att/1544_subor.pdf)

²⁶ Supreme Court of the Slovak republic (2009). "Decision of the Supreme Court of the Slovak republic number 4 Cdo 10/2009" (available at: http://www.supcourt.gov.sk/data/att/7592_subor.pdf)

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