

Impact Assessment on Extending the Scope of the Commission Proposal on Online Sales of Goods to Offline Sales - Survey questionnaire for Business organisations-national level

Fields marked with * are mandatory.

1

Identification of the respondent

Please provide the following details.

- * 1 Your full name and the name of the entity on whose behalf you are replying.

Dr. Rosemarie Schön
Austrian Federal Economic Chamber (WKÖ)

- * 2 Country where you live or, if you reply on behalf of an entity, the country where it has its headquarters/ place of establishment.

Austria

- * 3 Your email.

rp@wko.at

* 4

Category of the entity on behalf of which you are replying (e.g. consumer organisation, business organisation, SMEs organisation etc.) Please, insert the contact details of the entity.

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Confidentiality

* 5 Please, select the relevant option:

- Can be used to the purposes of the present analysis, including your name or that of your organisation (I consent to use of all information in my contribution and I declare that none of it is under copyright restrictions that prevent publication).
- Can be used to the purposes of the present analysis in an anonymous way (I consent to use of all information in my contribution except my name/the name of my organisation, and I declare that none of it is under copyright restrictions that prevent publication).

3

Please, select the relevant option:

This survey aims to collect information for the ‘Impact Assessment of proposed substantial EP amendments extending the scope of the Commission proposal on online sales of goods to offline sales’ that Europe Economics and Milieu Ltd. are currently carrying out at the request of the European Parliament’s Committee on Internal Market and Consumer Protection (IMCO). The European Parliament is considering extending the scope of the Commission’s proposed Directive [1] (hereafter referred to as the proposed Directive) to **offline** sales of goods (amendments **29** extending the scope to offline sales of goods and amendment **64** repealing Directive 1999/44/EC on consumer sales and guarantees [2]). Offline sales include face-to-face/counter sales.

The table below outlines the key changes brought by the proposed Directive and the EP amendments vis-à-vis Directive 1999/44/EC currently implemented by Member States.

Key aspects	Directive 1999/44 (Minimum harmonization: <u>Member States may go beyond the requirements of the Directive</u>)	Proposed directive (Full harmonization for <u>online sales</u>)	EP amendments (Full harmonization for <u>online and offline sales</u>)
Shift of the burden of proof period ³	6 months	2 years	6 months Extended to offline sales
Hierarchy of remedies	The consumer can first ask for repair or replacement, and only after for the price reduction or termination of the contract (Minimum harmonisation: MS can go beyond the requirements of the Directive)	The hierarchy of remedies of D. 1999/44 is upheld and further clarified: <i>If the seller does not repair/replace within a reasonable time, the c. has r. to price reduction/termination</i>	The hierarchy of remedy is upheld and extended to offline sales
Notification duty by consumers of defective goods	Member States can introduce a notification duty	No	No (also for offline sales)
Legal guarantee period	2 years (Minimum harmonisation: MS can go beyond the requirements of the Directive)	2 years fix	2 years fix Extended to offline sales
Legal guarantee period for second hand goods	1 year (minimum harmonisation: MS can go beyond the requirements of the Directive)	2 years	1 year Extended to offline sales
Consumer's right to terminate the contract in case of minor defects	No (minimum harmonisation: MS can go beyond the requirements of the Directive)	Yes	No (also for offline sales)

Objective of the study

The objective of this study is to assess the impacts of **Amendments 29** and **64**. Specifically, the study aims to assess the impacts on the **offline market segments** of having one single set of EU harmonized rules for both online and offline sales.

To this end, consumer/ business/SMEs organisations as well as legal professionals at EU and national level will be consulted via survey in order to gain insights into the impacts of the proposed legal changes on consumer protection and businesses [4].

The questionnaire is structured in three parts:

Section I discusses the general impacts that would be produced by the harmonization of rules across sales channels and across Member States.

Section II aims to assess the specific impacts of the extension of the scope of the proposed Directive to offline sales, with regard to four key aspects:

- **Aspect I:** Hierarchy of remedies available to consumers and possibility to terminate the contract in case of minor defects
- **Aspect II:** Periods of reversal of the burden of proof
- **Aspect III:** Legal guarantees including for second hand goods
- **Aspect IV:** Notification duty by consumers

Finally, **Section III** aims at collecting the feedback of stakeholders on the potential value of EU action in this area and possible policy options related to the harmonization of consumer legislation across sales channels and EU Member States.

Please, complete all the relevant sections according to your knowledge of and expertise in this field. Any additional comments or suggestions regarding literature sources which could be helpful for our assessment are welcome. The results of this survey will be used for analytical purposes in aggregated form without disclosing any personal information.

4 Questionnaire

Please, reply to the questions with regard to the situation in **your country**.

5

Section I: Impacts of harmonization of rules across sales channels and across Member States

Impacts of harmonization of rules across sales channels and across Member States

*The proposed Directive aims to establish a full harmonization of EU rules on online and other distance sales of goods across Member States and, thus, reduce the existing legal fragmentation at national level. In turn, the European Parliament aims to extend the scope of the mentioned Directive to **offline** sales and have one single set of rules for both online and offline sales across Member States (see background information). In particular, Amendments 29 and 64 harmonize rules across **sales channels** (offline and online) and across **Member States**.*

Impacts of harmonisation of rules across sales channels

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If the same rules (e.g. rules on consumers' remedies such as compensation/replacement of defective goods, burden of proof in the case of lack of conformity of goods, legal guarantee period, consumers' notification duty of defective goods) were adopted for **online** and **offline** sales, in your opinion, what would be the impact in terms of:

	Very positive	Rather positive	Neutral	Rather negative	Very negative	Don't know /no opinion
Level playing field online vs offline market segments	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification of rules for businesses selling both online and offline	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased competition between online sellers and offline sellers	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer confidence when purchasing offline	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer confidence when purchasing online	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other impacts	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7

Please motivate your reply. Please, specify if different impacts are expected on SMEs.

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As a general remark we would like to stress that impacts cannot be evaluated without knowing the content of the rules.

Furthermore, we would like to point out very clearly that the existing Sale-of-Consumer-Goods-Directive (1999/44) does not differentiate between online and offline sales. To our knowledge none of the Member States applies such a differentiation. Discussing different regimes for the two sales channels, thus, actually creates an artificial problem that would not exist if the Commission had followed her own better regulation commitments: Evaluation of existing consumer rules and if necessary revision of the Sale-of-Consumer-Goods-Directive.

Against the background of the proposal itself and the numerous amendments tabled for the proposed directive aiming at tightening the legal guarantee regime in comparison to the Sale of Consumer Goods Directive and amendments sticking to minimum harmonisation, it can be assumed that at the end businesses from all sectors will face new and burdensome provisions. Nevertheless the overall situation (fragmentation across Member States) would remain the same. We would consider this a "lose-lose"- situation.

But even if the envisaged goal of full harmonisation was reached by paying the price of an even higher level of consumer rights than today, the following aspects have to be taken into account:

Even now 55% of those retailers that already sell cross-border and 61% of retailers that consider to sell cross-border and 60 % of retailers that don't sell online at all consider the costs ! of guarantees and returns as an obstacle for e-commerce. They mainly argue that guarantees are "too expensive" [Eurobarometer 413, 34, 40, 48]. In view of the fact that for a great majority of businesses costs ! of guarantees are a problem with regard to distance selling, it seems absurd to try to boost cross-border e-commerce with a fully harmonised regime that tightens up the provisions on legal guarantees to the detriment of traders and that would make legal guarantees even more cost-intensive for them.

In this context it should be further emphasised that amongst retailers, which currently do not sell online at all, 72% have no intention to start online sales in the next 12 months. 15% are at least interested in selling online to consumers in their own country and 10% say they are interested in selling online to consumers both in their own and in other countries (Eurobarometer 396). Tightening up legal guarantee provisions will certainly not be an incentive to engage in e-commerce in the future. According to this Eurobarometer survey there has already been a decrease compared to 2012 in the proportion of retailers who report using e-commerce. That the general use of e-commerce still increased, can only be explained by the fact that fewer but larger providers use it as a distribution channel.

Large companies would be able to pay a "higher price" for full harmonisation as they are able to cope with more severe provisions more easily. SMEs on the other hand would be deterred by them.

Furthermore, especially SMEs that do not engage in cross border e-commerce at all and certainly won't do it in future (think of the huge amount of small local shops and crafts) will absolutely have no understanding for more severe legal guarantee provisions paid as a price for full harmonisation for the benefit of large e-commerce traders.

8 If the same rules were adopted for online and offline sales, which groups of businesses would be mostly affected and why?

Again it should be emphasised that the current regime does not differentiate between online and offline sales.

9 Do you think that the harmonisation of rules for online and offline sales could bring benefits to businesses by contributing to:

	Yes, to a large extent	Yes, to a limited extent	No	Don't know /no opinion
Increased online purchases	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Increased offline purchases	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

10 Please motivate your reply. Please, specify if different impacts are expected on SMEs.

Again it needs to be emphasised that there is no differentiation between online and offline sales in force.
 Furthermore, we would like to point out that a higher level of consumer protection does certainly not increase the purchasing power of EU citizens.
 Therefore, the level of consumer protection will not have any impact on online or offline purchases.

11 Do you think that the harmonisation of rules for online and offline sales could contribute to:

	Yes, to a large extent	Yes, to a limited extent	No	Don't know/no opinion
Shift of businesses from offline to online channels	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shift of businesses from online to offline channels	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Incentive for businesses to use both channels (online and offline)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

12

Please motivate your reply. Please, specify if different impacts are expected on SMEs

A stricter consumer protection regime and actually any intensification of the current legislative system will eventually lead to a decrease of businesses engaging in e-commerce becoming active cross-border. (see our answer to question 1)

13 If different sets of rules remain in place for online and offline sales, in your opinion, to what extent would businesses be inclined to shift their transactions to the segment where more favourable rules for businesses are offered?

Again it needs to be emphasised that at the moment neither the legislation on European level nor on national levels does differentiate between online and offline sales. Besides, even the currently negotiated proposal for a Directive on Contracts for the supply of digital content does not distinguish between these two sales channels.

Impacts of harmonisation of rules across sales channels and Member States

14 If the same rules for online and offline sales and across Member States were adopted, in your opinion, what would be the impact on businesses?

	Very positive	Rather positive	Neutral	Rather negative	Very negative	Don't know /no opinion
Level playing field across Member States	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification of rules for businesses selling across borders both online and offline	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumers' confidence when purchasing across borders	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competitiveness of EU businesses vs non-EU businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other impacts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

15 Please motivate your reply. Please specify if different impacts are expected on SMEs

Increasing the level of the current consumer protection regime would have massive negative impact on businesses in Europe. Particularly, the competitiveness of companies in Europe would suffer under new burdensome provisions. A study carried out under the auspices of the Polish Ministry of Foreign Affairs showed that consumers always tend to buy their products on the less expansive markets (ŚLEDZIEWSKA/ PUGACEWICZ/ SOBOLEWSKI ua, 71ff.). Fulfilling new obligations because of an increase of consumer protection laws, will eventually lead to higher prices of goods. As only European businesses will have to fulfil such a new consumer protection legislation (de facto, because the rights cannot be enforced towards businesses outside the EU), the competitiveness of European Businesses will be undermined.

16 Do you think that the harmonisation of rules for online and offline sales and across Member States could bring benefits to businesses by contributing to:

	Yes, to a large extent	Yes, to a limited extent	No	Don't know/no opinion
Increased cross-border online purchases	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Increased cross-border offline purchases	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Incentive for businesses to trade across border online	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Incentive for businesses to trade across border offline	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

17 Please motivate your reply. Please specify if different impacts are expected on SMEs

Even if some of the “big” companies might profit from it, an immense number of SMEs would be negatively affected if fully harmonised but more severe provisions would be introduced. Fulfilling new and more severe obligations will increase costs, complications and particularly legal uncertainty for SMEs not only in Austria, but rather all over Europe and in the end it will further deter businesses from the use of e-commerce. This is a trend that already exists in Europe. According to Eurobarometer 396, there has been a decrease compared to 2012 in the proportion of retailers who report using e-commerce. In some Member States this decline is significant: UK (-40 pp), Netherlands (-34 pp), Luxemburg (-23 pp), Ireland (-22 pp), Denmark, Hungary, Croatia (-19 pp), Finland, Czech Republic, Malta (-18 pp), Slovakia (-17 pp). Furthermore, increasing the level of consumer protection can certainly not increase the purchasing power of European consumers.

Even if the (limited) aspects of legal guarantees were fully harmonised, traders nevertheless would have to seek legal advice to adapt to contract and consumer protection laws of each Member State they wish to sell because of the many other differences in contract/consumer protection laws (e.g. laws on unfair contract terms).

Even if the (limited) aspects of legal guarantees were fully harmonised, traders nevertheless would have to seek legal advice to adapt to contract and consumer protection laws of each Member State they wish to sell because of the many other differences in contract/consumer protection laws (e.g. laws on unfair contract terms).

Other impacts of harmonisation

18 Can you provide an estimate of contract law-related costs for one company to adapt to new rules? Can you provide estimates in terms of man-days needed and related financial/monetary costs?

It is simply not possible to respond to such a general question in a precise and thoroughly way. In any event it needs to be emphasised that SMEs, without an own legal department, are disproportionally affected by the adaptation to new rules. Bearing in mind that they need to inform themselves, train their employees, adapt their intern instructions, adapt their internal guidance etc. to the new legal situation, it is obvious that the impact of new rules is significant for them. Furthermore, introducing new rules does also increase legal uncertainty, not only for companies, but also for consumers.

19 Would contract law-related costs be proportionate to the possible benefits (e.g. increased consumer confidence, increased online and/or offline sales, increase of cross-border trade)?

- The costs are more or less equal to the benefits
- The costs are somewhat greater than the benefits
- The costs far exceed the benefits
- The benefits are somewhat greater than the costs
- The benefits far exceed the costs
- No opinion

20

Please motivate your reply.

21 In the long term, would contract law-related costs be offset by possible savings, due to reduced costs for one company to adapt to different rules across Member States and sales channels?

- The costs are more or less equal to savings
- The costs are somewhat greater than savings
- The costs far exceed the savings
- The savings are somewhat greater than the costs
- The savings far exceed the costs
- No opinion

22

Please motivate your reply.

23 How costs and benefits (including savings) would compare in the case of SMEs?

As already stated SMEs, without an own legal department, are disproportionately affected by the adaptation to new rules. With regard to SMEs the disproportionality is particularly high.

In general, full harmonisation was always the preferred regulatory option from the point of view of businesses. Unfortunately, this concept bears the risk of completely losing sight of the aim for well-balanced solutions. Given the pressure of full harmonisation, some seem eager to maintain the highest level of consumer protection of each Member State, leaving the interests of businesses and especially SMEs unconsidered.

24 How costs and benefits (including savings) would compare in the case of businesses using only one sales channel (i.e. offline or online)?

It is simply not possible to respond to such a general question in a precise and thoroughly way.

25 How costs and benefits (including savings) would compare in the case of businesses trading only domestically (i.e. not engaged in cross-border trade)?

In the light of the currently negotiated proposal for a regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market it is not yet certain whether or not businesses will still have the possibility to trade only domestically.

As already mentioned above especially SMEs that do not engage in cross border e-commerce at all and certainly won't intend to do it in future (think of the huge amount of small local shops and crafts) will absolutely have no understanding for more severe legal guarantee provisions paid as a price for full harmonisation for the benefit of large e-commerce traders.

6

Section II: Specific Impacts

This section contains questions on specific aspects of consumer protection.

Aspect I: Hierarchy of remedies available to consumers

According to the proposed Directive in case of a lack of conformity of the good, if the seller does not repair/replace it within a reasonable time, the consumer has the right to price reduction or termination of the contract (hierarchy of remedies). Under the proposed Directive, consumers have the possibility to terminate the contract also in cases of minor defects. Moreover, no remedy is foreseen in case of hidden defects.

26 Should a hierarchy of remedies, as foreseen by the proposed Directive, be introduced for both online and offline sales, which would be the impacts on businesses in your country?

- Very positive impact
- Rather positive impact
- No impact
- Rather negative impact
- Very negative impact
- Don't know/no opinion

27

Please motivate your replies and specify if impacts would be different for SMEs:

We would like to point out very clearly that at the moment a hierarchy of remedy exists for online and offline sales according to the Sales of Consumer Goods Directive and is applied in practice. So in fact the question is not to "introduce" such a hierarchy:

In the interest of a fair balance between sellers and consumers the already established hierarchy of remedies should be kept. In case of non-conformity, a trader should always have a second chance. Furthermore, a free choice of remedies cannot be a solution from an environmental perspective, as it would encourage a "throw away"- culture.

28 Can you please explain whether, in your opinion, businesses costs are likely to increase /decrease as a result of implementing a hierarchy of remedies in your country? Please, explain which costs would be most likely to increase/decrease and why. Where possible, please, provide a quantification of costs.

Maintaining the principle of hierarchy of remedies would neither increase costs nor decrease them, as this principle is already in force in 20 Member States of the European Union (Draft report of Pascal Arimont, 40, 41). Replacing this principle by a free choice of the consumer or by extending it, would, however, increase the costs for businesses massively. Furthermore, amending this fundamental principle, established in the overwhelming majority of the private law regimes in the European Union would be absolutely unjustified.

- 29 Should the possibility to terminate the contract also in cases of minor defects be introduced in your country, would business costs likely to increase or decrease? Please, explain which costs would be most likely to increase/decrease and why. Where possible, please, provide a quantification of costs.

Such a right would be comparable with the elimination of the hierarchy of remedies. As stated above, the elimination of this fundamental principle of the private law regimes of more than half of the European Member States would increase the costs for businesses massively.

- 30 Should the possibility to obtain a remedy for hidden defects of goods, after the expiration of the legal guarantee period, be removed, would business costs likely to increase or decrease? Please, explain which costs would be most likely to increase/decrease and why. Where possible, please, provide a quantification of costs.

The national Austrian private law regime has been proven to provide sufficient and satisfying remedies for consumers to exercise their rights connected to the existing legal guarantee.

Aspect II: Periods of reversal of the burden of proof

Under the proposed Directive, unless the seller proves otherwise, a lack of conformity which becomes apparent within 2 years of the delivery of the goods is presumed to have existed at the time of delivery unless this is incompatible with the nature of the goods or the lack of conformity. This 2-year period is reduced to 6 months by the amendments proposed by the EP.

- 31 In your opinion, what would be the impact on businesses in your country if the same 2-year period of reversal of burden of proof was adopted for both online and offline sales?
- Very positive impact
 - Rather positive impact
 - No impact
 - Rather negative impact
 - Very negative impact
 - Don't know/no opinion

Please motivate your replies and specify if impacts would be different for SMEs:

Provisions in the field of consumer law should be balanced, considering the legitimate interests of both consumers and business alike. Any extension of the presumption period does not meet these demands in the slightest and is definitely unacceptable from the business perspective. The solution reached in the current Sale-of-Consumer-Goods-Directive is, however, based on a period of 6 months, for which one could convincingly accept the reversal of the burden of proof.

The longer an item is used, the more likely it is that a defect will result from a handling error, malpractice or wear out. Upon these reasonable grounds the overwhelming majority of 25 Member States apply this six months period. Extending this period by law takes away the freedom of action of the company and further restricts commercial freedom.

Therefore, any extension of the presumption period would definitely have negative impacts especially on SME, because costs and the financial risks are the higher the less they can be neutralised by the "law of large numbers". This is clearly shown by Flash Eurobarometer 413 stating that the smaller the company, the more likely high costs for guarantees and returns are considered problems e.g. 55% of companies with 1-9 employees say guarantees and returns would be a problem compared to 41% with 50-249 employees, in case of companies with more than 500 employees the figure drops to 35%. A similar effect is also shown with respect of the company type: Companies that are part of an international group are the least likely to see the cost of guarantees and returns as a problem (34%) (Flash Eurobarometer 413, p 35). Therefore, our view is that half a year is the longest plausible time period for the legal presumption that the defect had already existed at the moment of the delivery of the good.

Within the EU only 3 Member States out of 28 provide, for whatever reason, a longer presumption period than 6 months. We would particularly advise against taking provisions of Member States as a rule model that apparently seem to place less value on a business friendly environment as their positions in the IMD World Competitiveness Ranking 2016 (<http://www.imd.org/wcc/news-wcy-ranking/>) might indicate.

- 33 Should a 2-year period of reversal of burden of proof be adopted in your country, would business costs (e.g. businesses' legal expenses incurred to demonstrate the lack of conformity of the good) likely to increase or decrease? Please, explain which costs would be most likely to increase/decrease. Where possible, please, provide a quantification of costs.

As stated above, any extension of the presumption period would definitely have negative impacts especially on SMEs, because costs and the financial risks are the higher the less they can be neutralised by the "law of large numbers". This is clearly shown by Flash Eurobarometer 413 stating that the smaller the company, the more likely high costs for guarantees and returns are considered problems e.g. 55% of companies with 1-9 employees say guarantees and returns would be a problem compared to 41% with 50-249 employees, in case of companies with more than 500 employees the figure drops to 35%. A similar effect is also shown with respect of the company type: Companies that are part of an international group are the least likely to see the cost of guarantees and returns as a problem (34%) (Flash Eurobarometer 413, p 35).

Furthermore, the costs for legal guarantees are one of the main reasons why business do not become active in e-commerce (see answer to question 1).

- 34 Should a 6-month period (instead of a 2-year period) of reversal of burden of proof be adopted, would business costs (e.g. businesses' legal expenses incurred to demonstrate the lack of conformity of the good) likely to increase or decrease? Please, explain which costs would be most likely to increase/decrease and why. Where possible, please, provide a quantification of costs.

It should be emphasised that this 6 months presumption period is already in force in Austria. Maintaining this time period would, thus, neither increase nor decrease the costs for businesses. As stated above 25 Member States apply this 6 months period and only 3 Member States provide a longer one.

Aspect III: Legal guarantees including for second hand goods

Under Directive 1999/44 the seller can be held liable for a period of no less than two years for defects that were present at the time of delivery. However, Member States can go beyond this requirement and establish a longer legal guarantee period.

The proposed Directive will establish a fixed 2-year legal guarantee period.

Under the proposed Directive the legal guarantee period for second hand goods is also 2 years. The period for second hand goods is reduced to 1 year by the amendments proposed by the EP.

35 Should a fix 2-year legal guarantee period be introduced for both online and offline sales in your country, which would be the impacts on businesses?

- Very positive impact
- Rather positive impact
- No impact
- Rather negative impact
- Very negative impact
- Don't know/no opinion

36

Please motivate your replies and specify if impacts would be different for SMEs:

The current two-year period has proven to be reasonable for consumers and businesses.

37 Should a fixed 2-year legal guarantee period be introduced also for second-hand goods, would business costs likely to increase or decrease? Please, explain which costs would be most likely to increase/decrease and why. Would these costs be any different for SMEs? Where possible, please, provide a quantification of costs.

The nature of second hand products require a shorter period of 1 year.

38 Should a fixed 1 year (not a 2-year) legal guarantee period be introduced also for second-hand goods, would business costs likely to increase or decrease? Please, explain which costs would be most likely to increase/decrease why. Would these costs be any different for SMEs? Where possible, please, provide a quantification of costs.

The nature of second hand products require a shorter period of one year. Such a fixed one year period would slightly reduce costs.

Aspect IV: Notification duties by consumers

Under Directive 1999/44/EC, in order to benefit from their rights, Member States can require that consumers must inform the seller of the defect within two months from its discovery. This notification duty will be removed under the proposed Directive.

39 Should the notification duties be removed for both online and offline sales, would business costs likely to increase or decrease in your country? Please, explain which costs would be most likely to increase/decrease why. Would these costs be any different for SMEs? Where possible, please, provide a quantification of costs.

The introduction of notification duties only makes sense if also obligations to examine goods are established. Establishing one of them without the other would not have any practical impact.

Section III: Policy Options

This section contains questions on the potential value of EU action in this area and possible policy options related to the harmonization of consumer legislation across sales channels and EU Member States.

- 40 In your opinion, is the EU intervention in this field necessary for both online and offline sales? Should this matter be decided by Member States or an EU action in this area would have an added value?

In general, full harmonisation was always the preferred regulatory option from the point of view of businesses. Unfortunately, this concept bears the risk of completely losing sight of the aim for well-balanced solutions. Given the pressure of full harmonisation, some seem eager to maintain the highest level of consumer protection of each Member State, leaving the interests of businesses and especially SMEs unconsidered.

41 In your opinion, which of the following options should be adopted at EU level in order to ensure a balance between consumer protection and the interests of businesses?

	Please describe below
Minimum harmonisation [5] of rules across Member States for online sales only	
Minimum harmonisation of rules across Member States for both online and offline sales	
Full harmonisation [6] of rules across Member States for online sales only	
Full harmonisation of rules across Member States for both online and offline sales	In general, full harmonisation was always the preferred regulatory option from the point of view of businesses. Unfortunately, this concept bears the risk of completely losing sight of the aim for well-balanced solutions. Given the pressure of full harmonisation, some seem eager to maintain the highest level of consumer protection of each Member State, leaving the interests of businesses and especially SMEs unconsidered.
Full harmonisation of rules across Member States with limited exceptions (possibility for Member States to maintain or offer different remedies)	

Endnotes

[1] Commission's Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015PC0635&from=EN>

[2] Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

[3] Unless the seller proves otherwise, a lack of conformity which becomes apparent within certain time of the delivery of the goods is presumed to have existed at the time of delivery unless this is incompatible with the nature of the goods or the lack of conformity.

[4] In line with the proposed Directive, businesses include both manufacturers and retailers (Article 2 of the proposed Directive: 'seller' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive');

[5] Minimum harmonisation means that an EU threshold is set which national legislation must meet. However, national law may exceed the terms of EU legislation if desired.

[6] Full harmonisation means that national law may not exceed the terms of EU legislation. In practice, this prohibits gold-plating of EU legislation (the practice of exceeding the terms of EU legislation) when it is transposed into national law.

Contact

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