



# Study on the costs and benefits of extending certain rights under the Consumer Sales and Guarantees Directive 1999/94/EC

## *Executive Summary*

March 2017

### **Study context and objectives**

The study is part of the ongoing Fitness Check of EU consumer and marketing law, and focuses on the Consumer Sales and Guarantees (CSG) Directive 1999/44/EC. This Directive provides consumers across the EU with a minimum level of protection by laying down a minimum set of rules on conformity with the contract and a set of remedies in case a good turns out to be faulty or not in conformity with its description.

This study responds to a number of aims:

- To determine the costs and benefits of extending the legal guarantee period to more than two years for all products or applying varying guarantee periods for a selection of products depending on product type, value or life-span as declared by the manufacturer;
- To determine the costs and benefits of uniform EU rules allowing the consumer to freely terminate the contract when the seller fails to repair or replace a defective good within a specified deadline;
- To determine the costs and benefits of introducing an obligation on sellers to inform consumers about the availability of spare parts and introducing an obligation on sellers to keep or facilitate access to spare parts for all or some products.

### **The current situation**

The CSG Directive is a minimum harmonisation Directive laying down a minimum legal guarantee period of two years. Whilst the CSG Directive provides that the contract may be rescinded where in case of non-conformity of the good the seller has not completed the remedy within a reasonable time, it does not, however, lay down a precise deadline<sup>1</sup>. It does not contain provisions regarding information about spare parts or rules about keeping spare parts either.

Several Member States have however, gone beyond the minimum rules provided for by the CSG Directive. Specifically:

- Five Member States have a longer guarantee period than provided for in the Directive. Sweden has a guarantee period of three years. In the Netherlands and Finland the legal guarantee is tied to the lifespan of the product. In the United Kingdom and Ireland consumers can claim a remedy for a faulty good if that fault becomes apparent, within a limitation period<sup>2</sup> of up to six years (five years in Scotland; six years in England, Wales and Northern Ireland).
- In nine Member States there is a specified timeframe within which a seller must repair or replace the goods. This is the case in Bulgaria, France and Luxembourg (one month), Czech Republic, Portugal and Slovakia (30 days), Hungary and Romania (15 days) and Slovenia (eight days).

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<sup>1</sup> According to Article 3(3) of the CSD: "Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the good."

<sup>2</sup> A period of time within which an individual may bring a claim. The periods are established in the statute of limitations, the Limitation Act 1980, accessible here: [<http://www.legislation.gov.uk/ukpga/1980/58>].

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- In eight Member States there are rules that place an obligation on retailers to keep or facilitate access to spare parts for varying lengths of time. This is the case in France, Greece, Malta, Portugal, Slovenia, Spain, and Sweden, while in Romania this obligation is for manufacturers (rather than retailers).
- In three Member States, retailers are obliged to inform consumers about the availability of spare parts. This is the case in France and Slovenia, as well as in Italy, albeit indirectly<sup>3</sup>.

### Potential impacts of uniform rules

Introduction of a **uniform legal guarantee period extending beyond two years** would result in a higher level of consumer protection in 23 Member States. Some consumer representatives and some national authorities also highlighted environmental benefits, including a possible reduction in waste and the potential for addressing planned obsolescence, and promote more durable products. Businesses and some national authorities however, pointed to potentially higher costs for businesses, more disputes between sellers and consumers (on issues such as cause of defect), and placing a burden on retailers in having to address problems with low-quality goods for which repair is no longer possible, thus leaving retailers with unusable products. Price increases were quoted by some business associations as a risk, though it is unclear to what extent those would be a significant factor in the medium to long run due to the effect of competition and innovation on prices. According to business interviews, over all product categories (different sectors may be impacted differently) an extension of the legal period to 3 or to 5 years is seen by 22 % and 37 % of respondents respectively to result in major costs, while 28 % and 36 % of respondents respectively expect no cost of such a measure.

According to the parallel Consumer Market Study to support the Fitness Check of Consumer Law (Lot 3), 96 % of recent problems reported with defective goods arose within two years of purchasing the product. In a Eurobarometer survey<sup>4</sup> 66% of European consumers said that they would be willing to pay more for a product if the guarantee period was extended to five years. Already, a significant proportion of consumers (22% of consumers across the EU-28) are purchasing commercial guarantees<sup>5</sup>. This suggests that consumers may be willing to pay (up to 7% of the price of certain white goods) for extra reassurance in the form of longer guarantee periods.

An extension of the legal guarantee period may affect retailers whose revenue model particularly includes paid repair services after the expiry of the legal guarantee or the sale of paid commercial guarantees<sup>6</sup>. There is little evidence that a uniform extension from two to three years would have significant negative impacts on the sales of such commercial guarantees: in Member States with a longer legal guarantee consumers still contract commercial guarantees and retailers have adapted their revenue models.

The introduction of a **differentiated legal guarantee period** established by the EU law would imply changes in national legislation of 26 Member States representing around 96% of the EU population and over 3.45 million retailers, or around 96% of retailers, i.e. all countries except those with a differentiated legal guarantee period (Finland and the Netherlands).

According to the business interview, 31 % of businesses expected major costs of such a system, whereas 30 % expected no costs. On the benefits side, 59 % of businesses saw no benefit from such a system.

Systems currently in place in the Netherlands and Finland are rather complex, despite the system in Finland seemingly leading to less dissatisfaction and having been in place for decades. There is limited evidence to suggest that a system could be devised at EU level that tackles complexity and can keep up

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<sup>3</sup> In Italy, there is no obligation of information per se, however the seller should inform the consumer if the goods are out of production on the legal basis of fairness, transparency and equity in contractual relations, as these are recognised as fundamental consumer rights.

<sup>4</sup> Flash Eurobarometer 367. Attitudes of Europeans towards building the single market for green products: [http://ec.europa.eu/public\\_opinion/flash/fl\\_367\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_367_sum_en.pdf)

<sup>5</sup> Ipsos-London Economics-Deloitte (2015), Study on legal and market guarantees, p.112: [http://ec.europa.eu/consumers/consumer\\_evidence/market\\_studies/docs/legalguaranteesfinal\\_report\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/legalguaranteesfinal_report_en.pdf)

<sup>6</sup> Commercial guarantees are also sold in Member States with a longer legal guarantee, such as Ireland (19% of consumers bought a commercial guarantee) and the United Kingdom (14%). In these countries, commercial guarantees typically include additional services such as annual maintenance, courtesy replacement during repairs, accident cover, theft cover etc., during the legal guarantee period. This is also in line with the findings of the 2015 guarantee study, which found that over 99% of paid-for guarantees found were of a duration of five years or less. Very few observations of the 2,456 prices collected for brown, white and grey goods, offered guarantees for more than a five-year period"

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with continued changes and developments in products, while establishing clear criteria or indicators for establishing a specific legal guarantee per product category.

A **right granted to consumers to terminate a contract if a seller fails to repair or replace a product within a certain timeframe** would affect about 69% of retailers and 74% of the EU population, as nine Member States currently have – in some form or another – such a timeframe.

The approach of specifying a timeframe was generally favoured by consumers associations as a way of protecting consumers against delays in remedies. Survey evidence, however, suggests that retailers address the vast majority of problems within two weeks. And while it is tempting to specify a similar timeframe for carrying out repairs or replacements, some practical considerations need to be taken into account. For instance, retailers are often dependent on manufacturers (or their service centres) to carry out such repairs and seasonality can also affect the timeframe for provision of repairs. Businesses therefore stressed that a specific timeframe should not bind a seller for situations outside its own control, though businesses were not able to estimate the costs relating thereto.

Introducing an **obligation on sellers to keep or facilitate access to spare parts** in EU law would result in legislative changes in 21 Member States, or around 63% retailers and 71% consumers in the EU. Such an obligation exists to certain degrees in seven Member States, and impacts would depend on the specific obligations envisaged. Advantages for consumers include greater trust in products and environmental benefits in combatting various forms of planned obsolescence. Business associations interviewed generally opposed such an obligation if it implied a responsibility of the retailer rather than the manufacturer, highlighting that sellers have no control over production lines.

Introduction of an **obligation to inform consumers about the availability of spare parts** in EU law would imply legislative changes in 25 Member States that currently do not have such a provision in their national law, or 60% of EU retailers and nearly 75% of EU consumers. A behavioural experiment<sup>7</sup> showed that providing information on the reparability of products influences consumers to purchase more repairable products. The recent Flash Eurobarometer 367<sup>8</sup> also showed that consumers would like to have additional information in this regard. According to consumer representatives, an obligation to inform consumers about the availability of spare parts would enhance transparency, thus helping consumers to make an informed decision when buying a product. This might ultimately also enhance consumer trust and confidence. According to business interviews, 44% of respondents expect additional costs by an obligation to inform about the availability of spare parts, while 46% of respondents expect this would bring no extra costs for them.

Physically keeping spare parts in stock (as opposed to facilitating access to spare parts on demand) was considered by business associations to be cumbersome and expensive, and lead to waste. Impacts, both for businesses and consumers, depend on the specific type of obligation. A system where the retailer is required to facilitate access to spare parts for a specific time frame that is equal to the legal guarantee period would have more limited impact.

<sup>7</sup> Consumer market study to support the fitness check of the Consumer Law (Lot 3), European Commission, DG Justice and Consumers, forthcoming.

<sup>8</sup> Flash Eurobarometer 367, Attitudes of Europeans towards building the single market for green product: [http://ec.europa.eu/public\\_opinion/flash/fl\\_367\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_367_en.pdf)