

This second edition of the ECC-Malta newsletter includes a detailed description of Directive 2019/771 concerning the Sale of Goods implemented on the 1st January 2022, followed by a success story the Centre has recently handled. The last page is dedicated to the new proposed amendments raised by the Commission related to the right to repair. It is being proposed that traders must be obliged to provide consumers with the required information related to the durability and the repair of the products.



Enhanced Consumer Protection

This year brought with it significant changes in European Consumer Protection with the new Sale of Goods Directive (Directive 2019/771)

The new Sale of Goods Directive lays down a standard set of rules across all European Member States on consumers' rights when purchasing goods. The purchased goods must conform with the sale contract, and where these are not, the Directive provides for the specific remedies and how these shall apply in case of lack of conformity. These new rules came into effect on 1st January 2022 and apply to all sales contracts concluded between consumers and traders after this date.

The new Directive has included all digital elements in the definition of goods. Therefore, when the consumer purchases any tangible movable items that are interconnected with digital content, such as a smart product, the absence of that digital content would prevent the goods from performing their function; the consumer is now legally covered.

The Directive has also introduced a new definition regarding the durability of the purchased product. It holds that the goods should be able to function and perform through regular use; otherwise, the product may be considered non-conforming to the sales contract.



Conformity of Goods

The Directive provides more precise rules on conformity and creates both subjective and objective criteria for assessing conformity with the contract of sale

The subjective requirements specify that the goods supplied are:

- As described, of the type, quantity and quality, functions, and is compatible with the requirements of the sales contract;
- Fit for the purpose of the consumer's choice when purchasing them and was made known to the seller before the sale is concluded;
- Delivered with all accessories and instructions as stipulated in the contract of sale;
- Supplied with updates as stipulated by the sales contract.

The objective requirements specify that the goods must:

- Be fit for the purpose for which the goods would usually be used;
- Correspond and have the quality of the sample/model description made available to the consumer by the seller before the conclusion of the contract;
- Be of the quantity and possess the qualities as advertised by the seller.

Obligation to Notify

Consumers must notify the seller of any lack of conformity within two months of the date when the problem is detected. However, they are no longer required to make this notification via a registered letter only and may choose the method they prefer, be it a normal letter, email, or message. However, consumers are advised to keep a copy of this notification as this may be required should the dispute escalate.

Liability

The seller is liable for non-conforming goods for two years. For goods with digital elements that involve a continuous supply for more than two years, the liability period is the same as the supply period.

WITH THE NEW RULES



Where there is a bug in the software of a TV set purchased, the seller provide you with an update for that software to bring it back into conformity. This can be done through a direct update of your TV Device, which you can install by approving it.

However, if the update is made available to you but you decide not to install it, the seller will not be responsible for the consequences.

WITH THE NEW RULES



Within at least two years from the day you bought the smartwatch, you can go back to the online seller and ask him to fix the problem.

If the seller is not able to fix the problem, the consumer can choose between one of two options:

1. Keep the smartwatch and get a price reduction;
- or
2. Return the smartwatch and get a full refund.

WITH THE NEW RULES



Where a defect appears within the first 12 months (1 year) after the delivery, the consumer has the right to ask for a remedy (repair, replacement, price reduction, refund) without the need to prove the existence of the defect at the time of delivery. Here it presumed that the defect was present prior to the item being delivered.



If the lack of conformity becomes apparent within the first year from when the goods were delivered, the non-conformity is presumed to have existed at the time of delivery unless the seller can provide otherwise. Within this period, the burden of proof is on the seller, in the case of goods with digital elements that involve a continuous supply of digital content or services.

The Remedies

When there is a lack of conformity, the consumer is entitled to have the goods brought into conformity through repair or replacement free of charge. Remedies should be provided within a reasonable time, without causing any inconvenience to consumers, considering the nature of the goods and the purpose for which the consumer needed the goods.

Other remedies available to the consumer are a reduction in price and the termination of the sales contract. A consumer can choose to terminate the contract where the seller has not fulfilled his obligations to repair or replace the non-conforming product or where the product has a severe defect, or where the non-conformity reappears even after the repair or replacement. However, such a right for termination does not exist for minor defects.



Success Story

Last February, our ECC received a complaint from France from a consumer who had purchased an amulet online as a gift for her daughter's birthday. Her daughter did not like the amulet and asked her mother to have it returned as what she wanted was a spa day with her mother. The consumer contacted the trader to have the amulet returned within the 14-day cooling-off period. However, the trader refused to have the amulet returned and to issue a refund to

the consumer. The trader informed the consumer that the amulet was made explicitly for her needs. The consumer understood that she had been scammed and contacted ECC France immediately. Once ECC Malta received the case, we contacted the trader and explained the rights related to distance shopping. When buying online within the EU, the consumer has the right to a 14-day cooling-off period. Within this period, the consumer can return the product bought without providing any explanation. Moreover, if the trader fails



to inform the consumer about the return cost during the purchase, the trader must pay for the return cost. Upon this explanation, the trader admitted that the item was not personalised. The trader invited the consumer to keep the amulet and refunded her in full as a goodwill gesture.

Improving the right to repair: A proposal



Recently, the European Commission proposed updating the rules on the right to repair to protect consumers in the European Union against the so-called programmed ageing of goods. The goal of these amendments is for consumers to make an informed decision when buying products. Mainly, the Commission proposes that consumers have the right to know how long a product should be expected to last and whether it can be repaired. The new rules will also strengthen the protection of consumers from unreliable claims of environmental friendliness by banning these misleading claims and practices.

The Commission is proposing to amend the **Consumer Rights Directive** to obligate traders to provide information on the durability & repair of products to consumers:

Durability

A study on empowering consumers for the Green Transition shows that:

- 86% of consumers want better information on durability;
- 82% of consumers find it challenging to find information on durability.

The proposed rules ensure that consumers are informed about products' guaranteed durability. The seller must inform the consumer where the producer of a consumer good offers a commercial guarantee of durability of more than two (2) years. Moreover, for energy-using goods, the seller must inform consumers when the producer provides no information on the commercial guarantee of durability.

Reparability

The study on empowering consumers for the Green Transition shows that:

- More than 80% of European Consumers are not able to find information on the reparability of products;
- 80% of consumers want more information on the availability of spare parts and repair manuals.
- Most consumers are willing to pay more for products that are easy to repair.

The proposed rules provide that the seller must provide relevant information on repairs, such as the repair manual. Where smart devices are purchased, the consumer must also be informed about software updates offered by the producer, and the information shall be provided to the consumer before the purchase clearly and comprehensively.

The new proposals also aim to end **unfair commercial practices that prevent sustainable purchases** by amending **The Unfair Commercial Practices Directive**.

The new rules provide that there needs to be **Trusted information on product sustainability**.

- These ensure that traders do not mislead consumers about environmental and social impacts, durability and reparability of products;
- Ban vague claims where environmental excellence cannot be demonstrated;
- Ban making environmental claims about an entire product when it should refer to only part thereof;
- Ban claims that a good is durable when it is not.
- Traders cannot hide from consumers that good has limited functionality when using consumables, spare parts or accessories not provided by the original producer.



European Consumer Centre Malta

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