

Consumers' protection: sale of consumer goods and associated guarantees

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For consumers, the single market can only be deemed to be functioning properly if, when buying goods in a Member State other than their own, they can be sure of a comparable degree of protection against faulty goods as they enjoy at home. As the law stands at the moment, many consumers are wary of purchasing items abroad for fear of encountering difficulties when exchanging them or having repairs carried out. To remedy this deplorable state of affairs, which has come in for particular criticism from consumer groups, legislation has to be harmonized on the basis of a Directive passed under Article 100 a of the EEC Treaty. It must be remembered that, while systems of private law are in many ways similar, they are each built on very differing concepts. Complete harmonization of legal and commercial guarantee systems therefore would not appear advisable, or indeed necessary to provide consumers with a minimum degree of rights.

Legal guarantees The time limit of two years set for the legal guarantee corresponds to the time limit set under UN law of sale and represents a compromise among the existing, very different time limits set in the Member States. This time limit would appear acceptable from the point of view of consumer protection, given that the objective here is to guarantee a minimum degree of harmonization. The Committee notes that the time limit pursuant to Article 3(1), within a claim has to be lodged on a defect which was present from the outset, but only became apparent at a later stage, does not prejudice the time limits set for commercial guarantees. Unlike legal guarantees, commercial guarantees usually comprise all defects which arise within a certain period after buying the product, regardless of whether they were present at the time of delivery.

Commercial guarantees In its opinion on the green paper, the Committee explicitly rejected full-scale harmonization of the commercial guarantee and noted the possibility of a code of conduct in this field. The Committee backs the Commission approach. The idea of "advantage" propounded in Article 5(1) helps protect consumers from being misled and also enhances honourable trade practices.