

Consumers' protection: sale of consumer goods and associated guarantees

1996/0161(COD) - 24/04/2007 - Follow-up document

This Report is made up of two parts. The first concerns the implementation of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. The second part considers the case for introducing direct liability of producers, in EU legislation. The report takes account of the Green Paper on the Review of the Consumer Acquis, in which the Commission has presented a number of cross-cutting issues for public consultation including issues relating to gaps and regulatory shortcomings.

All of the EU Member States have transposed Directive 1994/44/EC into national law. This report examines, article by article, the implementation of the Directive as well as examining the case for introducing the direct liability of producers. The Report also examines the use made by the Member States of the option to introduce a time limit (Article 5 (2)).

Part I: Implementation: In summary, the report finds that the transposition of the Directive in the Member States has raised a number of problems. The Commission is of the opinion that many of these problems may be due to regulatory gaps in the Directive. Others, on the other hand, can be directly attributed to the incorrect transposition of the Directive. The transposition checks reveal significant divergences between national laws (stemming from the use of minimum clauses) and the various regulatory options provided by the Directive. It is unclear, as yet, to what extent these divergences affect the proper functioning of the Internal Market and consumer confidence. The outcome of the consultation in the Green Paper will provide information that will assist in determining whether there is a need for revising the Directive.

Part II: Direct Producers' Liability (DPL): The second part of the report then goes on to examine direct producers' liability. The existing Directive allows consumers to claim remedies for lack of conformity of goods against the seller – but it does not provide for the direct liability of producers. The Directive does, however, require the Commission to examine the case for introducing DPL and, if appropriate, to submit a proposal.

For the purpose of determining the legal situation in the EU, the Commission sent a questionnaire to the Member States seeking their input on national laws in this respect. The questionnaire also sought Member States' views on what impact DPL may have on the level of consumer protection and on the internal market. Stakeholders were forwarded a similar questionnaire.

The results of the questionnaire reveal a set of diverging views. A majority of the Member States and a number of stakeholders consider that DPL actually, or potentially, increases consumer protection as well as providing a redress for consumer in case the seller is not able (or willing) to resolve the consumer complaint. It acts as a consumer "safety net". A minority of Member States and stakeholders, on the other hand, are of the opinion that DLP will not increase consumer protection causing instead uncertainty as to the applicable law and delay in the resolution of consumer complaints.

A similar picture emerges vis-à-vis cross border shopping. A number of respondents consider that DPL would encourage consumers to shop cross-border as it would make it easier for them to turn to the producer's domestic representative compared with a seller in another country. Other respondents consider that DPL will not influence consumers' attitudes to the internal market as they are influenced by

economic factors. Further, an important number of stakeholders and a number of the Member States consider that DPL would cause a significant burden for businesses since producers would need to develop systems for handling complaints and make financial provision for exposure to this liability.

In its conclusion, the report states that the existence of diverging regimes of DPL constitutes a potential problem for the internal market. However, the Commission is unable, at this stage, to draw final conclusions. Not enough evidence exists to determine whether the lack of EU rules on DPL has a negative effect on consumer confidence in the internal market. For these reasons, the Commission has decided not to submit a proposal. Instead it will explore this issue further in the context of the Green Paper.