PhD THESIS

Ivan Jokanović

MISKOLC

2025

UNIVERSITY OF MISKOLC
FACULTY OF LAW
FERENC DEÁK DOCTORAL SCHOOL OF LAW

Ivan Jokanović

DIFFERENT REGULATORY FRAME OF CONFORMITY AND GUARANTEES IN CONSUMER SALES CONTRACTS IN THE SELECTED CEE COUNTRIES

Ferenc Deák Doctoral School of Law
Head of the Doctoral School:
Prof. Dr. Erika Róth

Title of the Doctoral Programme:
Further Development of the Hungarian State and Legal System and Legal Scholarship, with Special Regard to European Legal Trends

Supervisor:
Prof. Dr. Attila Dudás

MISKOLC
2025

Recommendation from the Supervisor

I met Ivan Jokanović in the Law of Obligations course when he was a third-year student at the Faculty of Law of the University of Novi Sad. In the period of undergraduate legal studies, he demonstrated extraordinary skills, dedication, and devotion to, particularly, civil law subjects. This devotion found its natural continuation, first during the legal apprenticeship period that was crowned by passing the bar exam and becoming an attorney-at-law in Serbia, and then by his solid and life-changing decision to enroll in the PhD programme at the Deák Ferenc Doctoral School in Law and Political Sciences in Miskolc, Hungary. In parallel with his dedication to legal theory and practice, he cultivated his passion for, in particular, Romance and Slavic languages.

The conjunction between legal theory and practice on the one side, and the knowledge of foreign languages on the other, found its full application in the writing of his PhD thesis, which concerns the legal position of the consumer in the event of a lack of conformity of the goods with the sales contract in Croatian, Slovenian, Hungarian, Czech, Slovak, Polish, and Serbian law. For such a thesis to be successfully produced, the author had to examine the legislation and case law and use legal literature written in the official languages of all the mentioned countries, together with legal literature written in English, French, Italian, and Spanish. In essence, the profound knowledge of foreign languages is an indispensable condition for writing this PhD thesis.

The principal advantage of this PhD thesis is its comparative character, featured by a meticulous and detailed analysis of the regulation governing the consumer's overall position in the case of a defective performance of the seller. In that sense, it can be of interest for legal scholars and practitioners from the examined countries, as well as for everyone else interested in this specific topic.

Together with the introductory and concluding parts, the author divides the PhD thesis into chapters dedicated to each examined national law. The chapters are divided into subchapters dealing with the legal sources, the most important definitions, the concept of a lack of conformity, specific moments a defect has to emerge for the seller to be considered liable, deadlines and burden of proof, goods with digital elements (except in the chapter on the Serbian regulation, as the only examined country which is not a Member

State of the European Union), consumer remedies, and consumer (commercial and/or mandatory) guarantees. Since the choice of the topic was mainly influenced by the recent amendments to the consumer sales law regulation brought by the transposition of Directive (EU) 2019/771 in all the analysed national laws (except in Serbia, as an example of the legal framework still under the influence of Directive 1999/44/EC), the author's main objective was to establish whether the change of the consumer's position concerning the specific issues outlined in the separate subchapters was significant and beneficial to the consumer.

The right answer to this issue depends on the specific legal matter. For example, while the mandatory hierarchical interrelation between the remedies at the consumer's disposal, where repair and replacement are primary, and the appropriate price reduction and the termination of the contract are subsidiary remedies, generally does not constitute an improvement of the consumer's position on a level of the examined national law compared to the previous, repealed regulation, the novel concept of lack of conformity, combining subjective and objective elements, favoured the consumer. The general conclusion is that the recent amendments proved to be beneficial and advantageous to the consumer, albeit not in each analysed legal matter. In addition, the amendments at the level of the national regulation can be considered significant, although not in each legal issue, since the two-year time limit during which the lack of conformity had to emerge for the seller to be liable remained unaltered (except in the case of the continuous supply of the goods with digital elements).

It is clear that this PhD thesis constitutes a notable contribution to the research and theory of the consumer sales law within the Central European region. As the supervisor of Ivan Jokanović, I warmly recommend this PhD thesis to the attention of all those interested in this specific topic, and I am looking forward to participating in his official PhD defence.

Budapest, 05 May 2025

Prof. Dr. Attila Dudás

Professor

Supervisor

Summary

This PhD thesis aims to provide an exhaustive and detailed analysis of the regulation governing the consumer's position in the event of a lack of conformity of the goods with the contract in certain Central European national legal frameworks. The issues connected to the defective performance in consumer sales contracts are of paramount practical importance in the modern world. The selected national countries are Croatia, Slovenia, Hungary, the Czech Republic, Slovakia, Poland, and Serbia. Together with the legal regulation in force at the time of writing of this PhD, the rules governing the mentioned issue before the recent modifications representing the transposition of Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods are also covered and examined. The only exception in this regard is Serbia, whose regulation is still influenced by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.

The PhD thesis is divided into 9 separate chapters. While the first and closing chapters are the introduction and the conclusion, a distinct chapter is dedicated to each examined national legal framework, i.e., a separate chapter is devoted to the regulation of the analysed legal matters in Croatian, Slovenian, Hungarian, Czech, Slovak, Polish, and Serbian law.

Each national chapter is divided into an identical number (eight) of subchapters (except the chapter on the Serbian regulation, which contains 7 subchapters). The subchapters deal with the following legal issues: the position of the consumer sales law regulation within the national legal system, the fundamental definitions of the consumer sales law, the notion of the lack of conformity, the specific moments the defect has to exist and emerge for the seller to be liable, the issues of deadlines and the burden of proof, the matters connected with the goods with digital elements (the only subchapter lacking in the Serbian chapter), legal remedies available to the consumer when there is a lack of conformity, as well as the contractual and/or mandatory consumer guarantees. The main objective is to determine whether the recent amendments significantly changed the consumer's position and whether this change benefits the consumer compared to the previous regulation.

Table of Contents

1. INTRODUCTION 9
1.1. Choice of the Subject 9
1.2. Content of the Doctoral Thesis 13
1.3. Objectives 14
1.4. The methodology employed in the doctoral thesis 16
2. CROATIA 17
2.1. Legal Sources 17
2.2. Definitions 19
2.3. Lack of Conformity 21
2.4. The Moment of the Emergence of the Seller's Liability 27
2.5. Deadlines and Burden of Proof 30
2.6. Goods with digital elements 32
2.7. Consumer Remedies 36
2.8. Consumer Guarantees 44
3. SLOVENIA 49
3.1. Legal Sources 49
3.2. Definitions 51
3.3. Lack of Conformity 53
3.4. The Moment of the Emergence of the Seller's Liability 57
3.5. Deadlines and Burden of Proof 60
3.6. Goods with Digital Elements 62
3.7. Consumer Remedies 64
3.8. Consumer Guarantees 73
4. HUNGARY 82
4.1. Legal Sources 82
4.2. Definitions 85
4.3. Lack of Conformity 86
4.4. The Moment of the Emergence of the Seller's Liability 91
4.5. Deadline and Burden of Proof 92
4.6. Goods with digital elements 93
4.7. Consumer Remedies 96
4.8. Consumer Guarantees 107
5. THE CZECH REPUBLIC 114

5.1. Legal Sources ... 114
5.2. Definitions ... 116
5.3. Lack of Conformity ... 117
5.4. The Moment of the Emergence of the Seller's Liability ... 121
5.5. Deadlines and Burden of Proof ... 122
5.6. Goods with Digital Elements ... 126
5.7. Consumer Remedies ... 129
5.8. Consumer Guarantees ... 137
6. SLOVAKIA ... 142
6.1. Legal Sources ... 142
6.2. Definitions ... 143
6.3. Lack of Conformity ... 145
6.4. The Moment of the Emergence of the Seller's Liability ... 149
6.5. Deadlines and Burden of Proof ... 150
6.6. Goods with Digital Elements ... 153
6.7. Consumer Remedies ... 156
6.8. Consumer Guarantees ... 164
7. POLAND ... 167
7.1. Legal Sources ... 167
7.2. Definitions ... 169
7.3. Lack of Conformity ... 171
7.4. The Moment of the Emergence of the Seller's Liability ... 175
7.5. **Deadlines and Burden of Proof** ... 177
7.6. Goods with Digital Elements ... 180
7.7. Consumer Remedies ... 182
7.8. Consumer Guarantees ... 188
8. SERBIA ... 191
8.2. Definitions ... 193
8.3. Lack of Conformity ... 195
8.4. The Moment of the Emergence of the Seller's Liability ... 198
8.4. Deadline and Burden of Proof ... 201
8.5. Consumer Remedies ... 202
8.6. Consumer Guarantees ... 206
9. CONCLUSION ... 212
9.1. Legal Sources ... 212

9.2. Definitions 213
9.3. Lack of Conformity 214
9.4. The Moment of the Emergence of the Seller's Liability 216
9.5. Deadlines and Burden of Proof 217
9.6. Goods with digital elements 219
9.7. Consumer Remedies 220
9.8. Consumer Guarantees 222
9.9. Overall Conclusion 223
BIBLIOGRAPHY 226

1. INTRODUCTION

1.1. Choice of the Subject

The subject of the doctoral thesis concerns the legal position of the consumer in the case of a lack of conformity of the goods with the sales contract in Croatian, Slovenian, Hungarian, Czech, Slovak, Polish, and Serbian national legal systems. The choice of the topic is influenced by the recent developments in the field of consumer sales law, which exert a direct and inevitable impact on the national laws of the Member States.

Specifically, the departing point for the development of the consumer sales law at the level of the European Union was the enactment of Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees (hereinafter referred to as "Directive 1999/44/EC"). The first proposal by the Commission of the European Communities for a European Parliament and Council Directive on the sale of consumer goods and associated guarantees was presented in 1996, followed by the amended proposal in 1998.[1]

The crucial importance of Directive 1999/44/EC is demonstrated by the affirmations in the legal theory that it "undoubtedly had the greatest impact on contract law",[2] and that it "goes to the heart of private law".[3] The European legislator aimed at contributing "to the achievement of a high level of consumer protection by the measures it adopts pursuant to Article 95" of the Treaty on the Functioning of the European Union.[4]

This legal act was characterized by the minimum harmonization clause, signifying that Member States were allowed to introduce or retain in force more stringent provisions aiming to ensure a higher, more advanced level of consumer protection.[5] Consequently, the pertaining provisions introduced by the national legislator could differ from the European model, causing a lack of uniformity between the national legal orders of the Member States. The fundamental provisions of this Directive concerned the requirements of the conformity with the contract and the hierarchical order between the remedies

[1] Amended Proposal for a European Parliament and Council Directive on the Sale of Consumer Goods and Associated Guarantees, Explanatory Memorandum, p. 2.
[2] Twigg-Flesner, 2008, p. 59.
[3] Howelles et al., 2018, p. 167.
[4] Directive 1999/44/EC, Recital 1.
[5] Directive 1999/44/EC, Art. 8, Sec. 2.

available to the consumer.[6] Essentially, by introducing "a common set of minimum rules of consumer law, valid no matter where goods are purchased within the Community", the European legislator intended to "strengthen consumer confidence and enable consumers to make the most of the internal market".[7]

Directive 1999/44/EC was partly amended by enacting Directive 2011/83/EC of the European Parliament and of the Council on consumer rights (hereinafter referred to as "Directive 2011/83/EC). Although this Directive has been characterized by the maximum harmonization approach,[8] due to the circumstance that it does not directly concern the seller's liability for the lack of conformity in consumer sales contracts, its adoption did not alter the minimum harmonization clause of Directive 1999/44/EC.[9] It is also worth underlining that the planned modifications of the consumer sales law presented in 2011 by the European Commission in the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law proved to be an unsuccessfully attempt since the European Commission in 2014 enunciated the withdrawal of this project.[10]

Therefore, Directive 1999/44/EC was finally repealed by adopting Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods (hereinafter referred to as "Directive (EU) 2019/771"), whose principal objective is "strike the right balance between achieving a high level of consumer protection and promoting the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity".[11] The most significant feature of this Directive is the maximum harmonization clause, which constitutes a notable shift from the minimum harmonization approach of Directive 1999/44/EU, meaning that the Member States cannot introduce or retain in force provisions differing from those contained in the Directive, comprising more, or less stringent provisions to ensure a higher level of consumer protection.[12] However, the maximum harmonization clause is not absolute and unrestricted since the same Directive

[6] Howells et al., 2018, p. 168.
[7] Directive 1999/44/EC, Recital 6.
[8] Directive 2011/83/EC, Art. 4.
[9] Mišćenić et al., 2021, p. 24.
[10] Beale, 2016, p. 7.
[11] Directive (EU) 2019/771, Recital 2.
[12] Directive (EU) 2019/771, Art. 4.

envisages instances where the national legislator is allowed to introduce divergent legal solutions. Therefore, the national regulation of defective performance by the seller may present certain peculiar, country-specific legal solutions. Together with Directive (EU) 2019/771, Directive (EU) 2019/770 of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content or digital services (hereinafter referred to as "Directive (EU) 2019/770") was also enacted, which is the reason why in legal literature they are known as "Twin Directives".[13]

It is worth underlining that Directive (EU) 2019/771 has been partly amended, principally in the direction of promoting and incentivizing the repair remedy, by Directive (EU) 2024/1799 of the European Parliament and of the Council on common rules promoting the repair of goods (hereinafter referred to as "Directive (EU) 2024/1799"), also characterized by the maximum harmonization approach since the Member States are not allowed to introduce or maintain the provisions differing from those contained in this Directive.[14] However, the Member States, comprising those that are the subject of this doctoral thesis, are obliged to transpose the provisions of this Directive by 31 July 2026, starting to apply them from the same date.[15]

Closely connected to Directive (EU) 2019/771, with multiple references to this legal document, although without amending it, mainly concerning the notion of durability and the producer's commercial guarantee of durability, is Directive (EU) 2024/825 of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information. Its provisions are to be transposed within the national legal orders of the Member States by 27 March 2026, with their application commencing from 27 September of the same year.[16]

In addition, the case law of the Court of Justice of the European Union (hereinafter referred to as "the CJEU"), concerning principally for the sake of this doctoral thesis the interpretation of the specific provisions of Directive 1999/44/EC, contributes to a better

[13] De Franceschi and Schulze, 2023, pp. 2-3.
[14] Directive (EU) 2024/1799, Art. 3.
[15] Directive (EU) 2024/1799, Art. 22.
[16] Directive (EU) 2024/825, Art. 4, Sec. 1.

understanding of and provides answers to particular legal issues and bears relevance at the level of the Member States.

The inevitable modifications brought by the transposition of Directive (EU) 2019/771 to national legal orders of the Member States influenced and conditioned the content and the manner of comparison in this doctoral thesis. Specifically, the legal regulation in force before the implementation of Directive (EU) 2019/771, when the examined legal systems were based on Directive 1999/44/EC, is presented in order to determine the level and importance of amendments. However, the only exception in this regard is Serbia, as a candidate country for membership in the European Union, which has not yet transposed Directive (EU) 2019/771. Consequently, solely the legal regulation in force today in Serbia, as an example of the legal order and the position of the consumer still influenced by Directive 1999/44/EC, will be examined.

The choice to select the national legal orders of Croatia, Slovenia, Hungary, the Czech Republic, Slovakia, Poland, and Serbia was determined by several reasons. First, it may be stated that all the examined countries belong to the common Central European cultural circle, sharing a similar set of values. The historical occurrences of the last century brought Serbia, Croatia, and Slovenia together as components of the same state, which was the case for the Czech Republic and Slovakia as well. Moreover, all the analyzed countries shared similar, especially economic, development hallmarked by the absolute predominance of socialism/communism and the subsequent transition period to the neoliberal market economy. Moreover, these countries, except Serbia which is a candidate country as previously mentioned, became Member States of the European Union, which exerts a decisive influence on their national legal systems, including the regulation of the consumer sales law.

Furthermore, it is worth emphasizing that the scientific literature written in the English language with the sole and exclusive objective of analyzing and comparing the regulation on the consumer's position in the event of a lack of conformity of consumer goods with the contract in the mentioned countries is scarce and seldom found. In that regard, taking into account all the outlined reasons, this doctoral thesis may contribute to a comprehensive understanding of the manners (of) and national-specific legal solutions introduced by the transposition of Directive 1999/44/EC and Directive (EU) 2019/771 in

the selected countries. The extensive scope of issues analyzed in this doctoral thesis aims to provide a complete and exhaustive overview of the legal position of the consumer in the event of defective performance by the seller in the national legal frameworks of the chosen countries.

1.2. Content of the Doctoral Thesis

The doctoral thesis contains separate chapters devoted to the regulation of the lack of conformity of consumer goods with the sales contract in Croatia, Slovenia, Hungary, the Czech Republic, Slovakia, Poland, and Serbia. The final chapter is dedicated to concluding remarks, providing answers to the posed questions/hypotheses. Each chapter, except the one regarding the Serbian legal framework, is divided into eight subchapters, dealing with the same legal issues. Namely, the chapters analyze the regulation that was in force before the transposition of Directive (EU) 2019/771, as well as that currently in force based on the mentioned Directive. The only exception in this regard is Serbia, whose legal framework is still influenced by Directive 1999/44/EC. Consequently, the chapter on the regulation of the subject issue of this doctoral thesis in Serbia consists of seven subchapters.

The first or introductory subchapter concerns the legal sources in the mentioned countries. Specifically, it focuses on the place within the legal system where the rules that govern the consumer's position in the case of a deficiency in consumer goods, representing the transposition of Directive 1999/44/EC and (or) Directive (EU) 2019/771, are located. Particular emphasis is placed on whether these rules are contained in the Civil Code or other legal act (for example Obligations Act) constituting *sedes materiae* in the domain of civil law, or they are incorporated into a specific consumer protection act, or another legal act dedicated solely and exclusively to the issue of the lack of conformity of consumer goods with the contract. In addition, it will be elucidated whether the application of these legal provisions is limited to the sales contracts concluded in the consumer context.

The subsequent subchapter regards the most significant definitions of consumer sales law. More precisely, it presents how the notions of consumer, seller, consumer sales contract, and goods as well as other important concepts are defined in the examined legal frameworks. A separate subchapter is dedicated to the issue of the lack of conformity or defect. It deals with whether the national legislator established a general rule of or

enumerated the specific situations in which there is a non-conformity of the consumer goods with the contract, focusing on whether a presumption of conformity is introduced. In addition, this chapter investigates whether the notion of non-conformity combines subjective and objective criteria.

Furthermore, a particular subchapter concentrates on the point in time the defect has to exist for the seller to be considered liable for it. The same subchapter deals with the circumstances whose existence exonerates the seller from liability. The subsequent part is devoted to the deadline during which the lack of conformity needs to emerge for the seller to bear liability, as well as to the burden of demonstrating the existence of the circumstances leading to the seller's liability. This part also examines the conditions of the presumption of the non-conformity.

The only part missing in the chapter on the Serbian legal framework, but contained in the chapters on all the other examined countries, concerns the goods with digital elements. Such difference is due to the circumstance that the Serbian legislator has not yet transposed Directive (EU) 2019/771. Moreover, a separate subchapter concerns the legal remedies at the consumer's disposal, with particular emphasis on their hierarchy and interrelations between them, the conditions of their use, and the existence of the consumer's obligation to previously notify the seller of the lack of conformity. Finally, the last subchapter is dedicated to the guarantees providing additional protection to the consumer. In this part, the conditions for granting the guarantee, its content, the hierarchy of the available remedies, and the difference between the contractual/commercial guarantee and mandatory guarantee (for the legal systems where it exists).

1.3. Objectives

The principal objective of the doctoral thesis is to determine whether the modifications brought by the transposition of Directive (EU) 2019/771 significantly and radically changed the consumer's position in the examined legal frameworks, i.e. whether the consumer's condition improved or the modifications negatively affected his/her position. To be able to provide an answer to the posed issue, a detailed and meticulous examination of each legal matter deriving from the seller's defective performance is required. Therefore, the concluding remarks, as the final chapter of the doctoral thesis, will structurally follow the content of the national chapters and qualitatively assess the

obtained level of transformation of the consumer's condition concerning the specific legal issue. Based on the results applying individually to the analyzed national legal systems, a more general and overall conclusion on the totality of the issues affecting the consumer's legal position will be provided. In this regard, the space given in this doctoral thesis to the Serbian regulation, given that the Serbian legislator has not yet transposed Directive (EU) 2019/771, serves as an example of the national legal framework based on Directive 1999/44/EC and belonging to a country which is not a Member State of the European Union. Thus, it becomes indispensable to consider and include in the overall conclusion, as a sample of comparison, the consumer's position within Serbian law.

Furthermore, the assessment of the modification of the consumer's legal position requires the precise evaluation of certain additional issues. First, it is necessary to evaluate whether the particular legal provisions constitute a correct or verbatim transposition of the respective parts of Directive 1999/44/EC and Directive (EU) 2019/771. Connected to that, it will be assessed whether the national legal provision differs solely linguistically from the European model or whether it represents a more detailed, peculiar, and country-specific legal solution affecting the consumer. Taking into account the number and presence of particular legal solutions in the national legal framework, it is possible to determine to what extent and in which regard these national legal orders diverge from each other and whether these divergences exercise a beneficial or detrimental influence on the consumer's condition at a national level and by way of comparison.

Naturally, it may be stated and presumed that the minimum harmonization character of Directive 1999/44/EC rendered possible the existence of a considerable number of major and more significant differences between the national legal systems, conceding the national legislator to introduce or retain more specific, country-tailored legal solutions. One of the tasks of this doctoral thesis is to individuate and shed light on these differences and assess their impact on the consumer's overall position in the event of the lack of conformity of the goods with the sales contract. In doing so, in conjunction with the relevant case law of the CJEU, the available case law developed by the national courts of the examined countries proves to be of paramount importance.

In addition, given that the maximum harmonization character of Directive (EU) 2019/771 impedes the national legislator from deviating from its legal provisions, relegating such

possibility to specific and expressly allowed legal issues, it is inevitable that the previously existing divergences between the national legal frameworks of the examined countries which form part of the European Union significantly and considerably diminished. Therefore, this doctoral thesis also aims to determine whether the national legislator took advantage of such discretionary options and assess the influence of such choices on the consumer's position. It should also be established whether certain national legislators proved to be particularly tenacious and persistent in retaining, where permitted, the country-specific legal solutions, or even concerning the legal issues covered by the maximum harmonization clause.

1.4. The methodology employed in the doctoral thesis

The pillar research method utilized in this doctoral thesis is the comparative method, which is two-fold. Specifically, the comparison is internal since the regulation on the consumer's position in the event of defective performance, implying several specific legal issues, influenced by Directive 1999/44/EC is interpreted and compared with that based on Directive (EU) 2019/771, within the same national legal framework. Thus, the comparison, which exclusively concerns the non-conformity in consumer sales contracts, is performed within the same national legal system. Moreover, the comparison is also external since the specific issues affecting the consumer's position within seven different national legal orders (Croatia, Slovenia, Hungary, the Czech Republic, Slovakia, and Poland) are discussed and compared. In addition, it is worth noting that the external comparison of the legal solutions which ceased to be applicable because of the transposition of Directive (EU) 2019/771 presupposes the implementation of the historical comparison.

Furthermore, providing an answer to the posed question of whether the consumer's position significantly changed with the amendments brought by the transposition of Directive (EU) 2019/771 necessitates employing the functional method, as a part of the comparison. Namely, it presupposes identifying and comparing the specific legal solutions and evaluating their impact on the partial and overall position of the consumer in the examined national legal orders.

The correct application of the comparison implies several other types of interpretations. Primarily, it is necessary to find and individuate the legal source(s) within the national

legal framework in which the relevant provisions are (or used to be) situated and delimit its (their) application from other legal sources which do not directly concern the subject of the doctoral thesis. Such activity is performed by employing systematic interpretation. In this regard, determining whether the relevant legal provisions are contained in the Civil Code (or other legal act with the *sedes materiae* position in the domain of civil law) or in a specific act dedicated to consumer protection issues and delving into the (potential) interrelation between them requires the implementation of the structural method.

Once the pertaining legal source is found, grammatical interpretation, focusing on the linguistic understanding of the content of the relevant legal provisions and their literal meaning, and technical interpretation, considering the specific legal language and used terminology, are applied. Such activity has as a precondition the use of the hermeneutical method, while the examination of the content of the relevant legal provisions and the applicable legal notions and concepts requires the use of the analytical method. Finally, since this doctoral thesis inevitably takes into account case law produced by the national courts and the CJEU, as well as the clarifications provided by the national and international legal theory, the judicial and doctrinal interpretations are also applied and contained therein. In that sense, the legal literature written in the national languages of the examined countries is used, together with that written in English, Italian, Spanish, and French.

2. CROATIA

2.1. Legal Sources

Upon concluding and ratifying the Stabilisation and Association Agreement with the European Communities[17] in 2001, Croatia committed to harmonizing its legislation and aligning its level of consumer protection with that of the Community. To achieve this objective, Croatia agreed to cooperate with the other signatories of the Agreement. This collaborative effort resulted in the enactment of the first Consumer Protection Act[18] in

[17] Zakon o potvrđivanju Sporazuma o stabilizaciji i pridruživanju između Republike Hrvatske i Europskih zajednica i njihovih država članica [Law on Ratification of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States], *Narodne novine* [Official Gazette], No. 14/2001.

[18] Zakon o zaštiti potrošača [Consumer Protection Act], *Narodne novine* [Official Gazette], No. 96/2003.

2003, and another in 2014.[19] Notably, the Consumer Protection Act[20] currently in force (hereinafter referred to as "the CroCPA"), which serves as the principal statute, *sedes materiae*, in the domain of consumer protection law,[21] was adopted in 2022.

In the Croatian legal framework, the provisions of Directive 1999/44/EC were incorporated within the Obligations Act[22] (hereinafter referred to as: "the CroOA"), enacted in 2005 and partly within the Consumer Protection Act. Moreover, Croatia transposed Directive (EU) 2019/771 by amending the CroOA in 2021. However, the novel provisions do not retroactively apply to contracts concluded before 1 January 2022.[23] It is noteworthy that the Croatian legislator initially intended to transpose this Directive into a specialized legal act devoted to consumer protection, aiming to foster more uniformity and reduce the legal fragmentation concerning consumer law.[24]

Consequently, matters concerning consumer rights in the event of a lack of conformity of the goods with the contract and contractual guarantee are governed by the CroOA.[25] Its stipulations regarding the seller's liability for material defects apply to contracts concluded between two natural persons, between two legal persons, and even consumer sales contracts.[26] The CroOA explicitly delineates the application of certain provisions exclusively to consumer sales contracts.[27]

The adoption of a uniform regulatory approach, with specific exceptions tailored for consumer sales contracts intended to meet the requirements of harmonizing Croatian consumer protection law with EU law, was deemed the most effective legislative strategy for the transposition of Directive 1999/44/EC.[28] This choice was justified by the fact that the CroOA already contained rules on the conformity of goods and contractual guarantees

[19] Zakon o zaštiti potrošača [Consumer Protection Act], *Narodne novine* [Official Gazette], No. 41/2014.
[20] Zakon o zaštiti potrošača [Consumer Protection Act], *Narodne novine* [Official Gazette], No. 19/2022, 59/23.
[21] Mišćenić et al., 2021, p. 27.
[22] Zakon o obveznim odnosima [Law on Obligations], *Narodne novine* [Official Gazette], No. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23.
[23] Law on Amendments to the LO, Art. 22.
[24] Mišćenić, 2023, p. 117-118.
[25] Given the fact that the Croatian legislator transposed the provisions of the Directive 1999/44/EC and of the Directive (EU) 2019/771 in the LO containing general rules of contract law, the terminology used is different. For example, the LO uses the term object (*stvar*) instead of the goods and the term material defect (*materijalni nedostatak*) instead of lack of conformity.
[26] Jokanović and Dudás, 2022, p. 25.
[27] Nikšić, 2022, p. 532.
[28] Petrić, 2007, pp. 97-98.

before the harmonization process.[29] In that manner, the Croatian lawmaker aimed at circumventing the fragmentation and guaranteeing a higher level of coherence of national civil law.[30] The subsequent transposition of Directive (EU) 2019/771 did not deviate from this strategy. However, the Croatian legal theory pointed out that the regulation of the lack of conformity became confusing due to numerous exceptions related to the character of the contractual party.[31]

Finally, the CroOA may also be considered *lex generalis* in the field of consumer contract law, as its provisions apply to business-to-consumer (B2C) contractual civil obligations unless otherwise determined by special laws governing specific administrative areas, which have been harmonised with the *acquis communautaire,* or by the CroCPA itself.[32]

2.2. Definitions

The definitions of the fundamental notions of the consumer sales law are contained in the CroOA and CroCPA. Since there are no substantial differences in this regard compared with the previous regulation, apart from the introduction of new notions based on Directive (EU) 2019/771, the rules in force at this moment will be presented in this subchapter.

To transpose properly the mentioned Directive, the Croatian legislator introduced Art. 399a to the CroOA.[33] The consumer is defined as any natural person who concludes a sales contract outside of his/her trade, business, craft, or professional activity.[34] Thus, the consumer status is determined by two conditions: that a buyer is a natural person, thereby excluding legal persons from this notion, and that he/she enters into a sales contract for non-professional purposes. However, the Court of Justice of the European Union (hereinafter referred to as "the CJEU") in the Faber case imposes on the national court the obligation to ascertain of its own motion whether the purchaser qualifies as a consumer "as soon as that court has at its disposal the matter of law and of fact that are necessary for that purpose or may have them at its disposal simply by asking for clarification".[35]

[29] Mišćenić, 2023, pp. 118-119.; Mišćenić, 2014, p. 287.
[30] Miščenić et al., 2021, p. 32.; Tot, 2022, p. 74.
[31] Nikšić, 2022, p. 532.
[32] CroCPA, Art. 3, Sec. 2.; Jokanović and Dudás, 2022, p. 25.
[33] Kanceljak, 2023, p. 94.
[34] CroOA, Art. 399a, Sec. 1 (1).
[35] CJEU, Case C-497/13, para. 48.

This obligation persists even in cases where the purchaser did not invoke the consumer status.[36] This interpretation is valid also within Croatian law, meaning that the Croatian court should independently determine whether a buyer qualifies as a consumer, regardless of the absence of the explicit invocation of the consumer status.

The CroCPA defines the trader, the other party to a consumer sales contract (seller), as any person entering into a legal transaction or operating on the market for purposes related to his/her trade, business, craft, or professional activity, including a person acting in the name or on behalf of a trader.[37] It is important to note that the CJEU in the Wathelet case established that the concept of seller encompasses "a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual".[38]

Moreover, the goods, which are the object of the consumer sales contract, are defined as any tangible movable items, except those sold by way of execution or otherwise by authority of law. This definition also includes water, gas, and electricity where they are put up for sale in a limited volume or a set quantity, as well as items with embedded digital content or digital service or those connected to them in such a way that without digital content or digital service the goods would not be functional.[39] These definitions are in line with Directive (EU) 2019/771. However, the Croatian legislator did not exclude the application of the provisions dealing with defective performance in the case of a sales contract whose object are living animals or second-hand goods sold at public auction, as made possible by Art. 3, Sec. 5 of Directive (EU) 2019/771.

The definition of a consumer sales contract is also contained in the CroCPA. It is a contract by which the trader transfers or undertakes to transfer the ownership of goods to the consumer, and the consumer pays or undertakes to pay the price thereof, including any contract that has as its object both goods and services.[40]

Finally, the CroOA defines the consumer contract as any contract concluded between the consumer and any natural or legal person acting inside his/her trade, business, craft, and

[36] CJEU, Case C-497/13, para. 48.
[37] CroCPA, Art. 4, Sec. 1 (34).
[38] CJEU, Case C-149/14, para. 45.
[39] CroCPA, Art. 4, Sec. 1 (30).
[40] CroCPA, Art. 4, Sec. 1 (37).

professional activity, including a person acting in the name or on behalf of such person.[41] Implementing the provisions located in Art. 2 of the Directive (EU) 2019/771, the CroOA introduced the definitions of the notions of digital content,[42] digital service,[43] compatibility,[44] functionality,[45] interoperability[46] and durable medium[47], and durability[48].

2.3. Lack of Conformity

Before the transposition of Directive (EU) 2019/771, the Croatian legislator adopted a positive definition of the lack of conformity/material defect (materijalni nedostatak), differing from Directive 1999/44/EC.[49] Notably, the CroOA implemented a *numerus clausus* approach, delineating each instance of non-conformity, any of which could be applied alternatively.[50] Therefore, it sufficed for the goods to fail to comply with at least one of the enumerated criteria for the consumer to invoke the available remedies.

In the first instance, the CroOA stipulated that a defect existed when the goods did not possess the necessary qualities for their regular use or circulation.[51] Essentially, this case encompassed two distinct scenarios: the absence of the necessary qualities impacting the regular use and the absence of the necessary qualities affecting the circulation of the goods. This provision is similar to Art. 2, Sec. 2 (c) of Directive 1999/44/EC, which presumes that the goods conform to the consumer sales contract if they are fit for the purposes for which goods of the same type are normally used. The Croatian legal literature

[41] CroOA, Art. 399, Sec. 1 (2).
[42] Art. 399a, Sec. 1, P. 4 of the CroOA: Digital content is data which are produced and supplied in digital form.
[43] Art. 399a, Sec. 1, P. 5 of the CroOA: Digital service is a) a service that allows the consumer to create, process, store or access data in digital form or b) a service that allows the sharing of any other interaction with data in digital form uploaded and created by the consumer or other users of that service.
[44] Art. 399a, Sec. 1, P. 6 of the CroOA: Compatibility is the ability of the goods to function with hardware or software with which goods of the same type are normally used, without the need to convert the goods, hardware or software.
[45] Art. 399a, Sec. 1, P. 7 of the CroOA: Functionality is the ability of the goods to perform their functions having regard to their purpose.
[46] Art. 399a, Sec. 1, P. 8 of the CroOA: Interoperability is the ability of the goods to function with hardware or software different from those with which goods of the same type is normally used.
[47] Art. 399a, Sec. 1, P. 9 of the CroOA: Durable medium is any instrument which enables the consumer or the seller to store information addressed personally to that person in a way that is accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored.
[48] Art. 399a, Sec. 1, P. 10 of the CroOA: Durability is the ability of the goods to maintain their required functions and performance through normal use.
[49] Petrić, 2007, p. 103; Ćesić, 2021, p. 397.
[50] Mišćenić et al, 2021, p. 52.; Jokanović and Dudás, 2022, pp. 28-29.
[51] CroOA, Art. 401, Sec. 1 (1).

asserted that the determination of regular use of goods should have been objective, considering the nature of the goods in question.[52]

Furthermore, the lack of conformity arose when the goods lacked the necessary qualities for the specific purpose intended by the consumer, provided that such purpose was known or should have been known to the seller.[53] This provision shares similarities with Art. 2, Sec. 2 (b) of Directive 1999/44/EC.[54] However, it may be argued that the legal framework under Croatian law was more advantageous to consumers, as its application did not depend on the consumer's obligation to inform the seller about the specific purpose, which was to be interpreted as the one diverging from the regular purpose of the goods.[55] Thus, a non-conformity could have existed even if the seller became aware of such a specific purpose from other sources.[56] Curiously, the Croatian legislator did not explicitly mandate that the seller must have known or should have known about the specific purpose at the time of the conclusion of the contract.

Another instance of the lack of conformity pertained to the situation when the goods lacked qualities and characteristics explicitly or implicitly agreed upon or stipulated.[57] This provision accentuated the intention of the parties regarding the qualities and features of the goods, which could be articulated expressly in the consumer sales contract or by tacit deed (*facta concludentia*). It aligns with the overarching, general principle of Directive 1999/44/EC, which mandates the seller to deliver goods conforming to the contract. However, it is noteworthy that the Croatian legislator did not elevate this provision to a general rule; rather it remains only one of several instances indicating a defect.[58] This provision also encompasses the qualities and characteristics of the goods stipulated in a legal act.[59]

Moreover, a defective performance existed when the seller delivered goods that did not adhere to the sample or model unless the sample or model was presented solely for

[52] Mišćenić et al., 2021, p. 53.
[53] CroOA, Art. 401, Sec. 1 (2).
[54] The goods were presumed to be in conformity with the contract if they were fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted.
[55] Petrić, 2007, pp. 104-105; Gorenc et al., 2014, p. 687.
[56] Mišćenić et al, 2021, p. 53.
[57] CroOA, Art. 401, Sec. 1 (3).
[58] Petrić, 2007, p. 104, Miščenić et al, 2021, pp. 52-53.
[59] Mišćenić et al, 2021, p. 53.

informational purposes.[60] It implies that a sample or model was exhibited to the buyer before the conclusion of the sales contract. Although this provision corresponded to Art. 2, Sec. 2 (a) of Directive 1999/44/EC, the Croatian legal theory underlined that it applied only to commercial contracts.[61]

The lack of conformity also arose when the goods lack qualities inherent to the other goods of the same type, which the consumer could have reasonably expected based on the nature of the goods, particularly considering public statements made by the seller, the manufacturer, and their representatives regarding the qualities of the goods (advertising, labeling, etc.).[62] Thus, this instance combines subjective (the consumer's reasonable expectation) and objective requirements (the qualities inherent to the goods of the same type).[63] The Croatian legal literature underscored that the consumer's reasonable expectation could have extended to durability.[64] The seller could be exempt from liability for the public statements made by the manufacturer and his/her representative, upon which the consumer relied for the qualities of the goods, in the following cases:

1) if the seller did not know or could not have known about the public statement in question;
2) if the public statement was retracted by the time of the conclusion of the contract;
3) if the public statement did not influence the consumer's decision to enter into the sales contract.[65]

These cases were determined alternatively, indicating that the presence of one of them was sufficient for the seller to be exonerated from liability for the public statement. Notably, this exemption only applied to public statements made by the manufacturer and his/her representative, excluding the seller's public statements. Such a legal solution was more beneficial to the consumer's position compared to the one articulated in Directive 1999/44/EC.[66] Additionally, unlike the mentioned Directive, the CroOA did not explicitly assign the burden of proof to the seller. Given the general presumption of good faith (*bona*

[60] CroOA, Art. 401, Sec. 1 (4).
[61] Gorenc et al., 2014, p. 687.
[62] CroOA, Art. 401, Sec. 1 (5).
[63] Ćesić, 2021, p. 399.; Gorenc et al., 2014, p. 688.
[64] Petrić, 2007, p. 105.
[65] CroOA, Art. 401, Sec. 2.
[66] Petrić, 2007, pp. 106-107; Miščenić et al, 2021, p. 54.

fides) inherent in civil law, the *onus probandi* regarding the seller's awareness of the public statement in question was placed on the consumer, while in the two remaining cases, it was on the seller.[67]

Finally, the CroOA established that there was a lack of conformity when the goods were improperly assembled, under the condition that the assembly service was included in the performance of the sales contract.[68] The CroOA explicitly envisaged that the assembly service, to be performed by the seller or his/her representative, had to be part of the (consumer) sales contract.[69] Additionally, a defect existed when incorrect assembly stemmed from deficiencies in the assembly instructions.[70] This case presupposed that the assembly was performed by the buyer (consumer).[71] Both instances constituted the transposition of Art. 2, Sec. 5 of Directive 1999/44/EC.

The transposition of Directive (EU) 2019/771 introduced substantial novelties. The CroOA now differentiates between subjective and objective requirements for conformity, although without expressly nominating them. However, unlike this Directive, the Croatian legislator defines them by determining when a lack of conformity exists, potentially narrowing consumer protection to those specific cases.[72] Regarding the subjective requirements, the CroOA, implementing Art. 6 of the mentioned Directive, specifies that there is of a lack of conformity in the following cases:

1) when the goods do not match the description, type, quantity, and quality or lack the functionality, compatibility, interoperability, and other features specified in the sales contract;
2) when the goods are not fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract and in respect of which the seller has given acceptance;
3) when the goods are not delivered with all additional accessories and instructions, including on installation, as required by the sales contract;

[67] Petrić, 2007, p. 107.; Ćesić, 2021, p. 399.
[68] CroOA, Art. 401, Sec. 1 (6).
[69] Ćesić, 2021, p. 400.; Gorenc et al., 2014, p. 689.
[70] CroOA, Art. 401, Sec. 1 (7).
[71] Ćesić, 2021, p. 400., Gorenc et al., 2014, p. 689.
[72] Mišćenić, 2023, p. 122.

4) when the goods are not supplied with updates as stipulated by the sales contract.[73]

The complete determination of the content of these cases is conditioned by the free will of the parties expressed in the sales contract. Consequently, the subjective requirements for conformity emanate from the specific contractual relationship between the consumer and the seller.[74] Although the sales contract is not expressly referenced in the instance concerning the particular purpose of the goods, the consumer's communication of such purpose to the seller, coupled with the seller's acknowledgment, implies its integration into the sales contract.[75] Unlike the previous legal framework, the Croatian legislator now expressly mandates that the consumer disclose the particular purpose to the seller, rendering the seller's potential awareness from alternative sources immaterial. Additionally, the time frame for this notification is also specified, stipulating that it should occur "at the latest at the time of the conclusion of the sales contract".

Regarding the objective requirements for conformity, the CroOA, transposing Art. 7 of Directive (EU) 2019/771 stipulates that a lack of conformity should also subsist in the following scenarios:

1) if the goods are not suitable for the purposes for which the goods of the same type would normally be used, considering any existing law of the European Union and the Republic of Croatia, technical standards, or if such technical standards do not exist, applicable sector-specific codes of conduct if they exist;
2) if the goods do not align with the quality and description of a sample or model that the seller placed at the consumer's disposal before the conclusion of the sales contract;
3) if the goods are not delivered with additional accessories, including packaging, installation instructions, or other instructions, as the consumer may reasonably expect to receive;
4) if the goods do not match the quantity or lack qualities and other features, including those related to durability, functionality, compatibility, and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking account of any public statement made by

[73] CroOA, Art. 401, Sec. 1.
[74] Mišćenić et al, 2021, p. 55.
[75] Slakoper and Nikšić, 2022, p. 541.

or on behalf of the seller or other persons in previous links of the chain of transactions, including the manufacturer, particularly in advertising or on labelling.[76]

It should be highlighted that the objective requirements of conformity derive from the reasonable expectations of the consumer.[77] These requirements are applicable in each case, even when not explicitly stated in the consumer sales contract.[78]

In comparison to the previous regulatory framework, the current one presents a more exhaustive list of factors to consider when establishing the objective requirements of conformity. The CroOA explicitly mandates that the normal use of goods of the same type be determined by referencing the EU and Croatian legal regulations, technical standards, or sector-specific codes of conduct. Prior to the transposition of Directive (EU) 2019/771, the CroOA did not offer any guidance on assessing the regular use of the goods. Additionally, the Croatian legislator specifies that a sample or model must be presented to the consumer before the conclusion of the sales contract. Finally, durability, functionality, compatibility, and security are explicitly listed among the features the consumer can reasonably expect. Notably, functionality and compatibility are also categorized among the subjective requirements for conformity. Although the Croatian legal theory previously considered durability to be part of the consumer's reasonable expectation, its explicit inclusion represents a significant novelty.

The CroOA, in line with Art. 7, Sec. 2 of Directive (EU) 2019/771, specifies that the public statements referenced in Art 401, Sec. 2 (4) do not bind the seller if he/she can demonstrate that:

1) he/she did not know nor could have known about the public statement in question;
2) by the time of the conclusion of the contract, the public statement had been corrected in the same or comparable way as it was originally made;
3) the public statement could not have influenced the consumer's decision to purchase the goods.[79]

[76] CroOA, Art. 401, Sec. 2.
[77] Mišćenić et al. 2021, p. 55; Afferni, 2022, p. 262.
[78] De Franceschi, 2019, p. 86; Twigg-Flesner, 2020, p. 56.
[79] CroOA, Art. 401, Sec. 3.

This provision introduces two significant changes. Firstly, it explicitly assigns the burden of proof to the seller to demonstrate the existence of at least one of the enumerated circumstances. Secondly, it expands the scope of the seller's exemption to encompass his/her own public statements, not being confined anymore to those made by the manufacturer and his/her representatives. Such a legal framework is less beneficial to the consumer compared to the previous one.

Finally, the Croatian legislator incorporated provisions addressing the lack of conformity due to incorrect installation (the so-called IKEA clause) within the same section as those related to the objective requirements for conformity. Specifically, a lack of conformity also arises when the goods are improperly installed or assembled, provided that the installation or assembly service is part of the sales contract and was performed by the seller or person under his/her responsibility.[80] Furthermore, another instance of the lack of conformity occurs when the installation or assembly was intended to be performed by the consumer and, although done by the consumer, the incorrect installation or assembly results from the deficiencies in the instructions provided by the seller or, in the case of goods with digital elements, provided by the seller or the supplier of digital content or digital service.[81]

2.4. The Moment of the Emergence of the Seller's Liability

Before the implementation of Directive (EU) 2019/771, the CroOA imposed liability on the seller for any lack of conformity existing at the time of passing of risk to the consumer, irrespective of the seller's knowledge of such lack of conformity.[82] This stipulation aligned with Art. 3, Sec. 1 of Directive 1999/44/EC. It is important to emphasize that the issue of the seller's fault or gross negligence concerning the existence of the defect was deemed irrelevant.[83] Furthermore, the 2014 CroCPA, in line with Art. 20 of Directive 2011/83/EU, delineated the precise moments when the risk of loss or damage passed to the consumer. It occurred, as a general rule, at the moment of the delivery in possession of the goods to the consumer or a person appointed by the consumer other than a carrier.[84]

[80] CroOA, Art. 401, Sec. 2 (5).
[81] CroOA, Art. 401, Sec. 2 (6).
[82] CroOA, Art. 400, Sec. 1.
[83] Mišćenić et al, 2021, p. 90.; Ćesić, 2021, p. 396.; Gorenc et al., 2014, p. 684.
[84] 2014 CroCPA, Art. 45, Sec. 1.

An exception to this rule was provided if the carrier was selected at the consumer's proposal, whereby the passing of the risk of loss or damage to the consumer occurred at the time of the delivery in possession of the goods to the carrier.[85]

The Croatian legislator fortified the consumer's position by establishing the seller's liability for any lack of conformity appearing after the passing of risk to the consumer if it stemmed from a pre-existing cause.[86] Such a rule, although not explicitly outlined in Directive 1999/44/EC, did not diverge from it since the legal theory interpreted the provision from Art. 3, Sec. 1, which states that "the seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered," as encompassing hidden defects emerging post-delivery.[87]

Interestingly, upon its adoption, the CroOA contained a provision exempting sellers from liability for a minor lack of conformity.[88] This legal solution conflicted with the minimum level of consumer protection outlined in Directive 1999/44/EC.[89] Specifically, while in the mentioned Directive, the minor nature of the lack of conformity impeded the consumer from terminating the contract,[90] the Croatian lawmaker exonerated the seller from any liability, depriving the consumer of any redress against the seller. This provision was abolished in 2008 by amending the CroOA.[91]

Furthermore, the CroOA, implementing Art. 2, Sec. 3 of Directive 1999/44/EC, stipulated that the seller would not have incurred liability if the defect present at the time of the conclusion of the contract was either known or could not have remained unknown to the consumer.[92] This case implied that the consumer, cognizant of the defect, accepted it while concluding the sales contract and that the seller acted *in bona fide*.[93] However, the seller could not be exempt from liability, even for an easily noticeable defect, when he/she explicitly stated that the goods were without defects or possessed specific qualities and

[85] 2014 CroCPA, Art. 45, Sec. 2.
[86] CroOA, Art. 400, Sec. 2.
[87] Afferni, 2022, p. 205; Mišćenić et al, 2021, p. 58.
[88] CroOA, Art. 400, Sec. 4.
[89] Petrić, 2007, p. 109.
[90] Directive 1999/44/EC, Art. 3, Sec. 6.
[91] Zakon o izmenama i dopunama Zakona o obveznim odnosima [Law on Amendments to the Obligations Act], *Narodne novine* [Official Gazette], No. 41/2008.
[92] CroOA, Art. 402, Sec. 1.
[93] Mišćenić et al, 2021, p. 89.; Ćesić, 2021, p. 402.

features.[94] Notably, the Croatian legislator omitted to specify the formal requirement for the seller's statement to bear significance, implying that verbal assertions could be sufficient to establish his/her liability. The circumstance exempting the seller from liability contained in Directive 1999/44/EC that the lack of conformity originated from materials provided by the consumer was not transposed into Croatian law.

Finally, the Croatian legislator determined that the contractual stipulation excluding or limiting the seller's liability for the lack of conformity was null and void in the event of a consumer sales contract.[95]

The implementation of Directive (EU) 2019/771 into the CroOA did not introduce many new elements, except for provisions concerning goods with digital elements. Specifically, the rules on the seller's liability regardless of fault,[96] which encompasses non-conformity arising from a pre-existing cause,[97] remained unchanged. The novel 2022 CroCPA did not alter the rules regarding the transfer of the risk of loss or damage to the consumer.[98] Nevertheless, the CroOA incorporated a specific provision applicable to goods requiring installation or assembly by the seller or a person under the seller's responsibility. In such scenarios, the transfer of risk to the consumer occurs upon the completion of the installation or assembly.[99] This legal approach is consistent with Recital 40 of Directive (EU) 2019/771.

The provision exempting the seller from liability if the consumer is aware of the lack of conformity[100] is preserved, despite its absence from Directive (EU) 2019/771.[101] The seller's assertions that the goods are devoid of defects or have specific qualities continue to amplify his/her liability.[102] However, the CroOA, transposing Art. 7, Sec. 5 of Directive (EU) 2019/771, exonerates the seller from liability for the lack of conformity concerning the objective requirements for conformity, provided that two conditions are fulfilled. Firstly, the seller must inform the consumer, at the moment of the conclusion of the

[94] CroOA, Art. 402, Sec. 4.
[95] CroOA, Art. 408, Sec. 2.
[96] CroOA, Art. 400, Sec. 1.
[97] CroOA, Art. 400, Sec. 2.
[98] 2022 CroCPA, Art. 49.
[99] CroOA, Art. 400, Sec. 7.
[100] CroOA, Art. 402, Sec. 1.
[101] De Franceshi, 2019, p. 112.
[102] CroOA, Art. 402, Sec. 4.

contract that a specific feature of the goods deviates from the objective requirements for conformity. Secondly, the consumer must explicitly and separately accept this deviation when concluding the contract.[103] It is worth noting that this provision applies solely to consumer sales contracts.

2.5. Deadlines and Burden of Proof

Prior to the 2021 amendments to the CroOA, this act stipulated that the seller was liable for any lack of conformity manifesting two years after the delivery of the goods.[104] This provision was the transposition of Art. 5, Sec. 1 of Directive 1999/44/EC. The Croatian legislator permitted the contractual parties to agree on extending this two-year deadline,[105] implying that it applied unless a longer period was mutually agreed upon by the parties.[106] Furthermore, the CroOA specified that this two-year period recommenced from delivering the repaired goods or replacing parts in the respective cases.[107]

Regarding the burden of proof about the existence of the lack of conformity, the interpretation of the CJEU provided in Faber case that "the onus is, in principle, on the consumer to furnish the evidence that a lack of conformity exists and that the lack of conformity existed at the time when the goods were delivered"[108] holds true within the framework of Croatian law as well.

However, influenced by Art. 5, Sec. 3 of Directive 1999/44/EC, the Croatian legislator bolstered the consumer's position by instituting a presumption that a lack of conformity existed at the time of the passing of risk if it became apparent within six months from that moment. This presumption, however, was rebuttable (*praesumptio iuris tantum*) as the CroOA allowed the seller to demonstrate that the defect did not exist at the time of the passing of risk.[109] Consequently, the burden of proof shifted to the seller in this specific context, deviating from the general principle that it lies with the consumer. Additionally, the presumption was rendered inapplicable if it was incompatible with the nature of the goods or the nature of the lack of conformity.[110]

---

[103] CroOA, Art. 401, Sec. 4.
[104] CroOA, Art. 404, Sec. 2.
[105] CroOA, Art. 404, Sec. 4.
[106] Mišćenić et al, 2021, p. 77.
[107] CroOA, Art. 405.
[108] CJEU, C-497/13, Para. 52.
[109] CroOA, Art. 400, Sec. 3.
[110] CroOA, Art. 400, Sec. 3.

It is worth emphasizing that the CJEU in Faber case offered pivotal elucidations regarding the consumer's obligations regarding this presumption, which bear relevance to the Croatian legal framework.[111] Specifically, to leverage the shifted burden of proof, the consumer is obligated to "furnish evidence that the goods sold are not in conformity with the relevant contract".[112] It is crucial to accentuate that this obligation does not extend to proving "the cause of that lack of conformity" nor establishing that "its origin is attributable to the seller".[113] Rather, it suffices to evince the existence of a lack of conformity. Additionally, the consumer should substantiate that "the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods".[114]

Moreover, the CJEU decreed that Art. 5, Sec. 3 of Directive 1999/44/EC "must be regarded as a rule of equal standing to a national rule which ranks, within the domestic legal system, as a rule of public policy".[115] Consequently, the domestic legal provision transposing the aforementioned Art. 5, Sec. 3 must be mandatorily invoked by the national judiciary.[116] The intent of the CJEU was to safeguard the consumer who inadvertently overlooked the use of the aforementioned presumption.[117]

Regarding second-hand goods, the CroOA used the opportunity given by Art. 7, Sec. 1 (2) of Directive 1999/44/EC, permitting contractual parties to agree on a one-year period for the seller's liability.[118] It is essential to note that such a reduction was discretionary and contingent upon the contractual parties' autonomy of the will. In the absence of such an agreement, the default two-year time limit would have applied also to second-hand goods. Any contractual stipulation specifying the seller's liability for a duration shorter than one year would have been rendered null and void.[119]

The transposition of Directive (EU) 2019/771 did not introduce substantial alterations compared to the previous regulation. Notably, the provisions delineating the seller's

[111] Mišćenić et al, 2021, p. 89.
[112] CJEU, C-497/13, para. 70.
[113] CJEU, C-497/13, para. 70.
[114] CJEU, C-497/13, para. 71.
[115] CJEU, C-497/13, para. 56.
[116] CJEU, C-497/13, para. 56.
[117] Patti, 2016, p. 14.
[118] CroOA, Art. 404, Sec. 3.
[119] Mišćenić et al, 2021, p. 89.

liability for the lack of conformity that became apparent within two years of delivery,[120] and permitting the contractual parties to stipulate a reduced one-year time limit for second-hand goods[121] are preserved. Likewise, the opportunity for extending the two-year time limit[122] and its expiration in the case of repaired goods or replaced parts remained unchanged.[123] However, the presumption concerning the existence of the lack of conformity at the moment of the passing of risk underwent refinement to favor consumers. Specifically, in alignment with Art. 11, Sec. 1 of Directive (EU) 2019/771, its duration is extended from six months to one year.[124] It is noteworthy that the Croatian legislator did not use the opportunity provided by Art. 11, Sec. 2 of the mentioned Directive to introduce a two-year validity period for this presumption. Nonetheless, other aspects of this presumption remained unaltered.

2.6. Goods with digital elements

The Croatian legislator has specifically excluded the application of the provisions of the CroOA related to the lack of conformity in the event of consumer contracts for the delivery of digital content or digital services. Nevertheless, an exception to this exclusion concerns the instances where movable goods into which digital content or digital services are incorporated are the subject of a sales contract, and digital content or digital services are so interconnected with the goods that their absence prevents the goods from performing their functions. Moreover, such digital content or digital service must be supplied under the sales contract, whether by the seller or a third person.[125] These goods are categorized as "goods with digital elements".

It is crucial to underscore that the application of the provisions of the CroOA on the lack of conformity, presupposes the simultaneous fulfillment of these two conditions. The CroOA addresses potential ambiguities regarding whether the obligation to provide incorporated or interconnected digital content or digital service originates from the

[120] CroOA, Art. 404, Sec. 2.
[121] CroOA, Art. 404, Sec. 3.
[122] CroOA, Art. 404, Sec. 4.
[123] CroOA, Art. 405.
[124] CroOA, Art. 400, Sec. 9.
[125] CroOA, Art. 400, Sec. 5.

consumer sales contract by presuming that they are included.[126] These legal solutions are concordant with Art. 3, Sec. 3 of Directive (EU) 2019/771.

The primary objective of restricting the application of the provisions contained in the CroOA is to delineate and differentiate its scope from that of the Act on Certain Aspects of the Contract for the Supply of Digital Content and Digital Services.[127] By the latter act, the Croatian legislator transposed the Directive (EU) 2019/770.

The provision determining the precise moment of the passing of the risk of loss or damage to the buyer (consumer) in the context of goods with digital elements is articulated within the CroOA. Therefore, in this case, the general rule from Art. 49 of the novel Consumer Protection Act does not find its application. Namely, the CroOA establishes that the risk of loss or damage is transferred to the buyer (consumer) either upon the completion of the one-off supply of digital content or digital service or at the commencement of the continuous supply of digital content or digital service.[128]

Moreover, the presumption that the lack of conformity existed at the moment of the passing of the risk to the consumer if it becomes apparent within one year from that moment also extends to goods with digital elements.[129] Transposing Art. 11, Sec. 3 of Directive 2019/771, the CroOA introduced specific rules regarding the burden of proof in the event of a continuous supply of digital content or digital service, significantly reinforcing the consumer's position.

If the consumer sales contract stipulates a determined period for the continuous supply, the burden of proof to demonstrate the absence of the lack of conformity rests with the seller for a period of two years from the moment of the passing of the risk.[130] Should the continuous supply period exceed two years, the seller retains this burden for the entire duration of the supply period.[131] Conversely, if the sales contract provides for the one-off supply of digital content or digital service, the onus probandi shifts to the consumer.[132]

---

[126] CroOA, Art. 400, Sec. 8.
[127] Zakon o određenim aspektima ugovora o isporuci digitalnog sadržaja i digitalnih usluga [Law on Certain Aspects of the Contract on the Delivery of Digital Content and Digital Services], *Narodne novine* [Official Gazette], No. 110/2021.; Jokanović and Dudás, 2022, p. 32.
[128] CroOA, Art. 400, Sec. 6.
[129] CroOA, Art. 400, Sec. 9.
[130] CroOA, Art. 400, Sec. 11.
[131] CroOA, Art. 400, Sec. 11.
[132] Carvalho, 2020, p. 42.

Thus, in that case, to use the available remedies, the consumer must demonstrate that the lack of conformity existed at the time the one-off supply was completed.

It is worth noting that the temporal scope of the seller's liability for the lack of conformity concerning the continuous supply of digital content or digital service corresponds to the period during which the burden of proof is incumbent upon the seller. Specifically, if the consumer sales contract outlines a continuous supply period exceeding two years, the seller's liability persists for the entirety of that duration.[133] Conversely, when the consumer sales contract specifies a shorter continuous supply period, the seller is liable for any lack of conformity of the digital content or digital service that arises within two years from the moment of the passing of the risk.[134] These provisions represent the transposition of Art. 10, Sec. 2 of Directive (EU) 2019/771.

Regarding the subjective requirements of conformity, the Croatian legislator envisages that there is a lack of conformity when goods are not supplied with updates as specified by the sales contract.[135] This provision is particularly applicable to goods with digital elements. It presupposes that the seller's obligation to provide the goods with updates emanates from the consumer sales contract. As articulated in Recital 28 of Directive (EU) 2019/771, updates are intended to "improve and enhance the digital content and digital service element of the goods, extend their functionalities, adapt them to technical developments, protect them against new security threats or serve other purposes".

The CroOA imposes additional obligations on the seller when goods with digital elements are the subject of the consumer sales contract, also differentiating between single and continuous supply. Concerning the single supply of digital content or digital service, the seller is obliged to inform the consumer about updates, including security updates necessary to maintain the goods without defects, and ensure them for a period the consumer may reasonably expect, taking into account the type and purpose of the goods and digital elements and considering the circumstances and nature of the sales contract.[136] This provision reflects the transposition of Art. 7, Sec. 3 (a) of Directive (EU) 2019/771.

[133] CroOA, Sec. 404a, Sec. 1.
[134] CroOA, Sec. 404a, Sec. 2.
[135] CroOA, Sec. 401, Sec. 1 (4).
[136] CroOA, Sec. 401a, Sec.

It should be noted that the seller is not required to ensure every available update. Rather, his/her obligation is limited to those updates necessary for maintaining conformity with the subjective and objective requirements.[137] Therefore, unless otherwise stipulated in the sales contract, the seller is not obliged to provide updates that extend beyond the need to maintain the conformity of the goods or improve the digital elements.[138]

The CroOA places a particular emphasis on security updates. However, it is worth underlining that the seller's obligation is not restricted solely to this particular type of update.[139] Finally, assuming that the seller will ensure updates for the single act of supply of digital content or digital service in each case would be erroneous. This obligation is contingent upon the consumer's reasonable expectations or the content of the specific sales contract.[140]

In line with Art. 7, Sec. 3 (b) of Directive (EU) 2019/771, the CroOA establishes distinct deadlines for consumer sales contracts entailing a continuous supply of digital content or digital service. When the continuous supply period exceeds two years, the obligation to ensure updates extends until the expiration of that period.[141] Additionally, if the continuous supply duration spans two years or less, the obligation endures for a period of two years commencing from the moment of the passing of the risk.[142]

It should be underlined that the consumer is not mandated to install updates provided by the seller.[143] However, the seller will not be held liable for the lack of conformity solely attributable to the consumer's failure to install updates within a reasonable timeframe, provided that two conditions are met concurrently. Firstly, the seller must have informed the consumer about the availability of the update and the potential consequences of the failure to install it. Secondly, any failure to install the update or the incorrect installation by the consumer must not stem from shortcomings in the installation instructions provided to the consumer.[144]

[137] De Franceschi, 2019, p. 93; Recital 30 of Directive (EU) 2019/771.
[138] Kalamees, 2021, p. 135.
[139] Slakoper and Nikšić, 2022, p. 545.
[140] Slakoper and Nikšić, 2022, p. 545; Kalamees, 2021, p. 136.
[141] CroOA, Art. 401a, Sec. 2.
[142] CroOA, Art. 401a, Sec. 2.
[143] Carvalho, 2020, p. 40.
[144] CroOA, Art. 401a, Sec. 3.

This legal solution aligns with Art. 7, Sec. 4 of Directive (EU) 2019/771. The Croatian legislator did not clarify the type of language in which the seller should inform the consumer about the consequences of the failure to install the update. In this regard, the seller can solely be exempt from liability for the lack of conformity resulting from the failure to install the update, i.e., this provision does not encompass other causes.[145]

Lastly, the seller will not be liable for the lack of conformity if he/she, at the moment of the conclusion of the contract, specifically informed the consumer that a particular characteristic of the goods diverges from the criteria contained in Art, 401a, Sec. 1 and 2 and the consumer explicitly and separately accepted it while concluding the contract.[146]

2.7. Consumer Remedies

Before the transposition of Directive (EU) 2019/771, the consumer was allowed to request by his/her choice from the seller the elimination of the lack of conformity, delivery of flawless goods, price reduction, or to declare the contract terminated.[147] The consumer was also entitled to compensation for damages according to the general rules of tort law, encompassing indirect damages caused to other property by the defect (*damnum extra rem*).[148]

Despite the use of the term "by his/her choice", suggesting that the consumer could select any of the remedies without adhering to a specific hierarchy, the provisions regarding the termination of the contract indicated otherwise.[149] Specifically, to terminate the contract, the consumer was required to give the seller an additional adequate time limit to fulfil his/her contractual obligation.[150] Such performance of the contractual obligation was to be interpreted as presupposing the rectification of the defect through repair or replacement.[151] Notably, the requirement of providing an additional time limit did not apply to the remedy of price reduction.[152] Consequently, it may be inferred that the hierarchy of remedies established by the Croatian legislator differed from the model prescribed by Directive 1999/44/EC since repair, replacement, and price reduction were

[145] Kalamees, 2021, p. 137.
[146] CroOA, Art. 401a, Sec. 4.
[147] CroOA, Art. 410, Sec. 1.
[148] CroOA, Art. 410, Sec. 2.
[149] Mišćenić et al, 2021, p. 60.; Ćesić, 2021, p. 417.
[150] CroOA, Art. 412, Sec. 1.
[151] Mišćenić et al., 2021, p. 73.; Ćesić, 2021, p. 417.
[152] Ćesić, 2021, p. 417-418.

considered primary remedies, while the subsidiary status was given only to the termination of the contract.[153] The lesser relevance of the lack of conformity precluded the possibility of terminating the contract.[154] This limitation was introduced by the amendments to the CroOA in 2008.[155]

Concerning the consumer's request to eliminate the lack of conformity by repair or replacement, the Croatian legal theory underlined that the seller was allowed to choose the alternative remedy to remove the defect when the realization of the consumer's demand was difficult or would have caused disproportionately high costs. This interpretation stemmed from the respect for the principles of the prohibition of the abuse of rights and the prohibition of causing damage.[156] However, the CroOA stipulated that repair and replacement had to be performed within a reasonable time.[157] The exact duration of this time limit was contingent on the circumstances of the specific case.[158]

The price reduction was calculated based on the difference at the moment of the conclusion of the contract between the value the goods would have had if they conformed to the contract and the value of the defective goods.[159]

Utilizing the possibility outlined in Art. 5, Sec. 2 of Directive 1999/44/EC, the Croatian legislator implemented a two-month notification period commencing from the moment a lack of conformity was discovered, during which the consumer had to inform the seller. This notification had to occur within two years from the moment of the passing of the risk to the consumer. The same timeframe applied to both visible[160] and invisible defects.[161]

Regarding the content of the notification, the CroOA expressly stated that the consumer was not required to provide a detailed description of the lack of conformity nor to invite the seller to inspect the goods.[162] In this context, it is essential to consider the judgment of the CJEU in Faber case. The CJEU clarified that "the notification to be given relates only

[153] Petrić, 2007, p. 118; Meškić et al, 2010, p. 530; Povlakić, 2012, pp. 69-70; Mišćenić et al., 2021, p. 61.; Gorenc et al., 2014, p. 705.
[154] CroOA, Art. 410, Sec. 3.
[155] The Law on the Amendments to the CroOA, Art. 8.
[156] Ćesić, 2021, p. 418.; Gorenc et al., 2014, p. 706.
[157] CroOA, Art. 411.
[158] Ćesić, 2021, p. 420.
[159] CroOA, Art. 420.
[160] CroOA, Art. 403, Sec. 4.
[161] CroOA, Art. 404, Sec. 1 and 2.
[162] CroOA, Art. 406, Sec. 1.

to the existence of that lack of conformity and that it is not subject to rules of evidence which would make it impossible or excessively difficult for the consumer to exercise his rights".[163] Consequently, as interpreted by some legal scholars, this ruling indicated that the consumer is not obligated to provide a detailed account of the lack of conformity when informing the seller.[164] Thus, it may be stated that the notification requirements in Croatian law are consistent with the aforementioned judgment.[165]

Additionally, the rights of the consumer who timely informed the seller of the defect expired after two years from the day of sending the notification to the seller, unless the seller's fraudulent conduct prevented the consumer from exercising these rights.[166] This two-year timeframe constituted a preclusive time limit, meaning that, upon its expiration, the consumer's rights, including the right to initiate a legal proceeding, were extinguished.[167] However, the CroOA allowed the consumer, who had timely informed the seller of the lack of conformity and had not paid the price, to invoke price reduction or claim damages even after the expiration of this period, as an objection against the seller's request for payment.[168] Essentially, in that case the two-year time limit was a limitation period in relation to the price reduction and compensation of damages.[169]

One of the most significant changes introduced by the 2021 amendments to the CroOA concerns the transformation of the hierarchy of consumer claims.[170] Notably, the appropriate price reduction, whose manner of calculation remained the same (Art. 420), became a secondary remedy, together with the termination of the contract. The removal of the non-conformity (repair) and delivery of flawless goods (replacement) remained the primary set of remedies. It is noteworthy that the provision of the CroOA concerning the compensation of damages (Art. 410, Sec. 2), along with the aforementioned rules on notifying the seller, distinguishing between visible and invisible defects (Art. 403, Sec. 4 and Art. 404, Sec. 1 and 2), the content of the notification (Art. 406, Sec. 1), and preclusive time limit (Art. 422) remained unaltered. Although the CroOA permits the consumer to

[163] CJEU, C-497/13, para. 65.
[164] Patti, 2016, p. 13, Miščenić et al, 2021, p. 85.
[165] Dudás and Jokanović, 2023, p. 222.
[166] CroOA, Art. 422, Sec. 1.
[167] Petrić, 2007, p. 122; Mišćenić, 2023, p. 133.; Ćesić, 2021, p. 436.; Gorenc et al., 2014, p. 722.
[168] CroOA, Art. 422, Sec. 2.
[169] Gorenc et al., 2014, p. 723.
[170] CroOA, Art. 410, Sec. 1.

withhold the payment of any of the unpaid portion of the price until the seller fulfills his/her obligations, it did not take advantage of the opportunity provided by Art. 13, Sec. 6 of the Directive (EU) 2019/771 to establish the conditions and modalities for the exercise of this right.[171]

Regarding the primary set of claims, the consumer is entitled to select between repair and replacement, unless the chosen recourse would be impossible or, compared to another remedy, would impose disproportionate costs on the seller, taking into consideration all circumstances, particularly the value the goods would have if there were no lack of conformity, the significance of the lack of conformity and whether repair or replacement could be performed without significant inconvenience to the consumer.[172] Thus, the consumer's liberty of choice is not unrestricted. This legal solution represents the transposition of Art. 13, Sec. 2 of Directive (EU) 2019/771.

The CroOA, transposing Art. 13, Sec. 3 of Directive (EU) 2019/771, permits the seller to refuse to rectify the lack of conformity if the repair and replacement are impossible or would impose disproportionate costs taking into account all circumstances, especially those relevant to excluding the consumer's choice between repair and replacement.[173]

The Croatian legislator mandates that repair or replacement must be carried out free of charge, within a reasonable timeframe from the moment the seller is informed by the consumer about the lack of conformity and without causing any significant inconvenience to the consumer, considering the nature of the goods and their purpose intended by the consumer.[174] This legal solution aligns with Art. 14, Sec. 1 of Directive (EU) 2019/771. Interestingly, the CroOA does not specify a predetermined duration for the reasonable timeframe within which the seller must fulfil the consumer's request for repair and replacement. In this context, Recital 55 of Directive (EU) 2019/771, which states that a reasonable time should be interpreted as "the shortest possible time necessary for completing of repair or replacement" and determined objectively by taking into account "the nature and complexity of the goods, the nature and severity of the lack of conformity, and the effort needed to complete repair or replacement" holds paramount importance.

[171] CroOA, Art. 410, Sec. 6.
[172] CroOA, Art. 410, Sec. 3.
[173] CroOA, Art. 410, Sec. 4.
[174] CroOA, Art. 410a, Sec. 1.

Additionally, the CroOA obligates the consumer to make the goods available to the seller. Conversely, the seller must take over the goods and bear the associated costs.[175] The seller's obligation to take back the replaced goods at his/her expense is not particularly mentioned. However, the seller has to bear the costs of eliminating the lack of conformity and delivering other goods without defects.[176]

The Croatian legislator explicitly states that the consumer shall not be liable for compensation pertaining to the normal use of the replaced goods during the period preceding their replacement.[177] It is worth underlining that Recital 57 of Directive (EU) 2019/771 clarifies that the use of the goods is to be considered normal when it is in line with the nature and purpose of those goods. Notably, this regulation is confined to consumer sales contracts. These provisions represent the transposition of Art. 14, Sec. 4 of the Directive (EU) 2019/771, shaped by the ruling of the CJEU in the Quelle case.[178] The CJEU determined that Article 3 of Directive 1999/44/EC, which governs consumer rights "is to be interpreted as precluding national legislation under which a seller who has sold consumer goods which are not in conformity may require the consumer to pay compensation for the use of those defective goods until their replacement with new goods".[179]

A specific rule addresses the repair or replacement of the goods that had been installed in a manner consistent with their nature and purpose before the manifestation of the non-conformity. In this context, the obligation to repair or replace the goods encompasses removing the non-conforming goods and installing the replacement or repaired goods, or the assumption of the associated costs for such removal and installation.[180] This provision, transposing Art. 14, Sec. 3 of Directive (EU) 2019/771, codifies what had been ruled by the CJEU in joined cases C-65/09 and C-87/09 (the Weber and Putz cases). The CJEU adjudicated that when goods have been installed in good faith by the consumer consistently with their nature and purpose, "the seller is obliged either himself to remove the goods from where they were installed and to install the replacement goods there or

[175] CroOA, Art. 410a, Sec. 2.
[176] CroOA, Art. 410, Sec. 9.
[177] CroOA, Art. 410a, Sec. 4.
[178] Van Gool and Michel, 2021, p. 144; Mišćenić et al., 2021, p. 70.
[179] CJEU, C-404/06, para. 43.
[180] CroOA, Art. 410a, Sec. 3.

else to bear the cost of that removal and installation of replacement goods". Additionally, the CJEU asserted "that obligation on the seller exists regardless of whether he was obliged under the contract of sale to install the consumer goods originally purchased".[181] In this manner, the CJEU redefined the contractual equilibrium between the parties, imposing on the seller additional obligations not initially stipulated in the sales contract.[182] Essentially, it created a strict liability regime for the seller related to the consequent additional expenses stemming from the replacement following the transfer of the risk.[183] However, the inclusion of the indications given by the CJEU in the Quelle and Weber and Putz judgements is seen by the legal theory as "a good example of the virtuous interplay between case law and legislation."[184]

The subsidiary set of remedies, comprising the appropriate price reduction and termination of the contract, is accessible to the consumer if:

- if the seller has not rectified the lack of conformity, or has refused to do so, or has failed to bring the goods into conformity according to Art. 410, Sec. 2 and 3;
- if the lack of conformity exists despite the seller having attempted to eliminate it;
- if the seller explicitly declined to eliminate the non-conformity or it is evident from the circumstances that he/she will not do so within a reasonable timeframe or without causing significant inconvenience to the consumer;
- if the lack of conformity is of such severity that it justifies an immediate price reduction or termination of the contract.[185]

These criteria are consistent with Art. 13, Sec. 4 of Directive (EU) 2019/771. For a deeper understanding of the second case, it is essential to consider Recital 52 of the mentioned Directive, which advocated for the objective assessment of whether the consumer should accept further attempts by the seller to bring the goods into conformity, considering all the circumstances, particularly the type and the value of the goods and the nature and significance of the lack of conformity. For instance, expensive and complex goods are highlighted as examples where granting the seller another attempt to rectify the lack of

[181] CJEU, Joined cases C-65/09 and C-87/09, para. 62.
[182] Micklitz and Kas, 2014, p. 61.
[183] Micklitz and Reich, 2014, p. 181.
[184] De Franceschi and Schulze, 2023, p. 15.
[185] CroOA, Art. 410, Sec. 5.

conformity may be justified. Another crucial factor to consider is whether the consumer is expected to maintain confidence in the seller's ability to bring the goods into conformity.

Regarding the termination of the contract, the Croatian legislator did not amend the aforementioned Art. 412. Therefore, the requirement to provide the seller with a subsequent reasonable period to fulfill the contract remains the general rule.[186] However, the CroOA allows the consumer to terminate the contract without granting the seller a subsequent reasonable time limit in the following instances:

1) when the seller, upon being informed of the lack of conformity, declares that he/she will not perform the contract;
2) when it can be inferred from the circumstances of the specific case that the seller will not perform the contract within the subsequent reasonable time limit;
3) if the consumer cannot achieve the purpose for which he/she concluded the contract due to the seller's default.[187]

The second scenario may be interpreted as a situation implying the impossibility of the rectification of the defect.[188] In the third case, the burden of proof regarding the inability to achieve the purpose for which the contract was concluded lies with the consumer.[189] However, the consumer retains the right to request an appropriate price reduction or terminate the contract if repairing the defect or delivering flawless goods would cause significant inconveniences to him/her.[190] This provision serves to protect the consumer by impeding the seller from performing the repair or replacement that would cause substantial inconvenience to the consumer.[191]

Regarding the consequences of the seller's failure to perform the consumer sales contract within a subsequent reasonable time, the CroOA concedes the consumer to declare the contract terminated.[192] This provision represents the transposition of Art. 16, Sec. 1 of Directive (EU) 2019/771, enabling the consumer to exercise his/her right to terminate the

[186] CroOA, Art. 412, Sec. 1.
[187] CroOA, Art. 412, Sec. 2.
[188] Gorenc et al., 2014, p. 711.
[189] Petrić, 2007, p. 121.
[190] CroOA, Art. 412, Sec. 3.
[191] Dudás and Jokanović, 2023, p. 223.
[192] CroOA, Art. 413a.

contract through a unilateral statement. It is essential to underscore that this rule differs from the rule applicable to sale contracts concluded outside the consumer context, where the contract is considered terminated *ex lege*.[193] Consequently, the consumer assumes the final decision regarding the validity of the contract since he/she can decide to maintain it notwithstanding the seller's failure to perform. Such a rule demonstrates the Croatian legislation's overt commitment to preserving the contract's validity. Such commitment is also confirmed by retaining unaltered the hierarchy of remedies when the defect emerges immediately or shortly after the delivery of the goods.

Moreover, the CroOA specifies that in the event of the termination of the contract, the consumer is obliged to return the goods to the seller at the seller's expense.[194] On the other hand, the seller must reimburse the consumer the price paid for the goods upon receipt of the goods or any evidence provided by the consumer indicating their return.[195] These rules align with Art. 16, Sec. 3 of Directive (EU) 2019/771. It is worth noting that the consumer's obligation to return the goods precedes the reimbursement of the price. The CroOA also explicitly equates the effects of the termination of the contract due to a lack of conformity with the termination of bilateral contracts resulting from non-performance.[196]

Finally, the CroOA also safeguards the seller's position by not allowing the consumer to terminate the contract when the defect is of minor relevance. However, in that case, the consumer retains other remedies (repair, replacement, appropriate price reduction), including the right to compensation for damages.[197] The burden of proof that a non-conformity is of minor importance is explicitly placed on the seller.[198] Thus, in that scenario, the consumer is permitted to resort to the primary claims (repair and replacement) and the appropriate price reduction as the exclusive subsidiary claim.

---

[193] CroOA, Art. 413. Sec. 1.; Baretić, 2022, p. 203.
[194] CroOA, Art. 419, Sec. 3.
[195] CroOA, Art. 419, Sec. 3 and 4.
[196] The effects of the termination of bilateral contracts are regulated by Art. 368 of the LO. Pursuant to this article, both contracting parties shall be released from their obligations other than the obligation to pay damages. In case that one party has performed the contract fully or partially, he/she has the right to restitution of whatever he/she has given. Furthermore, each party owes the other compensation for the benefits that he/she enjoyed in the meantime from whatever he/she is obliged to return or compensate.
[197] CroOA, Art. 410. Sec. 7.
[198] CroOA, Art. 410, Sec. 8.

It is crucial to emphasize that the CJEU in its judgment C-32/12 (Duarte case) established that the national court should be empowered to "grant of its own motion an appropriate reduction in the price of goods which are the subject of the sales contract in the case where a consumer who is entitled to such a reduction brings proceedings which are limited to seeking only the rescission of that contract and such rescission cannot be granted because the lack of conformity in those goods is minor, even though that consumer is not entitled to refine his initial application or to bring a fresh action to that end".[199] Therefore, the national court should grant the appropriate price reduction *ex officio* when a consumer erroneously invokes the termination of the contract due to a minor relevance of the lack of conformity, and the national legal framework makes it impossible or excessively burdensome to seek a price reduction as an alternative remedy.[200]

The expected next step for the Croatian legislator to affect consumer remedies will be the transposition of Directive (EU) 2024/1799. Although without explicitly modifying the hierarchical order between the remedies[201], the amendments, following the spirit of circular economy and sustainable consumption, will have to stimulate the use of the remedy of repair by the consumer, mainly by prolonging the liability period for 12 months after the repair is performed[202] and introducing the possibility for the seller to "provide the consumer free of charge with a replacement good, including a refurbished good, on loan".[203]

2.8. Consumer Guarantees

Before the 2021 amendments, the CroOA did not explicitly define the contractual guarantee. The exact term used by the Croatian legislator was "the warranty for the proper quality of the sold goods". It is important to note that such a guarantee, constituting a unilaterally binding contract, could be offered voluntarily by either the producer or the seller.[204] The term "producer" subsumed the manufacturer of goods, the importer of goods, and any person representing himself/herself as a producer by affixing his/her name,

[199] CJEU, C-32/12, para. 43.
[200] Jansen, 2014, p. 990.
[201] Vítová, 2024, p. 95.
[202] Directive (EU) 2024/1799, Art. 16, Sec. 3.
[203] Directive (EU) 2024/1799, Art. 16, Sec. 4.
[204] Ćesić, 2021, p. 439.

trademark, or any other distinctive sign on the goods.[205] Thus, this definition was consistent with Art. 1, Sec. 2 (d) of Directive 1999/44/EC.

The guarantee granted by the producer provided the consumer with specific claims that could be asserted against both the seller and the producer, whose liability was solidary.[206] If the producer guaranteed the proper quality of the goods for a specified period starting from their delivery to the consumer, the consumer was entitled, in cases where the goods lacked proper quality, to demand either repair within a reasonable time or, if the repair was not completed, replacement with conforming goods from both the seller and the producer.[207] The reasonable time was to be determined based on the circumstances of the specific case, calculating also the time necessary to dispatch the goods to the place of repair and their return to the consumer.[208] Thus, the consumer was afforded the right to independently choose whether to seek redress from the seller or the producer based on the producer's guarantee. Conversely, a guarantee provided by the seller did not impose any obligation on the producer. Under such circumstances, the consumer could request repair to be completed within a reasonable time and, if necessary, replacement solely from the seller.[209] Consequently, it may be posited that the producer's guarantee was more beneficial to the consumer's position compared to the guarantee given by the seller.

The Croatian legislator established a hierarchical structure of claims arising from the guarantee. Since the possibility of replacement was contingent upon the failure to repair the goods within a reasonable time, it may be inferred that repair constituted a primary, while replacement was a secondary remedy. On the other hand, the Croatian legal literature stated that the seller was allowed to replace the goods immediately instead of repairing the defect if it was more appropriate to him/her, provided that the purpose of the contract would have been fulfilled in that manner.[210]

Notably, the consumer could invoke these remedies within the guarantee period, irrespective of when the defect emerged.[211] Thus, the presence of the defect at the time of

[205] CroOA, Art. 401, Sec. 3.
[206] Ćesić, 2021, p. 441.; Gorenc et al., 2014, p. 728.
[207] CroOA, Art. 423, Sec. 1.
[208] Ćesić, 2021, p. 441., Gorenc et al., 2014, p. 727.
[209] CroOA, Art. 423, Sec. 2.
[210] Ćesić, 2021, p. 441.; Gorenc et al., 2014, p. 727.
[211] CroOA, Art. 424, Sec. 1.

delivery of the goods to the consumer was not a prerequisite for exercising these remedies.[212] Additionally, the consumer was also cumulatively entitled to compensation for damages incurred due to his/her inability to use the goods from the moment the repair or replacement was requested until their performance.[213] Thus, the successful performance of repair or replacement was a prerequisite for obtaining compensation for damages.[214] Nevertheless, the consumer's rights deriving from the guarantee extinguished within one year commencing from the moment he/she asked for repair or replacement.[215] This one-year deadline is preclusive.[216]

Moreover, the CroOA obliged both the seller and the producer to transport the goods to the location where they needed to be repaired or replaced at their own expense and, subsequently, return the repaired or replaced goods to the consumer.[217] During the period necessary for effectuating the repair and replacement, the seller or the producer assumed the risk of the goods being destroyed or damaged.[218]

The consumer was also entitled to termination of the contract or price reduction if the seller proved unable to repair and replace the goods within a reasonable time.[219] Notably, the Croatian legislator specifically tied the availability of these remedies to the seller's failure to repair and replace the goods, i.e., the producer was omitted. This mirrors the perspective existing in Hungarian legal theory suggesting that termination of the contract and price reduction can only be obtained from the seller, given that the consumer has concluded the sales contract with the seller and paid the purchase price to him/her.[220] Additionally, the consumer was entitled to compensation for damages.[221]

In accordance with Art. 6, Sec. 2 of Directive 1999/44/EC, the CroOA established that provisions governing the guarantee did not preclude the application of the rules on the seller's liability for the lack of conformity of the goods with the contract.[222] Furthermore,

[212] Gorenc et al., 2014, p. 729.
[213] CroOA, Art. 424, Sec. 2.
[214] Ćesić, 2021, p. 441.
[215] CroOA, Art. 429.
[216] Ćesić, 2021, p. 448.
[217] CroOA, Art. 427, Sec. 1.
[218] CroOA, Art. 427, Sec. 2.
[219] CroOA, Art. 426.
[220] Kemenés in Dudaš 2021, 943.; Ćesić, 2021, p. 446.
[221] CroOA, Art. 426.
[222] CroOA, Art. 423, Sec. 4.

the guarantee had to include a precise statement that it did not affect the consumer's other rights based on alternative legal grounds.[223] Thus, the consumer could select the legal basis under which to assert his/her rights. The CroOA mandated that the guarantee specify the consumer's rights deriving from it.[224] In line with Art. 6, Sec. 2 of Directive 1999/44/EC, the guarantee had to outline essential particulars necessary for the consumer to make claims under it, including its duration, territorial scope, and the name and address of the person who granted it.[225] However, there was no explicit requirement for the guarantee's content to be drafted in plain, intelligible language. Notably, non-compliance with obligations concerning the content of the guarantee (the mentioned Art. 423, Sec. 5 and 6) did not affect its validity.[226] Interestingly, the requirement contained in Directive 1999/44/EC that the guarantee needs to be given without extra charge was omitted in the CroOA.

Finally, the Croatian legislator did not require the guarantee to be in written form as it was considered binding under the conditions under which it was provided. The CroOA explicitly referenced the warranty certificate, oral statement, and associated advertising without addressing potential discrepancies between the terms of the warranty certificate or the oral statement on the one side and the associated advertising on the other.[227] However, the 2014CroCPA stipulated that ambiguous or incomprehensible contractual provisions were to be interpreted in a manner more favorable to the consumer.[228] Transposing Art. 6, Sec. 3 of Directive 1999/44/EC, the CroOA allowed the consumer to request the guarantee be provided in writing or another durable medium available and accessible to him/her.[229]

The transposition of Directive (EU) 2019/771 introduced significant changes. First, this institute has been rebranded to commercial guarantee (komercijalno jamstvo), a term also adopted by the EU legislator in the mentioned Directive. The commercial guarantee is defined as any obligation whereby the seller or the producer, in addition to the seller's

[223] CroOA, Art. 423, Sec. 5.
[224] CroOA, Art. 423, Sec. 5.
[225] CroOA, Art. 423, Sec. 6.
[226] CroOA, Art. 423, Sec. 7.
[227] CroOA, Art. 423, Sec. 3.
[228] 2014 CroCPA, Art. 54, Sec. 1.
[229] CroOA, Art. 423, Sec. 3.

liability for the lack of conformity of the goods with the contract, are being bound to the consumer to refund the price paid or replace, repair, or service the goods if they fail to meet the specifications or other requirements outlined in the commercial guarantee statement or relevant associated advertising material available at the time of or prior to the conclusion of the contract.[230]

In addressing potential conflicts between the terms of the commercial warranty statement and associated advertising material, the CroOA stipulates that if the conditions outlined in the former are less favourable to the consumer than those in the latter, the commercial guarantee is binding under the conditions specified in the latter unless it was corrected in the same or a comparable manner to that in which it was made before the conclusion of the contract.[231] This provision represents the transposition of Art. 17, Sec. 1 of Directive (EU) 2019/771.

The mandatory content of the commercial guarantee statement has been refined, now requiring to be expressed in plain and intelligible language, a stipulation absent before the transposition of Directive (EU) 2019/771.[232] In line with the letter and spirit of Art. 17, Sec. 2 of the mentioned Directive, the CroOA specifies that the commercial guarantee statement should contain the following elements:

1) a clear statement that the consumer is entitled to remedies stemming from the seller's liability for the lack of conformity of the goods with the contract free of charge and that the commercial guarantee does not affect those remedies;
2) the name and address of the guarantor;
3) the procedure the consumer must follow in order to obtain the implementation of the commercial guarantee;
4) the designation of the goods to which the commercial guarantee applies;
5) the terms of the commercial guarantee.[233]

Moreover, the commercial guarantee statement must be provided to the consumer on a durable medium no later than at the moment of the delivery of the goods.[234] Thus, the

[230] CroOA, Art. 423, Sec. 1.
[231] CroOA, Art. 423, Sec. 7.
[232] CroOA, Art. 423, Sec. 9.
[233] CroOA, Art. 423, Sec. 9.
[234] CroOA, Art. 423, Sec. 8.

Croatian legislator has established a general rule applicable to each case, ensuring that the commercial guarantee statement is integrated into a durable medium. A durable medium is defined as any tool allowing the consumer or the seller to store information addressed personally to him/her, enabling access throughout a period corresponding to the intended purposes of the information and facilitating the unchanged reproduction of the stored information.[235] It is important to note that non-compliance with the obligations regarding the delivery of the commercial guarantee statement and its mandatory content does not affect the validity of the commercial guarantee.[236]

The CroOA introduced a possibility for the producer to offer the consumer a commercial guarantee of durability for certain goods for a certain period. In this scenario, the producer assumes direct liability to the consumer throughout the entire duration covered by the commercial guarantee of durability, adhering to repair or replacement as outlined in Art. 410a.[237] Thus, the consumer has the autonomy to opt for repair or replacement from either the producer or the seller.[238] However, the producer can provide the consumer with more beneficial conditions in the commercial guarantee of durability statement.[239] These provisions align with Art. 17, Sec. 1 of Directive (EU) 2019/771.

The hierarchy of remedies available to the consumer and the conditions for their application in the event of a commercial guarantee provided by either the producer or the seller remained unaltered following the transposition of Directive (EU) 2019/771. Therefore, repair, which must be carried out within a reasonable period, retains its priority over replacement. This prioritization of repair over replacement may be regarded as the most notable distinction compared to the producer's commercial guarantee of durability, where repair and replacement are accorded equal significance, with the possibility of granting more beneficial conditions to the consumer.

3. SLOVENIA

3.1. Legal Sources

[235] CroOA, Art. 399a (9).
[236] CroOA, Art. 423, Sec. 10.
[237] CroOA, Art. 423, Sec. 3.
[238] Marín López, 2019, 19; Cárcamo, 2022, 158.
[239] CroOA, Art. 423, Sec. 4.

Slovenia concluded the Europe Agreement[240] in 1996, thereby establishing an association with the European Communities and their Member States, operating within the European Union framework.[241] The paramount significance of consumer protection was underscored by entirely dedicating Article 93 of the Agreement to this issue, which posed the achievement of compatibility between the consumer protection systems of Slovenia and the Community as the objective of the cooperation between the parties. To achieve this common aim, the parties committed to promoting and providing, *inter alia*, the harmonisation of legislation and the alignment of Slovenian consumer protection laws with those applied within the Community.

As a direct outcome of harmonisation efforts, Slovenia enacted its Consumer Protection Act in 1998[242] (hereinafter referred to as: the 1998/2002 SloCPA). In addition, the transposition of Directive 1999/44/EC was achieved through an amendment to this act in 2002. The Ministry of Economic Development and Technology subsequently prepared the Proposal Draft of the novel SloCPA (hereinafter referred to as: "the Proposal Draft"), which was adopted by the Slovenian Parliament on 29 September 2022. This novel SloCPA[243] (hereinafter referred to as: "the 2022 SloCPA"), which is the principal legislation in the domain of consumer protection, among other measures, transposes Directive (EU) 2019/771.

It is crucial to emphasize that the application of the 2022 SloCPA commenced three months after it came into force.[244] Given that it came into force fifteen days following its publication in the Official Gazette, and it was published on 11 October 2022, the 2022 SloCPA became applicable as of 26 January 2023.

---

[240] Europe Agreement establishing an association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part (1996).

[241] Slovenia is the only country, former federal unit of the Socialist Federal Republic of Yugoslavia, which concluded this type of agreement with the European Communities. Other countries, former federal units, concluded the Stabilisation and Association Agreement (Croatia and Macedonia in 2001, Montenegro in 2007, Serbia and Bosnia and Hercegovina in 2008).

[242] Zakon o varstvu potrošnikov [Consumer Protection Act], *Uradni list RS* [Official Gazette of the Republic of Slovenia], No. 20/98, 25/98, 110/02, 14/13 (official consolidated version), 51/04, 98/04 (official consolidated version), 126/07, 86/09, 78/11, 38/14, 19/15 and 31/18.

[243] Zakon o varstvu potrošnikov [Consumer Protection Act], *Uradni list RS* [Official Gazette of the Republic of Slovenia], No. 130/2022.

[244] 2022 SloCPA, Art. 249.

Furthermore, the Slovenian legislator enacted the novel Obligations Act[245] (hereinafter referred to as: the SloOA) in 2001, thereby repealing the Yugoslav Obligations Act of 1978. It is important to note that the SloOA constitutes a primary legal framework for general contract law. Since the SloOA incorporates provisions pertaining to liability for material defects (Art. 458 – 480), it may be stated that the Slovenian legislator adopted a dual regulatory approach, resulting in a fragmented legal landscape concerning sales law. Its primary objective was to "ensure minimum standards of consumer protection are met with as little change of existing contract law as possible".[246]

Consequently, the respective provisions of the consumer protection regulation (initially the 1998/2002 SloCPA, at this moment the novel 2022 SloCPA), having the *lex specialis* position compared to the SloOA,[247] have been applicable to sales contracts concluded in a consumer context, characterized by the involvement of a consumer as one of the contractual parties, while the SloOA governs sales contract concluded outside this context. In this regard, it is worth underlining that the same 2022 SloCPA specifies that the SloOA finds its subsidiary application when certain issues are not regulated by that act,[248] which rule applying to the liability for the lack of conformity was also contained in the 1998/2002 SloCPA.[249] This provision confirms that the SloOA is *lex generalis* for consumer sales contracts.

3.2. Definitions

The 1998/2002 SloCPA established the fundamental definitions in the realm of consumer protection law. A consumer was defined as any natural person who acquired or used goods for purposes unrelated to his/her professional or gainful activities.[250] This definition, consistent with Art. 1, Sec. 2 (a) of Directive 1999/44/EC, necessitated the fulfillment of two conditions for someone to be considered a consumer: (i) the status of a natural person, thus excluding legal persons from the scope of consumer, and (ii) the circumstance that

[245] Obligacijski zakonik [Obligation Act], *Uradni list RS* [Official Gazette of the Republic of Slovenia], No. 83/01, 28/06, 40/07, 97/07 (official consolidated version), 64/16, 20/18.
[246] Možina, 2008, p. 176.
[247] Berdnik and Žefran, 2017, p. 39.
[248] 2022 SloCPA, Art. 3, Sec. 1.
[249] 1998/2002 SloCPA, Art. 37, Sec. 4.; The same act also stated in Art. 1, Sec. 28 that the rights the consumer had under it did not affect his/her rights deriving from the general regulations on contractual relationships.
[250] 1998/2002 SloCPA, Art. 1, Sec. 2,

the acquisition of goods occurred outside the natural person's commercial or business activity. The guidance provided by the CJEU in Faber case that the national court shall independently assess whether a buyer qualifies as a consumer was also applicable within Slovenian law. The 2022 SloCPA retained this concept, defining it identically as the 1998/2002 SloCPA.[251]

Curiously, although the term seller (prodajalec in Slovenian) appeared frequently in the 1998/2002 SloCPA, the Slovenian legislator did not provide a clear and consistent definition. It could be only inferred indirectly that the concept of the company[252] (podjetje in Slovenian) was equated with the seller since the sales contract was defined as any agreement wherein the company undertook to deliver goods to the consumer in such a way that he/she acquired ownership, and the consumer undertook to pay the price to the company.[253] This lack of clarity was rectified by the 2022 SloCPA which explicitly defines the seller as a company that enters into sales contracts.[254] The definition of the sales contract, however, remained unchanged.[255] It should be underlined that the indication given by the CJEU in the Wathelet case that the concept of the seller also includes "a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual"[256] is valid also in Slovenian law.

The 1998/2002 SloCPA defined the goods as any movable item, excluding those sold by way of execution or other judicial proceedings. Moreover, digital content, as well as water, gas, and electricity provided that they were put up for sale in a limited volume or a set quantity, were also considered goods.[257] It is important to underline that digital content,[258] absent in Directive 1999/44/EC, was also included in the definition of the concept of goods. Since the notion of digital content is enshrined in Directive (EU) 2019/771, it may be stated that the Slovenian legislator was forward-looking in this specific case. Another

[251] 2022 SloCPA, Art. 4, Sec. 18.
[252] A company was defined in Art. 1, Sec. 3 of the 1998/2002 SloCPA as any legal or natural person engaged in a gainful activity, irrespective of its legal and organisational form or ownership status.
[253] 1998/2002 SloCPA, Art. 1, Sec. 18.
[254] 2022 SloCPA, Art. 4, Sec. 19.
[255] 2022 SloCPA, Art. 66.
[256] CJEU, C-149/14, para. 45.
[257] 1998/2002 SloCPA, Art. 1, Sec. 5.
[258] The 1998/2002 SloCPA defined digital content as data which are produced or supplied in digital form.

example of the progressive nature of the Slovenian legislator is the inclusion of the concept of a durable medium defined as any medium enabling the consumer to store data or information addressed to him/her in a permanent manner and allowing for enduring access and reproduction.[259] The 2022 SloCPA maintains the same definition of goods as the 1998/2002 SloCPA[260], though with an increased emphasis on goods with digital elements, which will be covered in a dedicated section of the chapter. In addition, the Slovenian legislator does not limit the application of the provisions on the lack of conformity when the object of the sales contract are living animals or second-hand goods sold at a public auction.

Finally, it is worth noting that the 2022 SloCPA, following the words and spirit of Directive (EU) 2019/771, introduced the notions of functionality,[261] interoperability,[262] durability,[263] and compatibility.[264]

3.3. Lack of Conformity

In accordance with Art. 2, Sec. 1 of Directive 1999/44/EC, the 1998/2002 SloCPA established a general obligation imposed on the seller to deliver goods that conform with the contract to the consumer, thereby holding him/her liable for any lack of conformity (the exact term used was a material defect – stvarna napaka) related to the performance of the contract.[265] The European lawmaker considered this legal framework, clearly influenced by Art. 35 of the United Nations Convention on Contracts for the International Sale of Goods,[266] as „common to different national legal traditions“, as articulated in Recital 7 of the mentioned Directive. The 1998/2002 SloCPA delineated specific situations in which a defect was to be considered material.

---

[259] 1998/2002 SloCPA, Art. 1, Sec. 8.
[260] 2022 SloCPA, Art. 4, Sec. 1.
[261] The 2022 SloCPA in Art. 4, Sec. 7, transposing Art. 2, Sec. 13 of Directive (EU) 2019/771, defines the functionality as the ability of the goods to perform their functions having regard to their purpose.
[262] The 2022 SloCPA in Art. 4, Sec. 8, transposing Art. 2, Sec. 10 of Directive (EU) 2019/771, defines the interoperability as ability of the goods to function with hardware or software different from those with which goods of the same type is normally used.
[263] The 2022 SloCPA in Art. 4, Sec. 26, transposing Art. 2, Sec. 13 of Directive (EU) 2019/771, defines the durability as the ability of the goods to maintain their required functions and performance through normal use.
[264] The 2022 SloCPA in Art. 4, Sec. 30, transposing Art. 2, Sec. 8 of Directive (EU) 2019/771, defines the compatibility as the ability of the goods to function with hardware or software with which goods of the same type are normally used, without the need to convert the goods, hardware or software.
[265] 1998/2002 SloCPA, Art. 37, Sec. 1.
[266] Staudenmayer, 2000, p. 551; Howells et al., 2018, p. 176; Aurrekoetxea, 2006, p. 1014.

First, a defect was material when the goods did not possess the features necessary for their regular use or placement in circulation.[267] The assessment of the adequacy of the goods for their regular use was to be made by considering the usual goods of the same type and having regard to any statement about their features provided by the seller or the manufacturer, in particular through advertising, presentation of the product or indication on the goods.[268] This specification was beneficial to the consumer, enabling him/her to utilize available remedies when the goods failed to conform to the unilateral statements given by the seller or the manufacturer.[269] On the other hand, the seller could not be exempt from liability for such statements, as the 1998/2002 SloCPA did not transpose Art. 2, Sec. 4 of Directive 1999/44/EC.[270]

Another instance of lack of conformity (material defect) arose when the goods did not have the features necessary for the specific use for which the consumer purchased them, provided that this specific use was known or should have been known to the seller.[271] The 1998/2002 SloCPA did not explicitly mandate that the consumer inform the seller of the intended specific use of the goods before concluding the contract. Consequently, it may be inferred that the seller's liability could be established based on his/her awareness of the specific use, regardless of whether this knowledge was obtained directly from the consumer or through other issues.

Furthermore, a lack of conformity (material defect) existed when the goods did not possess the characteristics and features that were expressly or tacitly agreed upon or prescribed.[272] It is noteworthy that this scenario presupposed non-compliance with explicit or implicit contractual stipulations or requirements contained in a legal act. Therefore, this criterion encompassed subjective and objective elements.

Finally, a material defect also existed when the seller delivered goods that did not comply with the sample or model unless the sample or model was exhibited solely for informational purposes.[273] This situation presupposed that the seller had shown a sample

[267] 1998/2002 SloCPA, Art. 37, Sec. 2 (1).
[268] 1998/2002 SloCPA, Art. 37, Sec. 3.
[269] Brus, 2020, p. 33.
[270] Twigg-Flesner, 2008, p. 424.
[271] 1998/2002 SloCPA, Art. 37, Sec. 2 (2).
[272] 1998/2002 SloCPA, Art. 37, Sec. 2 (3).
[273] 1998/2002 SloCPA, Art. 37, Sec. 2 (4).

or model to the consumer before the conclusion of the contract. However, the circumstance that it was shown only for informational purposes excluded the application of this provision.

It is important to note that the determination of the lack of conformity/material defect in Slovenian law differed conceptually from the provisions set out in Directive 1999/44/EC. Specifically, the 1998/2002 SloCPA used the specific words ("napaka je stvarna" – a defect is material), suggesting that the Slovenian legislator established a *numerus clausus* approach, specifying each possible case where the lack of conformity (material defect) could be established. If the prescribed criteria were not met, it was presumed that the goods conformed to the sales contract.[274] Conversely, Directive 1999/44/EC in Art. 2, Sec. 2 provided situations where consumer goods were presumed to conform with the contract. Moreover, the Slovenian legislator did not transpose Art. 2, Sec. 5 of the same Directive (the so-called IKEA clause).[275]

Following the word and the spirit of Directive (EU) 2019/771, the 2022 SloCPA differentiates between subjective and objective requirements for conformity. For goods to be deemed compliant with the sales contract, they must satisfy both requirements.[276] Transposing Art. 6. of the mentioned Directive, the 2022 SloCPA specifies that goods conform with the contract, in particular, when appropriate, when:

- they correspond to the description, type, quality, and quantity and possess the functionality, compatibility, interoperability, and other features as required by the sales contract;
- they are suitable for a specific purpose for which the consumer requires them, provided that the consumer informed the seller of this purpose no later than at the time of concluding the sales contract, and the seller agreed to it;
- they are supplied with all accessories and instructions, including those related to installation, as stipulated in the sales contract;
- they are updated as specified in the sales contract.[277]

[274] Twigg-Flesner, 2008, p. 421.
[275] Možina, 2012, p. 87.
[276] Možina, 2023, p. 13.
[277] 2022 SloCPA, Art. 72.

The common feature of all these cases is their direct connection to the sales contract. Specifically, the determination of elements constituting the subjective requirements for conformity is contingent upon the content of each sales contract. In contrast to the previous regulation, it is worth noting that the 2022 SloCPA stipulates that the seller's awareness of the specific purpose for which the consumer purchases the goods must stem from the notification by the consumer. Moreover, mere knowledge on the part of the seller does not suffice given that his/her acceptance of this intended purpose is indispensable to establish conformity.

Regarding the objective requirements for conformity, the Slovenian legislator, transposing Art. 7, Sec. 1 of Directive (EU) 2019/771, envisages that to conform with the contract, in conjunction with meeting the subjective requirements, the goods shall:

- be suitable for the purposes for which goods of the same type are normally used, considering, where appropriate, other regulations, technical standards, or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;
- be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract, where applicable;
- be delivered together with such accessories, including packaging, installation instructions, or other instructions, as the consumer may reasonably expect to receive, where applicable;
- be of the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility, and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transaction, including the producer, particularly in advertising or on labelling.[278]

The objective requirements for conformity find their application regardless of the specific terms of the sales contract and derive from the consumer's reasonable expectation.[279] The

[278] 2022 SloCPA, Art. 73.
[279] De Franceschi, 2019, p. 86; Twigg-Flesner, 2020, p. 56.

2022 SloCPA, transposing Art. 7, Sec. 2 of Directive (EU) 2019/771, introduced into the Slovenian legal system the opportunity for the seller to be released from liability for public statements made by other persons in the previous link of the chain of transaction. It may be argued that this novelty has a detrimental effect on the consumer's position, as his/her recourse is limited solely to the seller.

In this respect, the burden of proof explicitly rests on the seller. Specifically, the abovementioned public statements will not be considered in the assessment of objective requirements for conformity if the seller demonstrates the existence of at least one of the following circumstances:

- that the seller did not know about the public statement in question and cannot be reasonably expected to know it;
- that, by the time of the conclusion of the sales contract, the public statement had been corrected in the same or comparable way as it had been made;
- that the public statement could not influence the consumer's decision to purchase the goods.[280]

Another significant innovation introduced through the transposition of Directive (EU) 2019/771 is the incorporation of the so-called IKEA clause. The 2022 SloCPA specifies that a defect arising from the improper installation of goods constitutes a lack of conformity if the installation is an integral part of the sales contract and was performed by the seller or under his/her responsibility.[281] Furthermore, another scenario of lack of conformity arises when the installation of the goods done and intended to be done by the consumer is incorrect due to insufficient installation instructions provided by the seller.[282]

3.4. The Moment of the Emergence of the Seller's Liability

Before the transposition of Directive (EU) 2019/771, the 1998/2002 SloCPA did not explicitly define the seller's liability for the lack of conformity that existed at the time of delivery of the goods.[283] Nevertheless, the relevant provisions could be found in the SloOA due to its supplementary application.[284] Specifically, the SloOA envisages that the

[280] 2022 SloCPA, Art. 73, Sec. 1 (4).
[281] 2022 SloCPA, Art. 76, Sec. 1.
[282] 2022 SloCPA, Art. 76, Sec. 2.
[283] Brus, 2020, p. 33.
[284] 1998/2002 SloCPA, Art. 37, Sec. 4.

seller is liable for any lack of conformity the goods had when the risk was transferred to the buyer, irrespective of the seller's awareness of such lack of conformity.[285] Consequently, the seller's knowledge about the existence of the non-conformity was immaterial in establishing his/her liability. Additionally, the seller's liability extended to the lack of conformity manifesting after the passing of the risk to the buyer if attributable to a pre-existing cause.[286]

Furthermore, it is noteworthy that the Slovenian legislator incorporated provisions in the 1998/2002 SloCPA concerning the transfer of the risk of loss or damage to the consumer. As a general rule, this transfer occurred when the consumer, or a third party designated by the consumer for this purpose excluding the carrier, physically received the dispatched goods.[287] The 1998/2002 SloCPA established an exception to this rule applying to scenarios where the consumer commissioned a carrier not offered by the seller to transport the goods. In such instances, the risk of loss or damage was transferred to the consumer upon the delivery of the goods to the carrier, without prejudice to the consumer's rights against the carrier.[288] These legal provisions represented the transposition of Art. 20 of Directive 2011/83/EU.

Interestingly, analogous to the CroOA prior to its 2008 amendments, the SloOA does not classify a minor/insignificant defect as a lack of conformity.[289] The Slovenian legal theory has provided a stringent interpretation of this provision, suggesting that any lack of conformity affecting the usability of the goods or estimable in monetary terms cannot be regarded as insignificant.[290] It is crucial to highlight that under this legal framework, the buyer (consumer) was precluded from invoking any remedy against the seller. This legal approach diverged from Directive 1999/44/EC, wherein a minor lack of conformity solely excluded the possibility to terminate the sales contract.

The 1998/2002 SloCPA did not incorporate any provision exempting the seller from liability. Consequently, the rules from the SloOA were applicable also in such cases.[291]

[285] SloOA, Art. 458, Sec. 1.
[286] SloOA, Art. 458, Sec. 2.
[287] 1998/2002 SloCPA, Art. 25c, Sec. 1.
[288] 1998/2002 SloCPA, Art. 25c, Sec. 2.
[289] SloOA, Art. 458, Sec. 3.
[290] Možina, 2012, p, 87.
[291] Možina, 2012, pp. 87-88.

The circumstance that the lack of conformity was known to the buyer (consumer) at the time of the conclusion of the contract or could not have remained unknown absolved the seller from liability.[292] This legal solution assumed that the buyer relied on the lack of conformity when entering into the contract.

The seller's liability was intensified when he/she stated that the goods were devoid of defects or possessed particular characteristics or features. In such cases, the seller remained liable even when the buyer (consumer) could have easily detected the lack of conformity.[293] Furthermore, neither the 1998/2002 SloCPA nor the SloOA delineated a provision akin to that contained in Directive 1999/44/EC, which exempts the seller from liability if the lack of conformity originated from materials supplied by the buyer (consumer).[294]

With the enactment of the 2022 SloCPA, the instances necessitating the application of the SloOA have been substantially reduced, although the SloOA continues to apply on a subsidiary basis.[295] The 2022 SloCPA explicitly stipulates that the seller is liable for any lack of conformity existing at the time of delivery of the goods.[296] Moreover, the Slovenian legislator retained the provisions governing the transfer of the risk of loss or damage to the consumer, based on Art. 20 of Directive 2011/83/EU.[297]

Regarding the exemption of the seller from liability, it is permissible when the goods do not meet the objective requirements for conformity, provided that two conditions are satisfied in the specific case. Firstly, the seller must have explicitly informed the consumer at the time of the conclusion of the sales contract that a specific feature of the goods diverged from the objective requirements for conformity.[298] It is worth emphasizing that the consumer's awareness of this deviation must result directly from the seller's notification; it does not suffice that it was known or could not have remained unknown to the consumer at the time of the conclusion of the contract, as mandated by the SloOA.[299] Secondly, for the seller to qualify for exemption from liability, it is essential that the

[292] SloOA, Art. 460, Sec. 1.
[293] SloOA, Art. 460, Sec. 3.
[294] Možina, 2012, p. 88.
[295] 2022 SloCPA, Art. 3, Sec. 1.
[296] 2022 SloCPA, Art. 71.
[297] 2022 SloCPA, Art. 68.
[298] SloCPA, Art. 75.
[299] Možina, 2023, p. 15;

consumer explicitly and separately accept this deviation when concluding the sales contract.[300] By incorporating this legal solution, the Slovenian lawmaker transposed Art. 7, Sec. 5 of Directive (EU) 2019/771.

Finally, the provision located in the SloOA stating that a minor defect does not constitute a lack of conformity is no longer applicable in the consumer context. In the 2022 SloCPA, the lesser significance of the lack of conformity extinguishes the possibility of terminating the sales contract.[301] However, other remedies (repair, replacement, and the appropriate price reduction) remain available to the consumer.[302]

3.5. Deadlines and Burden of Proof

Prior to the adoption of the 2022 SloCPA, for the seller to be held liable, the lack of conformity had to manifest within two years of delivery of the goods.[303] This two-year time limit was considered preclusive.[304] The Slovenian legislator instituted a reduced liability period for second-hand goods, stipulating a one-year timeframe from the date of delivery of the goods.[305] It is worth emphasizing that this legal solution diverged from the provisions of Directive 1999/44/EC. Specifically, the 1998/2002 SloCPA did not require the contractual parties to agree on the application of a shorter time limit. Thus, it was automatically applicable when the sales contract regarded second-hand goods, regardless of the contractual parties' intentions. In contrast, Directive 1999/44/EC permitted the contractual parties to agree upon the reduction of the general two-year time limit.

Concerning the burden of proof for the existence of the lack of conformity, the interpretation provided by the CJEU in the Faber case, which assigned this burden to the consumer, was also applicable in Slovenian law. The Slovenian legal literature underscored that the provisions of the 1998/2002 SloCPA were to be interpreted in alignment with Directive 1999/44/EC.[306] In this context, the consumer's position was bolstered by the presumption that the lack of conformity existed at the time of delivery of the goods if it emerged within six months of delivery.[307] Notably, the Slovenian legislator

[300] 2022 SloCPA, Art. 75.
[301] 2022 SloCPA, Art. 83, Sec. 7.
[302] Dudás and Jokanović, 2023, p. 218.
[303] 1998/2002 SloCPA, Art. 37b, Sec. 1.
[304] Brus, 2020, p. 35.
[305] 1998/2002 SloCPA, Art. 37b, Sec. 2.
[306] Brus, 2020, p. 30.
[307] 1998/2002 SloCPA, Art. 37b, Sec. 3.

did not fully transpose Art. 5, Sec. 3 of Directive 1999/44/EC, omitting the clause that stated that this presumption was not applicable if it was incompatible with the nature of the goods or the nature of the lack of conformity. Nevertheless, the indications given by the CJEU in the Faber case concerning the consumer's obligation to demonstrate that a lack of conformity existed and that it manifested within six months of delivery of the goods, as well as the national court's duty to apply this presumption of its own motion, were also applicable in Slovenian law. Such an interpretation is consistent with the objectives and spirit of Directive 1999/44/EC.

The 2022 CPA has maintained a two-year deadline commencing from the moment of delivery of the goods, referring to it as both an "objective" and "guarantee" period.[308] Thus, the Slovenian legislator did not make use of the option provided by Art. 10, Sec. 3 of Directive (EU) 2019/771 to introduce a time limit longer than two years. Consequently, establishing the seller's liability requires two conditions: the presence of the lack of conformity at the time of delivery of the goods and its manifestation within two years thereafter. It is worth emphasizing that the reduction of the mentioned two-year time limit for second-hand goods is no longer mandatory; instead, it has become subject to the autonomy of will of the parties involved. Specifically, taking advantage of the opportunity given by Art. 10, Sec. 6 of Directive (EU) 2019/771, the Slovenian legislator allows the parties to shorten the liability (guarantee) period for second-hand goods, provided that it is not less than one year.[309]

Transposing Art. 11, Sec. 1 of Directive (EU) 2019/771, the 2022 SloCPA has extended the period during which the presumption that the lack of conformity existed at the time of delivery of the goods applies from six months to one year. The precise scope of this presumption has been delineated in greater detail. Notably, the burden of proof that the goods were in conformity with the contract at the moment of delivery is explicitly imposed on the seller. Additionally, the 2022 SloCPA specifically states that this presumption does not find its application if it is incompatible with the nature of the goods or the nature of the lack of conformity.[310]

[308] 2022 SloCPA, Art. 78, Sec. 1.
[309] 2022 SloCPA, Art. 78, Sec. 5.
[310] 2022 SloCPA, Art. 80, Sec. 1.

The Explanatory Memoranda accompanying the 2022 SloCPA, guided by Recital 45 of Directive (EU) 2019/771, provides explicit examples, such as goods inherently prone to rapid perishability (e.g. a bouquet of roses), or goods designed for single-use, where this presumption would not be applicable due to its incompatibility with the nature of the goods or the nature of the lack of conformity.[311] Consistent with the Faber case precedent, it is solely the consumer's responsibility to demonstrate the existence of a lack of conformity.[312]

3.6. Goods with Digital Elements

The provisions outlined in the 2022 SloCPA governing the warranty for the conformity of the goods also extend to situations involving digital content or digital service that is incorporated into or interconnected with goods to the extent that the goods could not perform their functions without this digital component. An additional requirement for these provisions to apply is that such digital content or digital service must be supplied alongside the goods under the same sales contract, regardless of whether it is provided by the seller or a third party.[313]

Therefore, where the supply of digital content or digital service is governed by a separate contract, independent from the consumer sales contract for the goods with digital elements, the application of the provisions on the warranty for the conformity is excluded.[314] In such instances, the specific chapter of the 2022 SloCPA dealing with contracts for the supply of digital content or digital service (Art. 103 – Art. 127) becomes applicable. Nevertheless, any ambiguity concerning whether the sales contract encompasses the supply of incorporated or interconnected digital content or digital service is resolved in favour of its inclusion within the contract.[315] These legal solutions are in concordance with Art. 3, Sec. 3 of Directive (EU) 2019/771. Moreover, the application of the mentioned provisions is also excluded in the event of physical data carriers (DVDs, CDs, USB keys, and memory cards) used exclusively as carriers of digital content.[316]

[311] The Explanatory Memoranda for the 2022 SloCPA, Comment to Art. 80, p. 112.
[312] The Explanatory Memoranda for the 2022 SloCPA, Comment to Art. 80, p. 112.
[313] 2022 SloCPA, Art. 67, Sec. 1.
[314] The Explanatory Memoranda for the 2022 SloCPA, Comment to Art. 67, p. 108.
[315] 2022 SloCPA, Art. 67, Sec. 1.
[316] 2022 SloCPA, Art. 67, Sec. 2.

To establish the seller's liability, the lack of conformity should exist at the time of delivery and emerge within two years thereafter also in the case of the goods with digital elements.[317] This rule applies equally to the one-act supply of digital content or digital service.

Concerning the continuous supply of the digital content or digital service over a specified period, the seller is liable for any lack of conformity that arises or becomes apparent within two years of the delivery of the goods with digital elements.[318] If the sales contract specifies continuous supply for more than two years, the seller's liability extends to covering each instance of non-conformity that arises or becomes apparent during this designated period.[319] These rules represent the transposition of Art. 10, Sec. 2 of Directive (EU) 2019/771.

Additionally, another noteworthy aspect related to the continuous supply of digital content or digital service over a specified period concerns the burden of proof on whether the digital content or digital service conformed during the period referred to in Art. 78, Sec. 3 and 4 of the 2022 SloCPA. Notably, this burden rests with the seller, who must demonstrate that the digital content or digital service adhered to the contract throughout the designated timeframe.[320]

As part of objective requirements for conformity, the Slovenian legislator, transposing Art. 7, Sec. 3 of Directive (EU) 2019/771, has imposed additional obligations on the seller regarding goods with digital elements. Specifically, the seller is mandated to ensure that the consumer is informed about updates, comprising security updates, necessary to maintain the conformity of the goods with digital elements. Furthermore, the seller must provide these updates to the consumer for the period:

- that the consumer can reasonably expect based on the type and purpose of the goods and digital elements, taking into account the circumstances and nature of the contract, in cases where the sales contract provides for a single supply of digital content or digital service;

[317] 2022 SloCPA, Art. 78, Sec. 2.
[318] 2022 SloCPA, Art. 78, Sec. 3
[319] 2022 SloCPA, Art. 78, Sec. 4.
[320] 2022 SloCPA, Art. 80, Sec. 2.

- of two years from the delivery of the good when the sales contract provides for a continuous supply of digital content or digital service over a specified period;
- in which the digital content or digital service is to be supplied according to the sales contract when it provides for a continuous supply of the digital content or digital service exceeding two years.[321]

It is important to emphasize that the seller's obligation does not include the requirement to install updates. Unless expressly agreed otherwise, the seller is not obliged to provide upgrades or extend the functionalities of the goods with digital elements.[322]

However, the consumer is not obliged to install the supplied updates,[323] although his/her omission bears certain legal implications. Specifically, if the consumer does not install the updates supplied in accordance with Art. 74, Sec. 1 of the 2022 SloCPA within a reasonable timeframe, the seller will not be held liable for the lack of conformity arising solely from this omission, provided that two conditions are met. First, the seller must have informed the consumer about the availability of the update and the potential consequences if the consumer fails to install it. Secondly, the reason why the consumer did not install the update or installed it incorrectly was not due to the faulty installation instructions provided by the seller to the consumer.[324] These rules are concordant with Art. 7, Sec. 4 of Directive (EU) 2019/771.

3.7. Consumer Remedies

Although Directive 1999/44/EC established the hierarchy of consumer rights in the event of a lack of conformity of the goods with the contract, distinguishing repair and replacement as primary remedies, and price reduction and termination of the contract as subsidiary options, the Slovenian legislator did not adopt the same approach.[325] The 1998/2002 SloCPA allowed the consumer to demand that the seller eliminate the lack of conformity, replace the goods inflicted by it with flawless goods, reimburse part of the paid price proportionally to the existing lack of conformity, or reimburse the entire paid amount.[326] Additionally, the consumer could seek compensation for damages incurred.

[321] 2022 SloCPA, Art. 74, Sec. 1.
[322] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 74, p. 110.
[323] Carvalho, 2020, p. 40.
[324] 2022 SloCPA, Art. 74, Sec. 2.
[325] Možina, 2008, p. 177.
[326] 1998/2002 CPA. Art. 37c, Sec. 1.

The 1998/2002 CPA specifically allowed reimbursement for "the costs of material, spare parts, labor, transfer, and transport of products" incurred in implementing the consumer's remedies, with no exclusion of other costs.[327]

Since the only precondition required by the 1998/2002 SloCPA for exercising these rights was notifying the seller in the specified manner, the interpretation based only on the provisions of this legal act could lead to the conclusion that the consumer was absolutely unrestricted while selecting between the offered remedies. However, the Slovenian legal theory emphasized the need for the subsidiary application of Art. 470, Sec. 1 of the SloOA, under which if the buyer (consumer) wanted to terminate the contract and demand reimbursement of the entire paid price, he/she was required to grant the seller a reasonable additional time limit to perform his/her contractual obligation.[328]

Following this interpretation, it may be stated that the elimination of the defect (repair), replacement, and reimbursement of part of the paid price (appropriate price reduction) were primary remedies since the consumer could exercise each of them without being subject to additional conditions, while the reimbursement of the entire price (termination of the contract), due to the subsidiary application of the SloOA, constituted the sole secondary remedy.[329] Such interpretation, however, conflicts with the judgments Cp 74/2015 and Cp 133/2015 of the Higher Court in Celje which affirmed that the consumer could in each case choose the alternative remedy of terminating the contract, without being subject to the special additional prerequisite for the exercise of this right, determined by Art. 470, Sec. 1 of the SloOA.[330]

Curiously, the Supreme Court of Slovenia posed at the consumer's disposal an additional remedy, which was not expressly contained in the SloCPA. Specifically, the consumer was allowed to repair the defect himself/herself at the seller's expense, provided that the seller failed to rectify it within a reasonable additional period of time.[331] This interpretation was derived from the subsidiary application of Art. 639, Sec. 3 of the SloOA.[332]

---

[327] 1998/2002 CPA, Art. 37c, Sec. 2.
[328] Možina, 2008, p. 177.; Berdnik and Žefran, 2017, p. 40.; Možina and Renko, 2023, p. 610.
[329] Dudás and Jokanović, 2023, pp. 212-213.
[330] Higher Court in Celje, Cp 74/2015, para. 12.; Higher Court in Celje, Cp. 133/2015, para. 5.
[331] Supreme Court of Slovenia, Case No. II Ips 12/2019.
[332] Wiengler, 2024, p. 956.

It is also essential to consider the judgment of the Supreme Court of Slovenia II Ips 968/93, which articulated that "if protection can be achieved in a way that is easier for the seller, the insistence on choosing a more severe guarantee penalty is contrary to the principle of non-abuse of rights" and concluded that "it is not possible to give legal protection to the request for such a guarantee sanction".[333] Although the 1998/2022 CPA did not impose limitations on the consumer's choice between repair and replacement, the principle of the prohibition of the abuse of rights enabled the seller to implement an alternative remedy if the chosen one was disproportionate, provided that it guaranteed an adequate level of protection of the consumer's interests.[334]

Moreover, even though the 1998/2002 SloCPA did not explicitly preclude the possibility of terminating the contract when the defect was minor, the Supreme Court of Slovenia in its judgment Ips 1001/2008, relying on the principle *de minimis non curat lex,* did not concede the termination of the contract because the lack of conformity in the particular case was considered trivial and insignificant.[335] Essentially, the Supreme Court in this case assumed the subsidiary application of the SloOA as *lex generalis*.[336]

The Slovenian legislator availed of the opportunity provided in Art. 5, Sec. 2 of Directive 1999/44/EC by establishing that the consumer had to notify the seller of a lack of conformity within two months of its detection to exercise his/her rights.[337] This notification obligation was further detailed, requiring consumers to describe the lack of conformity with precision (natančneje) and allow the seller to inspect the goods.[338] The Administrative Court in its judgment U 978/2005 clarified that the latter requirement entails both the consumer's duty to enable the seller to perform the inspection of the goods and the seller's right to request it.[339]

In this context, the judgment of the CJEU rendered in the Faber case which asserted that "the notification to be given relates only to the existence of that lack of conformity and that it is not subject to rules of evidence which would make it impossible or excessively

[333] Supreme Court of Slovenia, Case No. II Ips 968/93.
[334] Možina, 2012, p. 97.; Berdnik and Žefran, 2017, p. 40.
[335] The Supreme Court of Slovenia, Judgment II Ips 1001/2008, para. 11.
[336] Weingerl, 2024, p. 954.
[337] 1998/2022 SloCPA, Art. 37a, Sec. 1.
[338] 1998/2002 SloCPA, Art. 37a, Sec. 2.
[339] Administrative Court of Slovenia, Case No. U 978/2005.

difficult for the consumer to exercise his rights".[340] If the interpretation that the consumer is not required to provide detailed information about the lack of conformity is accepted,[341] the requirements envisaged in the 1998/2002 SloCPA may be seen as an additional and overly burdensome prerequisite for seeking remedies.[342] It is unreasonable to expect consumers to possess specialized knowledge or to ascertain the cause of the lack of conformity.[343]

One of the most pivotal innovations introduced by the 2022 SloCPA is the establishment of a hierarchy of remedies available to the consumer in alignment with Directive (EU) 2019/771, influenced by the ancient principle "*Pacta sunt servanda*".[344] Primarily, the consumer possesses the right to request the seller to rectify the lack of conformity free of charge, either through repair or replacement. Subsequently, the consumer is entitled to seek an appropriate price reduction or to terminate the contract, accompanied by a reimbursement of the paid amount.[345] Furthermore, the consumer retains the entitlement to claim compensation for damages analogous to the provisions of the 1998/2002 SloCPA.[346] The 2022 SloCPA also empowers the consumer to withhold the payment of the remaining part of the price or a portion thereof until the seller performs his/her obligations. Taking advantage of the opportunity given by Art. 13, Sec. 6 of Directive (EU) 2019/771, the Slovenian legislator subjects the exercise of this right to the consumer notifying the seller of his/her decision to invoke it.[347]

Regarding the primary set of remedies, the general principle is that the consumer has the discretion to choose between repair and replacement. However, this freedom is not absolute since it may be restricted when the implementation of the selected remedy is either impossible or would be excessively burdensome to the seller in terms of disproportionate costs compared to the alternative remedy, taking into account all the relevant circumstances.[348] The criterion of disproportionate costs must be assessed by

[340] CJEU, C-497/13, para. 65.
[341] Patti, 2016, p. 13.; Mišćenić et al, 2021, p. 85.
[342] Možina, 2008, p. 177.
[343] Možina, 2012, p. 89.
[344] Vujičić, 2023, p. 86.
[345] 2022 SloCPA, Art. 81, Sec. 1.
[346] 2022 SloCPA, Art. 81, Sec. 3.
[347] 2022 SloCPA, Art. 81, Sec. 2.
[348] 2022 SloCPA, Art. 82, Sec. 4.

particularly considering the hypothetical value of the goods absent the lack of conformity, the significance of the lack of conformity, and the feasibility of providing another alternative remedy without causing serious inconvenience to the consumer.[349]

The Explanatory Memoranda for the Bill of the 2022 SloCPA provides an illustrative example that highlights this principle: it would be deemed disproportionate to demand the replacement of the goods for a minor defect if such a request would result in substantial costs to the seller, particularly when the minor defect could be rectified without difficulties.[350] These provisions represent the incorporation of Art. 13, Sec. 2 of Directive (EU) 2019/771.

The 2022 SloCPA, transposing Art. 14, Sec. 1 of Directive (EU) 2019/771, mandates that the seller must fulfill the consumer's request free of charge, within a reasonable timeframe from the moment the consumer notified him/her about the lack of conformity and without causing significant inconvenience to the consumer, with particular consideration given to the nature of the goods and the intended purpose for which the consumer requires them.[351] The term "reasonable period" is interpreted as a timeframe not exceeding 30 days, aligning with the Recital 55 of Directive (EU) 2019/771 which defines this period as "the shortest possible time necessary for completing of repair or replacement".

Nevertheless, the 2022 SloCPA permits an extension of this 30-day deadline for the shortest time required to complete the requested repair or replacement, not exceeding an additional 15 days. The precise duration of this extension is to be determined based on the nature and complexity of the goods, the nature and the significance of the lack of conformity, and the effort required to complete the remedy. The seller is required to inform the consumer of the extension duration and the reasons for it before the primary deadline expires.[352] Therefore, the maximum permissible time for completing the repair and replacement is 45 days, comprising the primary 30-day period and the possible 15-day extension. It is noteworthy that the possibility of an extension was absent in the Bill. Finally, the rule specifying that the consumer's request must be fulfilled free of charge

[349] 2022 SloCPA, Art. 82, Sec. 5.
[350] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 82, p. 113.
[351] 2022 SloCPA, Art. 82, Sec. 1.
[352] 2022 SloCPA, Art. 82, Sec. 2.

entails that all costs incurred, especially the costs of postage, transport, labour, and materials, are to be borne by the seller.[353]

At this stage, the consumer is obligated to make the goods available to the seller. Conversely, in the event of a replacement, the seller must return the goods to the consumer at his/her own expense.[354] These obligations are consistent with Art. 14, Sec. 2 of Directive (EU) 2019/771. However, the seller can refuse to perform the consumer's request if both the repair and replacement are unfeasible or if they would result in disproportionate costs, taking into account all relevant circumstances, particularly those outlined in Art. 82, Sec. 5.[355] The Explanatory Memoranda for the Bill of the 2022 SloCPA provides an example to illustrate this point: if the goods are located in a different place from the original delivery address, resulting in excessive postage and transport costs, this would justify the seller's refusal to comply with the request.[356]

Transposing Art. 14, Sec. 4 of Directive (EU) 2019/771, the 2022 SloCPA stipulates that the consumer is exempt from payment for the normal use of goods leading up to their replacement.[357] It is worth underlining that Recital 57 of the same Directive clarifies that use is considered normal when it aligns with the nature and purpose of the goods. This legal framework is shaped by the judgment of the CJEU rendered in the Quelle case.[358]

Finally, the 2022 SloCPA contains a specific provision addressing situations where the repair or replacement affects goods installed in line with their nature and purpose before the lack of conformity arose. In such cases, the seller's obligation encompasses removing the defective goods and installing replacement or repaired goods, or bearing the expenses associated with such removal and installation.[359] This provision, transposing Art. 14, Sec. 3 of Directive (EU) 2019/771, is a codification of the principles established by the CJEU in joined cases C-65/09 and C-87/09.[360]

The secondary set of claims, comprising the appropriate price reduction and the termination of the contract, is available to the consumer if:

---

[353] 2022 SloCPA, Art. 82, Sec. 3.
[354] 2022 SloCPA, Art. 82, Sec. 7.
[355] 2022 SloCPA, Art. 82, Sec. 6.
[356] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 82, p. 113.
[357] 2022 SloCPA, Art. 82, Sec. 9.
[358] Van Gool and Michel, 2021, p. 144.; Mišćenić et al, 2021, p. 70.
[359] 2022 SloCPA, Art. 82, Sec. 8.
[360] Marín López, 2019, p. 15.; Muñoz Rodrigo, 2022, p. 1300.

1) the seller has not completed the repair or replacement of the goods or, where applicable, has failed to do so according to the Law, or has refused to bring the goods into conformity as required by Art. 82, Sec. 6 of the 2022 SloCPA;
2) there persists a lack of conformity, even though the seller attempted to rectify it;
3) the nature of the lack of conformity is so severe that it justifies an immediate appropriate price reduction and termination of the contract or
4) the seller has declared, or it is evident from the circumstances, that he/she will not rectify the lack of conformity within a reasonable time, or without causing significant inconvenience to the consumer.[361]

These requirements are consistent with Art. 13, Sec. 4 of Directive (EU) 2019/771. To clarify the second scenario, it is essential to refer to Recital 52 of the Directive, which recommends an objective evaluation of whether the consumer should accept further attempts to eliminate the lack of conformity, considering all the circumstances, particularly the type and the value of the goods and the nature and significance of the lack of conformity. High-value and complex goods are expressly mentioned as instances where additional attempt to rectify the lack of conformity may be justified. Another crucial consideration is whether the consumer is expected to maintain confidence in the seller's capability to bring the goods into conformity. These guidelines are also reflected in the Explanatory Memoranda for the Bill of the 2022 SloCPA.[362]

Additionally, the 2022 SloCPA enables the consumer to terminate the contract and seek reimbursement of the paid amount if the lack of conformity manifests in less than 30 days following the delivery of the goods.[363] Thus, when the lack of conformity emerges shortly or, more precisely, within the timeframe not exceeding 30 days from the delivery, the hierarchy of rights does not exist. The consumer may immediately terminate the contract, without first requesting repair or replacement of the goods. Nonetheless, the consumer retains the freedom to uphold the validity of the contract, as nothing precludes him/her from invoking other remedies according to his free will.[364] This legal provision, which circumvents the hierarchy of remedies, is consistent with Directive (EU) 2019/771,

[361] 2022 SloCPA, Art. 83, Sec. 1.
[362] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 83, p. 114.
[363] 2022 SloCPA, Art. 83, Sec. 2.
[364] Dudás and Jokanović, 2023, p. 217.

considering that Recital 19 and Art. 3, Sec. 7 explicitly affirm that this Directive does not affect the freedom of Member States to institute a specific remedy if the lack of conformity emerges shortly after delivery. This legal approach is inspired by the common law rules regarding the right to reject goods.[365]

The Slovenian legislator, in consonance with Art. 16, Sec. 1 of Directive (EU) 2019/771, provides that the termination of the contract is exercised through the consumer's statement notifying the seller about his/her decision to dispose of this remedy.[366] This unilateral statement alone suffices to terminate the contract.[367] Therefore, the exercise of the consumer's right to the termination of the contract is substantially streamlined, as it eliminates the necessity of granting the seller an additional timeframe to fulfil his/her contractual obligations, a requirement that was applicable before the enactment of the 2022 SloCPA.

Transposing Art. 16, Sec. 2 of Directive (EU) 2019/771, the 2022 SloCPA permits the consumer to terminate the contract concerning the conforming goods as well if the lack of conformity pertains to only some of the delivered goods. This is permissible when it is unreasonable to expect the consumer to retain only the conforming goods.[368] Generally, if a lack of conformity affects only part of the goods and grounds for the termination of the contract exist, the consumer is entitled to terminate the contract solely for the non-conforming goods. The ability to terminate the contract concerning the conforming goods as well is contingent upon the absence of a reasonable expectation for the consumer to retain those goods.

However, the Slovenian legislator has specifically excluded the option to terminate the contract if the lack of conformity is only of minor importance. The burden of proof that the lack of conformity is minor lies with the seller.[369] Thus, in such instances, the consumer is entitled to pursue the primary set of remedies (repair and replacement) and the appropriate price reduction as the sole subsidiary remedy. It is essential to highlight that the indications provided by the CJEU in the Duarte case are applicable also in

[365] Lilleholt, 2019, p. 5.
[366] 2022 SloCPA, Art. 83, Sec. 4.
[367] Sartoris, 2020, p. 708.
[368] 2022 SloCPA, Art. 83, Sec. 5.
[369] 2022 SloCPA, Art. 83, Sec. 7.

Slovenian law. Thus, the national court is required to grant the appropriate price reduction *ex officio* when the consumer erroneously seeks the termination of the contract due to the minor nature of the lack of conformity and the national legal framework makes it impractical or overly arduous to pursue the price reduction as an alternative remedy.[370]

The termination of the contract imposes certain obligations on both contractual parties. Transposing Art. 16, Sec. 3 of Directive (EU) 2019/771, the 2022 SloCPA mandates that the consumer must return the goods to the seller at the seller's expense.[371] Conversely, the seller is obligated to reimburse the consumer the price paid for the goods immediately upon or at the latest 8 days after the receipt of the goods or of proof that the goods have been dispatched back by the consumer.[372] According to the sequence of events, the consumer's obligation to return the goods triggers the seller's obligation to refund the paid amount. The Slovenian legislator has taken advantage of the opportunity granted by Directive (EU) 2019/771 to specify reimbursement modalities, setting a deadline for the fulfillment of this seller's obligation.

Curiously, the Bill proposed different provisions on this matter. It stipulated that the consumer must return the goods within 14 days from the compliance with the request (termination of the contract) if there is no dispute regarding the lack of conformity between the parties.[373] Similarly, the same 14-day time limit commencing from the termination of the contract was applied to the seller, who was required to reimburse the price paid within this period.[374]

Regarding price reduction, the 2022 SloCPA, transposing Art. 15 of Directive (EU) 2019/771, specifies that it should correspond to the decrease in the value of the goods received by the consumer compared to their value if they had conformed to the contract.[375]

Furthermore, the Slovenian legislator has introduced a timeframe within which the seller must fulfill the consumer's request. Precisely, the seller is obligated to refund the

[370] Jansen, 2014, p. 990.
[371] 2022 SloCPA, Art. 83, Sec. 6.
[372] 2022 SloCPA, Art. 86, Sec. 1.
[373] Bill of the 2022 SloCPA, Art. 86, Sec. 2.
[374] Bill of the 2022 SloCPA, Art. 86, Sec. 1.
[375] 2022 SloCPA, Art. 83, Sec. 3.

consumer a portion of the price paid within eight days from receiving the request for the appropriate price reduction.[376]

Finally, the 2022 SloCPA has retained the consumer's obligation to notify the seller about any lack of conformity without introducing changes compared to the 1998/2002 SloCPA. Thus, the consumer remains required to notify the seller within two months of discovering the lack of conformity.[377] The content requirements for the notification also remained unchanged, necessitating that the consumer describes the lack of conformity with precision and permits the seller to inspect the goods.[378] In light of the CJEU's ruling in the Faber case, these provisions could still be viewed as unduly burdensome to the consumer. Interestingly, the Bill did not include this two-month notification deadline.

Regarding the possible future developments in the ambit of the consumer remedies, the expected amendments, constituting the transposition of Directive (EU) 2024/1799, will stimulate the consumer to make use of the repair remedy, in line with the precepts of circular economy and sustainability. Nevertheless, it is probable that the hierarchy of remedies will remain unaltered.

3.8. Consumer Guarantees

A distinctive feature of Slovenian law has been the existence of voluntary and mandatory guarantees, alongside the seller's legal liability for the lack of conformity.[379] Due to the congruence between the provisions on voluntary and mandatory guarantees, located in the 2022 SloCPA and those from the 1998/2002 SloCPA, this chapter will primarily analyze the current regulation, with specific emphasis on any deviation from the legal framework established in the 1998/2002 SloCPA.

The 2022 SloCPA defines guarantee as any obligation that the seller or producer[380] assumes towards the consumer, which is supplementary to the seller's legal liability arising from the lack of conformity of the goods with the contract, and by which he/she

[376] 2022 SloCPA, Art. 86, Sec. 2.
[377] 2022 SloCPA, Art. 84, Sec. 1.
[378] 2022 SloCPA, Art. 84, Sec. 2 and 4.
[379] Možina, 2009, p. 145.
[380] The 2022 SloCPA defines the producer in Art. 4, Sec. 1 (20) as a company that manufactures finished goods or components or obtains basic raw materials or another person that presents him/herself as the producer of the goods with his/her company name, trademark or other distinguishing mark. The importer and distributor of goods not produced in the Republic of Slovenia, the representative office of the producer in the Republic of Slovenia, or any other person appearing to be the producer by marking the goods with their name, brand, or other distinguishing mark are also considered producers.

undertakes to repair or replace the goods for the consumer free of charge, refund a portion or the entirety of the purchase price when the goods fail to meet the specifications or lack the characteristics set out in the guarantee statement or the associated advertising available at the time or before the conclusion of the contract.[381] Therefore, the guarantee may be granted to the consumer by either the seller or the producer. Its essential characteristic is the gratuitousness connected to the performance of repair or replacement. Consequently, stipulating any requirement for the consumer to pay for these remedies would preclude the application of the provisions of the 2022 SloCPA concerning guarantees.[382] The Slovenian legislator differentiates between voluntary (commercial) and mandatory guarantees.[383]

In accordance with Art. 17, Sec. 1 (1) of Directive (EU) 2019/771, the 2022 SloCPA stipulates that the guarantee is binding under the conditions articulated in the guarantee statement and the associated advertising available at the moment of, or prior to, the conclusion of the contract.[384] In instances where an eventual conflict arises between the guarantee statement and the associated advertising and the latter contains terms more advantageous to the consumer's position, the terms of the associated advertising prevail unless it was corrected in the same or comparable manner to that in which it was issued.[385] This legal solution represents the transposition of Art. 17, Sec. 1 (2) of the mentioned Directive. Notably, this provision may be considered a novelty, as the 1998/2002 SloCPA did not address conflicts between the guarantee statement and associated advertising.

Furthermore, the seller is mandated to hand over the guarantee statement to the consumer for goods for which the guarantee is issued upon delivery of the goods at the latest.[386] This requirement, along with the stipulation that the guarantee statement must be provided to the consumer on a durable medium,[387] aligns with Art. 17, Sec. 2 of Directive (EU) 2019/771. On the other hand, the 1998/2002 SloCPA required that the guarantee statement be handed over to the consumer at the moment of the conclusion of the sales contract,

[381] 2022 SloCPA, Art. 89, Sec. 1.
[382] Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 89, p. 117.
[383] 2022 SloCPA, Art. 89, Sec. 2.
[384] 2022 SloCPA, Art. 90, Sec. 1.
[385] 2022 SloCPA, Art. 90. Sec. 2.
[386] 2022 SloCPA, Art. 91, Sec. 1.
[387] 2022 SloCPA, Art. 91, Sec. 3.

either in writing or featured on another durable medium that was easily accessible to the consumer.[388]

Concerning the language used in the guarantee statement, it must adhere to the requirement of being plain and intelligible, as prescribed by the abovementioned Art. 17, Sec. 2 of Directive (EU) 2019/771. Interestingly, the Slovenian legislator has utilized the opportunity provided by Art. 17, Sec. 4 of the mentioned Directive to lay down rules on the language in which the guarantee statement is to be made available to the consumer, stipulating that if the goods are intended for sale within the territory of the Republic of Slovenia, it should be drafted entirely in Slovenian.[389] Furthermore, the guarantee statement is required to include the following:

- the name and the address of the person issuing the guarantee, i.e., the guarantor;
- the date of delivery of the goods;
- information identifying the goods covered by the guarantee;
- the guarantor's statement that he/she guarantees the properties or flawless functioning (brezhibno delovanje) during the warranty period, which commences with the delivery of the goods to the consumer;
- the rights at the consumer's disposal if the goods fail to meet the specifications or lack the properties envisaged in the guarantee statement or the associated advertising;
- the procedure to be followed by the consumer to obtain the implementation of the guarantee;
- the deadline for resolving the complaint;
- the duration of the warranty period;
- the territorial validity of the guarantee;
- a clear statement that the consumer is entitled by law to remedies from the seller in the event of a lack of conformity of the goods free of charge and that the guarantee does not exclude these remedies;

[388] 1998/2002 SloCPA, Art. 16 and Art. 18, Sec. 1.
[389] 2022 SloCPA, Art. 91, Sec. 3.

- for goods for which the guarantee is mandatory, the time after the expiration of the warranty period during which the guarantor provides the consumer with maintenance, spare parts, and attachments.[390]

The content of the guarantee statement outlined in the 2022 SloCPA is more precise compared to that in the 1998/2002 SloCPA. Namely, the specific rights available to the consumer based on the guarantee, the procedure the consumer must follow to obtain the implementation of the guarantee, and the timeframe for resolving the complaint were not explicitly listed as mandatory elements of the guarantee statement in the 1999/2002 SloCPA. It is worth noting that the provision determining the content applies to both voluntary (commercial) and mandatory guarantees. Notably, non-compliance with the requirements outlined in Art. 91 does not affect the binding nature of the guarantee for the guarantor. This rule, favourable to the consumer's position, is the transposition of Art. 17, Sec. 3 of Directive (EU) 2019/771.

The Slovenian legislator has introduced the possibility whereby the producer can offer the consumer a commercial guarantee of durability for certain goods for a certain period under the aforementioned conditions and without prejudice to legal protection based on other regulations. In such instances, the producer assumes direct liability to the consumer, alongside the seller, for the repair and replacement of the goods throughout the entire duration of the mentioned guarantee in accordance with Art. 82, Sec. (1), (2), (7), (8), (9) of the 2022 SloCPA.[391]

The consumer's position can be further enhanced by the opportunity provided to the producer to offer more favourable conditions within the commercial guarantee of durability statement.[392] This institute, introduced into Slovenian law by transposing Art. 17, Sec. 1 (1) of Directive 2019/771, did not exist in the 1998/2002 SloCPA.

The existence of the mandatory guarantee in the 1998/2002 SloCPA came under substantial criticism from Slovenian legal scholars. Since it also applied to persons not considered consumers,[393] i.e., to commercial contracts, it was argued that state intervention in contractual relations among entities capable of protecting their own

[390] 2022 SloCPA, Art. 91, Sec. 2.
[391] 2022 SloCPA, Art. 92, Sec. 1.
[392] 2022 SloCPA, Art. 92, Sec. 2.
[393] 1998/2022 SloCPA, Art. 21.č

interests and engaging in market activities for lucrative reasons lacked justification.[394] Furthermore, it was perceived as potentially impeding the free movement of goods within the internal market.[395] The mandatory guarantee was viewed as an additional regulatory burden for sellers and producers in the Slovenian market.[396] It was considered "a source of inefficiency" because it allegedly constrained competition and "a source of moral hazard, opportunism, and negative selection".[397]

Critics argued that since the seller had no influence over final risks, which were contingent on the consumer's use of the goods, and the level of protection, the consumer was incentivized to behave opportunistically.[398] The Supreme Court of Slovenia also expressed its contrariety towards this institute, describing it as "a relic of the past".[399]

Despite facing significant criticism, the mandatory guarantee is retained in the 2022 SloCPA. The Explanatory Memoranda to the Bill of the 2022 SloCPA explicitly emphasized that by preserving the rules on the mandatory guarantee, "the high level of protection enjoyed by Slovenian consumers until now is maintained."[400] It is emphasized that retaining this institute is not contrary to the maximum harmonization character of Directive (EU) 2019/771 since Recital 18 stipulates that it should "not affect national laws providing for non-contractual remedies for the consumer, in the event of a lack of conformity of goods, against persons in previous links of the chain of transactions, for example, manufacturers, or other persons that fulfil the obligations of such persons".[401] The provisions governing the mandatory guarantee continue to be applicable to persons who are not considered consumers, i.e., to sales contracts concluded outside the consumer context.[402]

It is noteworthy that the mandatory guarantee does not cover all categories of goods. The 2022 SloCPA stipulates that the minister competent for consumer protection shall issue a regulation that specifies the goods for which the producer is obliged to grant a guarantee

[394] Možina, 2009, p. 157.
[395] Možina, 2009, p. 162.
[396] Možina, 2011, p. 46.
[397] Kovač, 2012, p. 113.
[398] Kovač, 2012, p. 113.
[399] Judgement of the Supreme Court of Slovenia, II Ips 1001/2008, para. 9.
[400] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 94, p. 118.
[401] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 94, p. 118.
[402] 2022 SloCPA, Art. 98.

for flawless operation (brezhibno delovanje) for at least one year.[403] This regulation[404] was issued in November 2022 (hereinafter referred to as "the Regulation of 2022"), and entered into force on 26 January 2023,[405] repealing the previously applicable regulation from 2012.[406]

The obligation to provide a guarantee for a minimum period of one year for so-called "technical goods"[407] is exclusively imposed on the producer. Due to the maximum harmonisation character of Directive (EU) 2019/771, the mandatory guarantee concerning second-hand goods imposed on the seller contained in the 1998/2002 SloCPA[408] was abolished.[409] The Regulation of 2022 explicitly clarifies that it does not apply to second-hand goods.[410]

For the goods covered by the mandatory guarantee, the producer is obliged to:

- provide the consumer, along with the guarantee statement, with instructions for assembly and use and a list of authorized service centers;
- provide a service that is authorized by him/her to carry out service work on the goods and has a contract concluded with him/her for the supply of spare parts if he/she does not perform such activity;
- ensure the rectification of the lack of conformity of the goods free of charge during the warranty period;
- offer, in exchange for a fee, repair, maintenance of the goods, spare parts, and attachments for at least three years after the expiration of the warranty period by performing the mentioned services himself/herself or having a service contract concluded with another person.[411]

[403] 2022 SloCPA, Art. 94.
[404] Pravilnik o blagu, za katero se izda garancija za brezhibno delovanje [Regulation on Goods for which a Guarantee for Faultless Operation is Issued], *Uradni list RS* [Official Gazette of the Republic of Slovenia], No. 142/22.
[405] Regulation of 2022, Art. 5.
[406] Pravilnik o blagu, za katero se izda garancija za brezhibno delovanje [Regulation on Goods for which a Guarantee for Faultless Operation is Issued], *Uradni list RS* [Official Gazette of the Republic of Slovenia], No. 14/12.
[407] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 94, p. 118.
[408] 1998/2002 SloCPA, Art. 19.
[409] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 94, p. 118.
[410] Regulation of 2022, Art. 1, Sec. 2.
[411] 2022 SloCPA, Art. 95.

The Slovenian legal literature particularly criticized the producer's obligation to offer repair, maintenance of the goods, spare parts, and attachments for three years following the expiry of the warranty period, contained also in the 1998/2002 SloCPA, arguing that it is a vestige of the socialist economy, characterized by restrictions of the market operations and shortages of certain goods.[412] Despite these criticisms, this provision remained unaltered in the 2022 SloCPA.

Furthermore, the circumstance that the guarantee statement was not issued or handed over to the consumer does not affect the producer's obligations deriving from the mandatory guarantee.[413] The Slovenian legislator has upheld the presumption that the guarantee statement is not issued if the documents containing all the necessary information, as mandated by the aforementioned Art. 91, Sec. 2 of the 2022 SloCPA, were not handed over to the consumer.[414] However, if these information are disseminated across multiple documents, the producer is obliged to warn the consumer about it specifically.[415]

If goods covered by the mandatory guarantee do not meet the specifications or lack the properties outlined in the guarantee statement or associated advertising, the consumer is primarily entitled to request repair. The replacement with identical, new, and faultless goods becomes available to the consumer if repair is not completed within 30 days from the day the producer or the authorized service received the consumer's request.[416] The 30-day deadline may be extended by the minimum time necessary to complete the repair or replacement, not exceeding 15 days.[417]

In determining the extended deadline, the nature and complexity of the goods, the nature and severity of the lack of conformity, and the effort required for the repair or replacement to be completed are to be taken into account. The 2022 SloCPA obliges the producer to inform the consumer of the exact number of days by which the deadline is extended and the reasons for the extension before the initial 30-day period expires.[418] Notably, the Bill did not envisage this possibility of extension. Therefore, the maximum period for the

[412] Možina, 2011, pp. 47-48.
[413] 2022 SloCPA, Art. 96, Sec. 1.
[414] 2022 SloCPA, Art. 96, Sec. 2.
[415] 2022 SloCPA, Art. 96, Sec. 2.
[416] 2022 SloCPA, Art. 97, Sec. 1.
[417] 2022 SloCPA, Art. 97, Sec. 1.
[418] 2022 SloCPA, Art. 97, Sec. 1.

individual realization of repair and replacement is 45 days (30 days plus a potential extension of up to 15 days).

The 1998/2002 SloCPA prescribed a 45-day deadline for completing the repair and replacement, without allowing for extensions.[419] It was interpreted as a deadline separately applicable to each remedy, meaning that if the repair was not completed within 45 days, the same 45-day period applied to the replacement.[420] This interpretation appears to be valid for the legal solution contained in the 2022 SloCPA as well. However, it is crucial to underline that the consumer cannot seek these remedies from the producer if the seller has already rectified the lack of conformity according to his/her legal liability for conformity. Allowing the consumer to request remedies from the producer, despite the seller's successful rectification of the lack of conformity, would result in unjust enrichment.[421]

The consumer's position is further improved by a provision requiring the producer or the authorized service to provide him/her with the free-of-charge use of similar goods while addressing the lack of conformity.[422] If the producer fails to fulfil this obligation, the consumer is entitled to compensation for the damages incurred due to the inability to use the goods from the moment he/she requested repair or replacement until their completion.[423]

It is worth underlining that the producer is required to bear the costs related to material, spare parts, work, transfer, and transport of products incurred while repairing and replacing the goods.[424] These expenses appear to constitute an exhaustive list (*numerus clausus)*, signifying that the producer's obligation does not encompass covering other types of costs. Additionally, the 2022 SloCPA mandates that the producer issue a new guarantee statement for replaced goods or replaced essential parts of the goods.[425]

The failure to complete repair or replacement within the prescribed time limits entitles the consumer to demand either a reimbursement of the entire purchase price from the producer

[419] 1998/2002 SloCPA, Art. 21b (1).
[420] Možina, 2009, p. 158
[421] The Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 94, p. 118.
[422] 2022 SloCPA, Art. 97, Sec. 7.
[423] 2022 SloCPA, Art. 97, Sec. 8.
[424] 2022 SloCPA, Art. 97, Sec. 9.
[425] 2022 SloCPA, Art. 97, Sec. 6.

or an appropriate price reduction.[426] As already mentioned, the Slovenian legislator specifies that a price reduction is considered appropriate when it is proportional to the decrease in the value of the goods received by the consumer compared to their value if they were compliant.[427]

It is noteworthy that the legal solution under the 2022 SloCPA diverges from that contained in the Bill. Specifically, while the 2022 SloCPA entitles the consumer to a reimbursement of the entire purchase price from the producer, the Bill explicitly mentioned the termination of the contract.[428] The 1998/2002 SloCPA also stipulated that the consumer could terminate the contract or request a price reduction when the producer failed to repair or replace goods within the prescribed timeframe.[429]

The reimbursement of the entire purchase price (vračilo celotne kupnine), as a separate remedy to be exercised against the producer, raises significant legal questions and complexities. One may consider it "only the extreme form of a price reduction" since the consumer receives a refund of the entire purchase price, without altering the contractual terms.[430] On the contrary, this remedy results in the complete return of what the consumer as a contractual party performed.[431]

In cases where a consumer terminates a consumer sales contract due to the lack of conformity, the seller is obliged to reimburse him/her the price paid for the goods (vračilo plačanega zneska).[432] It should be accentuated that this obligation squarely falls on the seller, who is a direct party to the consumer sales contract and originally received the paid price. That is why the Slovenian legal literature stressed that the consumer's rights to terminate the contract and obtain the price reduction were directed exclusively toward the seller.[433]

Conversely, under the mandatory guarantee framework, the producer, who is not a party to the sales contract, shall reimburse the consumer the entire purchase price, complementing the seller's legal liability for conformity. This legal solution appears to

[426] 2022 SloCPA, Art. 97, Sec. 3.
[427] 2022 SloCPA, Art. 97, Sec. 4.
[428] Explanatory Memoranda for the 2022 SloCPA, Commentary to Art. 97, p. 119.
[429] 1998/2022 SloCPA, Art. 21b, Sec. 2.
[430] Wiewiórowska-Domagalska, 2012, p. 77.
[431] Wiewiórowska-Domagalska, 2012, p. 77.
[432] 2022 SloCPA, Art. 86, Sec. 1.
[433] Možina, 2009, p. 157.

deviate from the principle of relativity of the effects of the contract.[434] Furthermore, it should be noted that the producer, lacking privity in the consumer sales contract, did not receive the purchase price. The Slovenian legislator did not determine whether this reimbursement triggers or precedes the consumer's obligation to return the goods nor against whom the appropriate price reduction is to be exerted.

It is noticeable that the remedies available to the consumer under the mandatory guarantee exhibit a three-level hierarchy.[435] Specifically, the repair is considered the primary remedy, while the replacement, contingent upon the producer's failure to complete the repair within the stipulated time, serves as a secondary remedy. Reimbursement of the entire purchase price and the appropriate price reduction constitute a tertiary set of claims. The 2022 SloCPA introduced an exception to this hierarchy for cases where the deficiency of the goods becomes apparent within less than 30 days of their delivery. In such instances, the consumer is entitled to immediately request the reimbursement of the purchase price from the producer.[436] However, it is important to note that the consumer is still permitted to choose repair as a primary remedy within the general hierarchy. This legal solution was not contained in the Bill.

Finally, since the producer guarantees flawless operation of the goods for at least one year, his/her liability is triggered if these goods exhibit deficiencies within the warranty period, which commences from the day of their delivery to the consumer.[437] Therefore, the consumer's notification of the faulty operation of the goods is not a prerequisite for the activation of the producer's liability.[438]

4. HUNGARY

4.1. Legal Sources

The Hungarian legislator transposed the provisions of Directive 1999/44/EC in 2002 by amending the Civil Code, originally adopted in 1959.[439] These amendments modified the

[434] Strojan, 2023, p. 83.
[435] Ocepek, 2022, p. 151; Možina 2009, p. 158.
[436] 2022 SloCPA, Art. 97, Sec. 5.
[437] Regulation of 2022, Art. 3.
[438] Možina, 2009, p. 155.
[439] 2002. évi XXXVI. Törvény a Magyar Köztársaság Polgári Törvénykönyvéről szóló 1959. évi IV. törvény, valamint egyes törvények fogyasztóvédelemmel összefüggő jogharmonizációs célú módosításáról [Act XXXVI of 2002 Amending Act IV of 1959 on the Civil Code of the Republic of Hungary and Certain Acts for the Purpose of Harmonising Legislation in Relation to Consumer Protection].

general contract law rules, *inter alia*, related to the buyer's position in the event of a lack of conformity of the goods with the contract.[440] Hungarian legal theory highlighted that integrating basic private consumer law rules into the Civil Code was advantageous since these norms appeared in a system appropriate to their nature and regulation method.[441] Repeating rules with identical content and double regulation were avoided in that manner.[442] The novel Civil Code (hereinafter referred to as "the HuCC"), adopted in 2013, whose preparation was initiated in 1998,[443] retained the same regulatory method, considering that the provisions on the lack of conformity applied to both consumer sales contracts and contracts concluded outside the consumer context.[444] However, it was clearly indicated when a particular provision applied solely and exclusively to consumer sales contracts.

The principal act transposing Directive (EU) 2019/771 into Hungarian law is Government Decree No. 373/2021 on the sale of goods and the supply of digital content between consumers and businesses and detailed rules for contracts for the provision of digital services[445] (hereinafter referred to as "the Government Decree") followed and amended by Government Decree No. 365/2022 on detailed rules for contracts between consumers and businesses for the sale of goods and the supply of digital content and digital services.[446] The legal basis for such regulation stems from the amendment of Act CLXXVII on transitional and enabling provisions related to the entry into force of Act V of 2013 on the Civil Code[447] that empowers the government to establish rules by decree

[440] Dudás, 2020, p. 1046,
[441] Vékás, 2006. (available online: https://szakcikkadatbazis.hu/doc/3885569).
[442] Vékás, 2021, p. 67.
[443] Fuglinszky, 2019, p. 265; Dudás, 2014, p. 338.
[444] Fuglinszky, 2023, p. 320; Dudás, 2020, p. 1053.
[445] A Kormány 373/2021. (VI. 30.) Korm. rendelete a fogyasztó és vállalkozás közötti, az áruk adásvételére, valamint a digitális tartalom szolgáltatására és digitális szolgáltatások nyújtására irányuló szerződések részletes szabályairól [Government Decree No. 373/2021 on the Sale of Goods and the Supply of Digital Content Between Consumers and Businesses and on Detailed Rules for Contracts for the Provision of Digital Services].
[446] A Kormány 365/2022. (IX. 23.) Korm. rendelete a fogyasztó és vállalkozás közötti, az áruk adásvételére, valamint a digitális tartalom szolgáltatására és digitális szolgáltatások nyújtására irányuló szerződések részletes szabályairól szóló 373/2021. (VI. 30.) Korm. rendelet módosításáról [Government Decree No. 365/2022 on Detailed Rules for Contracts Between Consumers and Businesses for the Sale of Goods and the Supply of Digital Content and Digital Services, Amending Government Decree No. 373/2021].
[447] 2013. évi CLXXVII. Törvény a Polgári Törvénykönyvről szóló 2013. évi V. törvény hatálybalépésével összefüggő átmeneti és felhatalmazó rendelkezésekről [Act CLXXVII on Transitional and Enabling Provisions Related to the Entry into Force of Act V of 2013 on the Civil Code].

for consumer sales contracts, including detailed provisions on conformity with the contract, defective performance, related remedies, the conditions for their enforcement and guarantees.[448]

The transposition of Directive (EU) 2019/771 introduced a significant conceptual novelty, as the provisions in the Government Decree apply exclusively to sales contracts concluded in the consumer context, i.e., between a consumer and a seller. The same Government Decree mandates that its provisions be applied alongside the requirements of the Civil Code related to the lack of conformity of the goods with the contract.[449] The Hungarian legislator justified this separate regulation by noting that the scope of the mentioned Directive is narrower than that of the Civil Code.[450] However, in line with Art. 3 of Act CXXX of 2010 on Law-Making[451], which stipulates that there should be no unnecessary parallel or multi-level regulation, the Government Decree aims to avoid duplicating the provisions already contained in the Civil Code.[452] Consequently, it may be inferred that the Government Decree is the principal legal source for determining the consumer's position in the event of a lack of conformity of the goods with the (consumer sales) contract, while the provisions of the Civil Code find their application when the Government Decree does not address a specific issue.[453] Hungarian legal theory criticizes this dual regulation approach for abandoning the congruent regulatory regime of the Civil Code.[454] Nevertheless, the provisions of the Civil Code cannot collide with the Government Decree.[455]

Finally, it is worth underlining that the Government Decree is not the only legal act transposing Directive 2019/771, albeit it may be considered "the major piece of the

[448] Act CLXXVII, Art. 11, Sec. (1i).
[449] The Government Decree, Art. 6.
[450] Végső előterjesztői indokolás a fogyasztó és vállalkozás közötti, az áruk adásvételére, valamint a digitális tartalom szolgáltatására és digitális szolgáltatások nyújtására irányuló szerződések részletes szabályairól szóló 373/2021. (VI. 30.) Korm. rendelethez [Final Explanatory Statement to the Government Decree No 373/2021 (June 30) on the Detailed Rules for Contracts Between Consumer and Business for the Sale of Goods, Respectively for the Supply of Digital Content and for the Provision of Digital Services], pp. 1354-1355; Szilágyi, 2021, p. 269.
[451] 2010 évi CXXX törvény a jogalkotásról [Act CXXX of 2010 on Law-Making].
[452] Final Explanatory Statement, p. 1355.
[453] Final Explanatory Statement, p. 1355; Szilágyi, 2021, p. 269.
[454] Fazekas, 2022, pp. 126-127.
[455] Csitei, 2023, p. 86.

transposition measure"[456], since certain provisions of the mentioned Directive are implemented into the Civil Code (amendments introduced by Act LI of 2021 Amending Certain Laws Relating to Service and Sectoral Judicial Legislation[457]), the Consumer Protection Act[458], and the Government Decree on Consumer Contracts.[459] In addition, important provisions regulating the manner in which a consumer claim is to be handled are contained in the Government Decree no. 19/2014 on the Procedural Rules for Handling of Warranty and Guarantee Claims for Goods Sold under a Contract between a Consumer and a Business.[460]

4.2. Definitions

The crucial definitions of consumer sales contract law are contained in the Government Decree and the HuCC. The HuCC defines the consumer as any natural person acting outside his/her profession, independent occupation, or business activity.[461] Thus, solely natural persons can be considered consumers, provided that they do not act inside their professional or business activity. The interpretation given by the CJEU in the Faber case that the national court shall independently assess whether a buyer qualifies as a consumer is also applicable within Hungarian law.

The other contractual party is an undertaking defined as any person acting within its profession, independent occupation, or business activity.[462] The Government Decree includes into this notion a person acting in the name of or on behalf of the undertaking.[463] With this clarification the definition of the seller (undertaking) became concordant with Art. 2, Sec. 3 of Directive (EU) 2019/771. In addition, the guideline provided by the CJEU in the Wathelet case that the concept of seller also includes "a trader acting as intermediary

[456] Szilágyi, 2021, p. 268.
[457] 2021. évi LI. Törvény egyes törvényeknek a kézbesítéssel és az igazságügyi ágazati szabályozással összefüggő módosításáról [Act LI of 2021 Amending Certain Laws Relating to Service and Sectoral Judicial Legislation].
[458] 1997. évi CLV. törvény a fogyasztóvédelemről [Act CLV of 1997 on Consumer Protection].
[459] 45/2014. (II. 26.) Korm. rendelet a fogyasztó és a vállalkozás közötti szerződések részletes szabályairól [Government Decree No. 45/2014 on the Detailed Rules on Contracts Between Consumer and Business].
[460] 19/2014. (IV. 29.) NGM rendelet a fogyasztó és vállalkozás közötti szerződés keretében eladott dolgokra vonatkozó szavatossági és jótállási igények intézésének eljárási szabályairól [Government Decree no. 19/2014 on the Procedural Rules for Handling of Warranty and Guarantee Claims for Goods Sold under a Contract between a Consumer and a Business].
[461] HuCC, Sec. 8:1 (1 – 3).
[462] HuCC, Sec. 8:1 (1 – 4).
[463] Government Decree, Sec. 4 (17).

on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual"[464] is applicable within Hungarian law as well.

The HuCC contains the definition of sales contract. Specifically, under this contract, the seller is obliged to transfer the ownership of the goods, while the buyer (consumer) is required to pay the purchase price and take over the goods.[465]

Moreover, concerning the goods as the object of the consumer sales contract, the Government Decree encompasses into this notion any movable item, including water, gas, and electricity in containers, bottles, or otherwise put up in limited quantities or with a specified volume, as well as the goods with digital elements.[466] This provision is in line with Art. 2, Sec. 5 of Directive (EU) 2019/771. The Government Decree did not take advantage of the opportunity provided by Art. 3, Sec. 5 of the mentioned Directive to exclude the application of its provisions when living animals or second-hand goods sold at public auction constitute a object of the sales contract.[467] Finally, the Hungarian lawmaker introduced the definitions of digital content[468], digital service[469], functionality[470], interoperability[471], compatibility[472], and durability.[473]

4.3. Lack of Conformity

Before the transposition of Directive (EU) 2019/771, the definition of lack of conformity in the consumer context in the HuCC differed from that in Directive 1999/44/EC.[474]

[464] CJEU, C-149/14, para. 45.
[465] HuCC, Sec. 6: 125 (1).
[466] Government Decree, Sec. 4 (1).
[467] Fuglinszky, 2023, p. 329.
[468] Digital content, as stated in Sec. 4 (5) of the Government Decree covers any data produced or supplied in digital form.
[469] Digital service, according with Sec. 4 (4) of the Government Decree is a service that allows the consumer to create, process, store, or access digital data, or a service that allows sharing of, or otherwise interacting with, digital data uploaded or generated by the consumer or other recipients of the service.
[470] Functionality is defined in Sec. 4 (7) of the Government Decree as the ability of the goods with digital elements, the digital content or digital service to perform their functions according to their purpose.
[471] Interoperability is defined in Sec. 4 (10) as the ability of the goods with digital elements, the digital content or digital service to function with hardware or software other than those with which goods, digital content or digital service of the same type are normally used.
[472] Compatibility is defined in Sec. 4 (12) as the ability of the goods with digital elements, the digital content or digital service to interoperate with hardware or software with which goods, digital content, or digital service of the same type are normally used together, without the need for adaptation.
[473] Durability is defined in Sec. 4 (14) as the ability of the goods to maintain their required functions and performance through normal use.
[474] Directive 1999/44/EC introduced a general obligation imposed on the seller to deliver goods that are in conformity with the contract of sale. The European legislator also established a presumption of conformity

Specifically, the lack of conformity was interpreted as a situation when the seller's performance at the time of delivery did not comply with the quality requirements set forth in the contract or stipulated by law.[475] Thus, the determination of the quality requirements was subject to the parties' will expressed in the consumer sales contract (subjective requirements) or the provisions of a specific law (objective requirements). The Hungarian Supreme Court affirmed that the contractual parties are free to "determine the quality and specific characteristics of the service to be provided by the debtor".[476] Consequently, when assessing whether there was a lack of conformity, the consumer sales contract was considered "the starting point".[477]

The HuCC, in the chapter containing general provisions on the performance of the contract, required that, at the moment of delivery, the goods be suitable for their intended purpose, that is to say:

- suitable for the purpose specified by the obligee (consumer), provided that he/she informed the obligor (seller) of this purpose before concluding the (consumer sales) contract;
- suitable for the purposes for which other goods having the same purpose are normally used;
- that they were to be of the quality and performance usual for goods having the same purpose and that the consumer could expect, taking into account any public statement on the specific characteristics of the goods made by the seller or producer, when the goods were not produced by the seller, and their representative;
- that they should have had the characteristics given in the description provided by the seller or typical for the goods presented by him/her to the consumer as a sample;
- that they should have complied with the quality requirements set out by law.[478]

---

if specific requirements were satisfied. It is worth noting that the mentioned presumption was rebuttable, meaning that goods that met the prescribed requirements could have been found not to be in conformity with the sales contract.

[475] HuCC, Sec. 6: 157 (1).

[476] Decision of the Supreme Court, Pfv. 21.825/2012/9.

[477] Fézer and Hajnal, 2020, p. 25.

[478] HuCC, Sec. 6. 123 (1).

In line with Art. 2, Sec. 4 of Directive 1999/44/EC, the obligor (seller) could be exempt from liability for public statements made by the producer or his/her representative if he/she demonstrated that:

- he/she was not and could not have been aware of the public statement in question;
- the public statement was appropriately corrected by the moment of the conclusion of the contract;
- the public statement could not influence the obligee's (consumer's) decision to conclude the contract.[479]

The burden of proof was explicitly placed on the obligor (seller). To be exempt from liability, it was sufficient for the seller to prove the existence of at least one of the enumerated circumstances.

Interestingly, the provisions on the incorrect installation of consumer goods and shortcomings in installation instructions, addressed in Directive 1999/44/EC and the old Civil Code, were omitted from the novel HuCC. Nonetheless, the incorrect installation could have been considered a breach of the seller's contractual obligation if he/she was obliged to install the consumer goods under a consumer sales contract, while the general rules of contract law could have determined the seller's liability for the shortcomings in the installation instructions.[480]

Implementing Directive (EU) 2019/771 introduced important innovations. Following the letter and spirit of this Directive, the Government Decree differentiates subjective and objective requirements of conformity. Concerning the subjective requirements of conformity, it is stipulated, in concordance with Art. 6 of Directive (EU) 2019/771, that the goods (the exact term used by the Hungarian legislator is the performance/service – szolgáltatás), to conform to the consumer sales contract, shall:

- be of the description, quantity, quality, type and possess the functionality, compatibility, interoperability, and other contractual features specified in the sales contract;

[479] HuCC, Sec. 6: 123 (2).
[480] Kemenés, 2014, cited in Dudás, 2020, p. 1053; Fuglinszky, 2023, p. 320.

- be fit for any particular purpose specified and made known to the seller by the consumer at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;
- have all accessories and instructions, including on installation and customer service support, as specified by the sales contract; and
- be supplied with updates as stipulated by the sales contract.[481]

The Hungarian legal theory underlines that the inclusion of the requirements that the goods be of the description and quality as determined in the contract and be suitable for the purpose specified by the consumer in the Government Decree is not justified since they constitute a mere duplication of the rules already contained in Sec. 6:123 (1) and 6:157 (1) of the HuCC.[482]

Regarding the objective requirements for conformity, the Governmental Decree, transposing Art. 7, Sec. 1 of Directive 2019/771, envisages that the goods shall:

- be fit for the purposes prescribed by law, technical standards, or, in the absence of such technical standards, a relevant code of conduct applicable to the goods of the same type;
- possess the quantity, quality, performance, and other features, including in relation to functionality, compatibility, accessibility, continuity, and security, that are normal for the goods of the same type and which the consumer may reasonably expect, taking into account any public statement made by the seller or his/her representative regarding the specific features of the goods, particularly in advertising or on labelling;[483]
- possess accessories and instructions that the consumer may reasonably expect, including packaging and installation instructions; and
- correspond to the features and the description of a sample, model, or trial version that the seller made available before the conclusion of the contract.[484]

[481] Government Decree, Art. 5, Sec. 2.
[482] Csitei, 2023, p. 87.
[483] Interestingly, the Hungarian legislator did not explicitly include the notion of durability among the objective requirements of conformity, albeit it is defined in Art. 2, Sec. 14. (tartósság – durability). The nature of the goods determining the reasonable expectation of the consumer, contained in Directive (EU) 2019/771, is absent as well. Furthermore, it is not specified that public statements are made by other persons in previous links of the chain of transactions, including the producer.
[484] Government Decree, Art. 5, Sec. 3.

It is crucial to emphasize that the objective requirements of conformity are applicable to each consumer sales contract, even in the absence of specific agreements between the contractual parties in the particular case. These requirements are rooted in the consumer's reasonable expectations.[485] In contrast, subjective requirements for conformity complement them, being subject to the parties' will expressed through the sales contract.[486] The application of the subjective requirements for conformity directly derives from the specific relationship between the contractual parties.[487]

The Hungarian legislator, transposing Art. 7, Sec. 2 of Directive 2019/771, renders possible the exemption from liability for the seller for public statements made according to the aforementioned Art. 5, Sec. 3 (b). Specifically, the seller is not bound by such public statements if he/she demonstrates that:

- he/she was not aware, and could not have been aware, of the public statement in question;
- the public statement had been duly corrected by the time of the conclusion of the contract or
- the public statement could not have influenced the consumer's decision to purchase the goods.[488]

Moreover, the Government Decree has reintroduced provisions concerning the incorrect installation of consumer goods and shortcomings in the installation instructions (IKEA clause). Transposing Art. 8 of Directive 2019/771, it stipulates that any defect resulting from improper installation of the goods shall be considered a lack of conformity of the goods, if:

- the installation forms part of the consumer sales contract and was performed by the seller or under the seller's responsibility; or
- the installation was intended to be carried out by the consumer, and the incorrect installation occurred due to shortcomings in the installation instructions provided by the seller.[489]

[485] Mišćenić et al., 2021, p. 55; Afferni, 2022, p. 262.
[486] Twigg-Flesner, 2020, p. 56.
[487] Mišćenić et al., 2021, p. 55.
[488] Government Decree, Art. 5, Sec. 4.
[489] Government Decree, Art. 9, Sec. 1.

4.4. The Moment of the Emergence of the Seller's Liability

Prior to the transposition of Directive (EU) 2019/771, the crucial moment for determining whether there was a lack of conformity of the goods with the contract was that of the performance, i. e., the delivery. The HuCC explicitly envisaged that for consumer sales contracts, the risk of damage transferred to the consumer when he/she or a third party designated by him/her took possession of the goods. Furthermore, the transfer of the risk of damage to the consumer also occurred upon handing over (delivery of) the goods to the carrier, provided that the carrier was commissioned by the consumer and this choice was not recommended by the seller.[490] These rules represent the transposition of Art. 20 of Directive 2011/83/EU.

Moreover, the Hungarian legislator exonerated the seller from liability if the consumer knew or should have known the lack of conformity at the time of the conclusion of the contract.[491] This provision represents an incomplete transposition of Art. 2, Sec. 3. of Directive 1999/44/EC as it omitted the circumstance that the lack of conformity had its origin in materials supplied by the consumer. The intention behind this provision was to limit the potential liability of the seller.[492] Essentially, both contractual parties were aware of the delivery of defective goods at the time of concluding the sales contract. Regarding the condition that the consumer should have known the lack of conformity, the Hungarian Supreme Court ruled that the seller could prove that the consumer, based on the circumstances surrounding the conclusion of the sales contract, should have expected or anticipated that the goods had defects at the time of their delivery.[493]

The HuCC explicitly stipulated that any attempt to waive warranty provisions to the detriment of the consumer in the consumer sales contract was null and void.[494] This supports that the warranty provisions applying to sales contracts concluded in the consumer context were unilaterally cogent.[495]

The transposition of Directive (EU) 2019/771 did not bring many novelties in this context. The relevant moment for assessing whether the goods are in conformity with the contract

[490] HuCC, Sec. 6: 219.
[491] HuCC, Sec. 6: 157 (1).
[492] Weatherill, 2005, p. 130.
[493] Opinion of the Civil Division of the Hungarian Supreme Court no. 1/2004, para. 1.
[494] HuCC. Sec. 6: 157 (2).
[495] Dudás, 2020, p. 1047.

remains the moment of the performance/delivery.[496] In addition, the rules located in the Civil Code governing the transfer of the risk of damage to the consumer continue to be applicable.

Similarly to the legal solution contained in the HuCC, the seller is exempt from liability, i. e. there is no lack of conformity, if, at the time of the conclusion of the sales contract, the consumer was explicitly informed that a particular characteristic of the goods deviated from the objective requirements for conformity outlined in Art. 5, Sec. 3 and the consumer expressly and separately accepted this deviation when concluding the sales contract.[497] This provision mirrors the transposition of Art. 7, Sec. 5 of Directive 2019/771, which aims to prevent the consumer from subsequently complaining about the lack of conformity that he/she was aware of before concluding the sales contract.[498]

It is important to note that the conditions for the seller's exoneration are more severe than those outlined in the HuCC. It is not sufficient that the consumer was or should have been aware of the lack of conformity at the moment of the conclusion of the contract. Instead, to achieve exemption, the consumer's knowledge of the deviation must stem from the seller's specific notification. The consumer's additional activity is also required since he/she must separately and explicitly accept this deviation.

4.5. Deadline and Burden of Proof

When the Hungarian law was still based on Directive 1999/44/EC, the HuCC established that the consumer's claims from the warranty for the lack of conformity lapsed within two years from the date of delivery.[499] It should be underlined that this two-year deadline constituted a limitation period. Therefore, the principal consequence of its expiration was the consumer's inability to have his/her claims enforced in court.[500]

Applying Art. 7, Sec. 1 (2) of Directive 1999/44/EC, the Hungarian legislator allowed the contractual parties to agree on a shorter limitation period for second-hand goods, provided that it was not shorter than one year.[501] It is worth noting that any reduction of the limitation period was contingent upon the agreement between the contractual parties.

[496] Government Decree, Art. 5, Sec. 1.
[497] Government Decree, Art. 8, Sec. 4.
[498] Twigg-Flesner, 2020, p. 71.
[499] HuCC, Sec. 6: 163 (2).
[500] Frézer and Hajnal, 2020, p. 30.
[501] HuCC, Sec. 6: 163 (2).

Therefore, unless the parties agreed otherwise, the standard two-year limitation period also applied to second-hand goods.

Regarding the burden of proof for establishing the existence of the lack of conformity, the interpretation given by the CJEU in the Faber case, which placed this burden on the consumer, was relevant under Hungarian law as well. However, transposing Art. 5, Sec. 3 of Directive 1999/44/EC, the Hungarian legislator established a presumption applying exclusively to consumer sales contracts that the lack of conformity existed at the time of delivery if the consumer detected it within six months of the date of performance. This presumption was rebuttable since it did not apply if it was incompatible with the nature of the goods or the characteristics of the lack of conformity.[502] In this context, the guidance given by the CJEU in the Faber case concerning the consumer's obligation to demonstrate that there was a lack of conformity and that it became evident within six months of delivery of the goods, as well as the national court's duty to apply this presumption *ex officio*, applied also in Slovenian law. This interpretation is consistent with the objectives and spirit of Directive 1999/44/EC.

The transposition of Directive (EU) 2019/771 did not introduce numerous novelties in this area. It is worth noting that the rules located in the HuCC regarding the two-year limitation period and the possibility of reducing it in the event of second-hand goods are still applicable, given that the Government Decree does not contain any provision altering them.

The time period for the emergence of the lack of conformity, covered by the rebuttable presumption that it existed at the time of delivery, becomes more favourable to the consumer's position since it has been extended to one year, compared to the six months prescribed in the HuCC.[503] Nevertheless, the conditions outlined by the CJEU in the Faber case should continue to be applicable.[504]

4.6. Goods with digital elements

The Government Decree defines goods with digital elements as any movable item incorporating or inter-connected with digital content or digital service in such a manner that any absence of the digital content or the digital service prevents the goods from

[502] HuCC, Sec. 6: 158.
[503] Government Decree, Art. 11, Sec. 1.
[504] Carvalho, 2020, p. 42.

performing their functions.[505] Therefore, the link between digital content or digital service and goods is of such a nature that the goods cannot properly function without it. This definition is in concordance with Art. 2, Sec. 5(b) of Directive (EU) 2019/771.

In addition to the mentioned connection, for the rules on the consumer sales contract to apply, the digital content or digital service needs to be supplied with the goods under the sales contract, regardless of whether that digital content or digital service is supplied by the seller or by a third party. The doubt on whether the digital content or digital service is covered by the sales contract is solved in favour of its inclusion.[506] As the same Government Decree contains rules that constitute the transposition of Directive (EU) 2019/770 governing the supply of digital content or digital services (Chapter III), it is worth underlining that the provisions on the goods with digital elements that bear importance for the sake of writing this study are encompassed in Chapter II (Special Rules for Contracts for the Sale of Goods).[507]

Concerning the moment conditioning the seller's liability for the defective performance, the Hungarian legislator introduces a particular rule applicable when the sales contract provides for a continuous supply of digital content or digital service over a certain period. Specifically, the seller is liable for any lack of conformity occurring or becoming apparent within two years of the delivery of the goods when the duration of the continuous supply does not exceed two years, or in the event of a continuous supply exceeding two years, during the entire period of its duration.[508] This legal solution is the transposition of Art. 10, Sec. 2 of Directive (EU) 2019/771. It is worth noting that the continuous supply may represent an exception from the general rule that the seller is liable for the defect becoming evident within two years of delivery since the contractual parties are allowed to agree on a longer duration of this type of supply of the digital content or digital service.[509]

Another specific legal solution related to the continuous supply over a certain period regards the duration of the validity of the presumption of the existence of the defect. Namely, the seller is required to demonstrate that the digital content or digital service

[505] Government Decree, Sec. 4 (2).
[506] Government Decree, Sec. 1 (2).
[507] Fuglinszky, 2023, p. 329.
[508] Government Decree, Sec. 10.
[509] Vanherpe, 2020, p. 262; De Franceschi, 2019, p. 115.

affected by the deficiency emerging within the period specified in Sec. 10 (two years and exceeding two years) was in conformity during the contractually agreed performance period.[510] This provision constitutes the implementation of Art. 11, Sec. 3 of Directive (EU) 2019/771. In essence, the burden of proof is assigned to the seller during the entire period of his/her liability, which notably fortifies the consumer's position compared to the single supply of goods with digital elements or ordinary goods. To be released from liability, the seller should show that the non-conformity with the contract did not manifest during the relevant period.[511]

Furthermore, regarding goods with digital elements, the seller is required to perform some additional obligations. Transposing Art. 7, Sec. 3 of Directive (EU) 2019/771, the Government Decree obliges the seller to ensure that the consumer is notified of updates, comprising security updates, that are necessary to maintain conformity of the goods with the contract and that the consumer receives them.[512] It should be accentuated that the seller's obligation refers exclusively to those "corrective" updates that are necessary for the goods to remain conforming with the contract.[513] Generally, in addition to security updates, they concern interoperability and functionality.[514] Thus, as stated in Recital 30 of Directive (EU) 2019/771, the seller is not obliged to improve the quality or quantity features of the goods with digital elements nor to provide their upgraded versions. Nevertheless, the contracting parties can agree on the upgrading obligation in their contract.

The duration of the mentioned seller's obligations is contingent upon the type of supply of the digital content or digital service. When the sales contract provides for a single supply, the seller's updating obligation covers the period the consumer can reasonably expect based on the type and purpose of the goods and digital elements, as well as the specific circumstances and the nature of the contract.[515] In the event of a continuous supply

[510] Government Decree, Sec. 11 (2).
[511] De Franceschi, 2019, p. 130.
[512] Government Decree, Sec. 8 (1).
[513] Compte, 2023, p. 27.
[514] De Franceschi, 2019, p. 93.
[515] Government Decree, Sec. 8 (2a).

over a certain period, the deadlines from Sec. 10 (two years and exceeding two years) are applicable.[516]

It is worth emphasizing that the seller is required to notify the consumer of the availability of the supplied updates, without being obliged to install them. The Government Decree, in line with Art. 7, Sec. 4 of Directive (EU) 2019/771, stipulates that when the consumer fails to install the supplied updates within a reasonable time, the seller will not be liable for the defect if it arises solely from the failure to apply the relevant update. For the seller to be exonerated from liability, two conditions need to be met. First, the seller should have informed the consumer of the availability of the update and the consequences of the consumer's failure to install it. Additionally, the failure of the consumer to install the update or the incorrect installation of the update by the consumer shall not be attributed to the incompleteness of the installation instructions provided by the seller.[517] The Government Decree does not contain any indication regarding the preciseness and clarity of informing the consumer about the consequences of the consumer's failure to install the update.

4.7. Consumer Remedies

Upon its enactment, the HuCC initially provided the consumer with more remedies than Directive 1999/44/EC, which distinguished repair, replacement, appropriate price reduction, and termination of the contract.[518] Transposing Art. 3, Sec. 3 of the mentioned Directive, the Hungarian legislator specified that the consumer could primarily choose between repair and replacement if there was a lack of conformity of goods with the contract. The consumer's freedom of choice was excluded if compliance with the selected remedy was impossible or imposed disproportionate costs to the seller compared to the other alternative remedy, taking into account the value the goods would have if there were no lack of conformity, the significance of the lack of conformity and the harm caused to the consumer upon compliance with the chosen remedy.[519]

It should be underlined that the Hungarian Supreme Court extended the application of this proportionality test beyond the choice between repair and replacement as primary

[516] Government Decree, Sec. 8 (2b).
[517] Government Decree, Sec. 8 (3).
[518] Directive 1999/44, Art. 3, Sec. 2.
[519] HuCC, Sec. 6: 159 (2-a).

remedies, encompassing the secondary claims as well. The Hungarian Supreme Court emphasized that the consumer could not demand the rectification of the lack of conformity by repair if it would have caused disproportionate additional expenses for the seller compared to the price reduction.[520]

It may be inferred that in Hungarian law, the application of the proportionality test appeared broader than the case law of the CJEU. Specifically, in the Weber and Putz case, the CJEU interpreted the term "disproportionate" from Art. 3, Sec. 3 of Directive 1999/44/EC to apply "exclusively in relation to the other remedy, thus limiting it to cases of relative lack of conformity."[521] Therefore, the proportionality test is exclusively employed between the repair and replacement as primary remedies.[522] However, the CJEU allowed the consumer to request an appropriate price reduction or rescission of the contract instead of the replacement when his/her right to reimbursement of the costs was reduced "since the fact that a consumer cannot have the defective goods brought into conformity without having to bear part of these costs constitutes significant inconvenience for the consumer."[523]

Furthermore, the HuCC stipulated that any repair or replacement should have been completed within a reasonable timeframe taking into account the consumer's interests, the characteristics of the goods, and their designated purpose that can be expected from the consumer.[524] In line with Art. 3, Sec. 4 of Directive 1999/44/EC, the seller bore all the costs incurred to fulfil repair or replacement.[525] However, if the consumer had sufficient information about maintenance or if the seller provided him/her with such information, the seller's obligation to cover these costs was reduced proportionally to the extent that the lack of conformity was attributable to the consumer's failure to fulfil maintenance.[526]

Transposing Art. 3, Sec. 5 of Directive 1999/44/EC, the Hungarian legislator allowed the consumer to request a price reduction or terminate the contract if the seller refused to provide repair or replacement or was unable to comply with this obligation under the

[520] Opinion of the Civil Division of the Hungarian Supreme Court no. 1/2012, para. 4.
[521] CJEU, joined Cases C-65/09 and C-87/09, para. 68.
[522] Mišćenić et al., 2021, p. 67; Michel, 2018, p. 223.
[523] CJEU, Joined Cases C-65/09 and C-87/09, para. 77.
[524] HuCC, Sec. 6: 159 (4).
[525] HuCC, Sec. 6: 166 (1).
[526] HuCC, Sec. 6: 166 (2).

conditions set out in the abovementioned Sec. 6:159 (4), or if repair and replacement no longer served the consumer's interest. Additionally, in such situations, the consumer could opt to repair the lack of conformity himself/herself or have it repaired at the seller's expense.[527] These remedies were not envisaged in Directive 1999/44/EC.

It is noteworthy that self-repair may be attractive and beneficial from the perspective of the circular economy and environmental protection since it saves transportation costs and enables the use of regenerated spare parts.[528] However, the amendments made to the HuCC in 2021 excluded the possibility of applying self-repair and repair at the seller's expense to consumer sales contracts involving movable goods, digital content, or digital service.[529] Additionally, the Hungarian Supreme Court established that to determine whether repair and replacement no longer served the consumer's interest, all the circumstances surrounding the case had to be taken into account.[530]

It is worth underlining that the Hungarian Supreme Court broadened the application of the proportionality principle to encompass the choice between the mentioned secondary remedies. It affirmed by way of example that a disproportionately higher amount could not be claimed for the repair at the seller's expense than what could be determined for the price reduction and vice versa.[531] This indicated that the proportionality principle was not limited solely to the termination of the contract as, in concordance with Art. 3, Sec. 6 of Directive 1999/44/EC, the minor relevance of the lack of conformity extinguished the possibility of using this remedy.[532]

The termination of the contract had a retroactive (*ex tunc*) effect to the date of its conclusion.[533] The parties were required to return reciprocally and simultaneously the performances they had already completed, which could be considered an expression of good faith and fairness requirements.[534] The consumer could terminate the contract by making a statement to the seller in which he/she expressed such intention.[535] It is worth

[527] HuCC, Sec. 6: 159 (2b).
[528] Zoll et al., 2020, p. 540.
[529] HuCC, Sec. 6: 159 (2a).
[530] Opinion of the Civil Division of the Hungarian Supreme Court no. 1/2012, para. 3.
[531] Opinion of the Civil Division of the Hungarian Supreme Court no. 1/2012, para. 4.
[532] HuCC, Sec. 6: 159 (4).
[533] HuCC, Sec. 6: 212 (1).
[534] Opinion of the Civil Division of the Hungarian Supreme Court no. 1/2012, para. 9.
[535] HuCC, Sec. 6: 213 (1).

noting that the impossibility of giving back the goods impeded the termination of the contract.[536] However, the Hungarian Supreme Court clarified that the circumstance that the consumer could return the goods in a substantially depreciated condition or not at all because of the lack of conformity or any other reason attributable to the seller's conduct did not prevent the exercise of this remedy.[537]

Concerning compensation for damages inflicted on the consumer by the lack of conformity for which the seller was liable, it should be emphasized that it was closely linked to the impossibility of providing for repair or replacement. Specifically, the consumer was entitled to claim damages if repair or replacement was not feasible, if the seller refused to provide repair or replacement or could not perform this obligation, or if the consumer's interest in repair and replacement ceased to exist.[538] The consumer's claim for compensation was subject to the same limitation period as the claims from the warranty for the lack of conformity.[539]

It may be inferred that prior to the amendments to the HuCC of 2021, the Hungarian legislator established the hierarchy of claims available to the consumer consisting of repair and replacement as primary remedies and appropriate price reduction, self-repair, repair at the seller's expense, and the termination of the contract as a secondary remedies.[540] The mentioned amendments reduced the number of remedies at the consumer's disposal, as self-repair and repair at the seller's expense became applicable solely in the case of sales contracts concluded outside the consumer context. The secondary set of remedies entailed the activation of compensation for damages.

Interestingly, the HuCC contains some peculiar and unique legal solutions. Notably, it stipulates that the consumer's request does not bind the court, but the court cannot order the performance of the remedy that both parties object to.[541] Without this provision, the consumer whose request was deemed unfounded would have been forced to initiate another legal proceeding to enforce his/her rights.[542]

---

[536] HuCC, Sec. 6: 212 (3).
[537] Opinion of the Civil Division of the Hungarian Supreme Court no. 1/2012, para. 9.
[538] HuCC, Sec. 6: 174 (2).
[539] HuCC, Sec: 6: 174 (2).
[540] Hajnal, 2022, p. 186.
[541] HuCC, Sec. 6: 161.
[542] Dudás, 2020, pp. 1053-1054.

This legal solution is similar to the findings of the Duarte case. Namely, the CJEU, in judgment C-32/12 (Duarte case), allowed the national court to "grant of its own motion an appropriate reduction in the price of goods which are the subject of the sales contract in the case where a consumer who is entitled to such a reduction brings proceedings which are limited to seeking only the rescission of that contract and such rescission cannot be granted because the lack of conformity in those goods is minor, even though that consumer is not entitled to refine his initial application or to bring a fresh action to that end."[543] This judgment refers to a situation when the consumer cannot obtain the requested termination of the contract due to the minor importance of the lack of conformity.[544] Conversely, the legal solution of the HuCC is more extensive since each consumer's request does not bind the court, not exclusively when the termination of the contract is inadmissible due to the lesser relevance of the lack of conformity. For instance, it is possible to imagine that the court refuses to terminate a contract because of its detrimental environmental consequences. It may be stated that the extensive interpretation of the proportionality principle can find its major utility because of this provision. However, the court cannot order the remedy to whose performance both parties are contrary.

Moreover, the consumer can switch from the initially chosen remedy to another. In that case, he/she is required to pay the costs caused by such a switch to the seller unless the switch was provoked by the seller or was otherwise justified.[545]

The Hungarian legislator instituted direct liability of the producer, applicable exclusively to consumer sales contracts involving movable goods. It is worth noting that Recital 23 of Directive 1999/44/EC emphasized the importance of „providing for the producer's direct liability for defects for which he is responsible", ensuring a high level of consumer protection and more far-reaching harmonisation. By the same token, the HuCC allows the consumer first to demand that the producer repair the lack of conformity in the goods. If the repair is not feasible within an appropriate timeframe and without detriment to the consumer's interest, the consumer may seek a replacement from the producer.[546]

[543] CJEU, C-32/12, para. 43.
[544] Jansen, 2014, p. 990; Micklitz and Kas, 2014, p. 62.
[545] HuCC, Sec. 6. 160.
[546] HuCC, Sec. 6. 168 (1).

The producer's liability may be characterized as extra-contractual and strict.[547] For the sake of establishing the direct liability of the producer, the lack of conformity exists if the goods fail to meet the quality requirements applicable when the goods were placed on the market or do not possess the characteristics specified by the producer.[548] It is crucial to underline that, in this case, the repair constitutes the primary remedy. The availability of the replacement, as the subsidiary remedy, is conditioned by the impossibility of performing the repair within an appropriate time limit and without causing harm to the consumer's interest.

The remedies of the appropriate price reduction and termination of the contract cannot be invoked against the producer because the consumer concluded the sales contract only with the seller.[549] Thus, these two claims are exclusively directed at the seller. Essentially, the consumer is permitted to request repair or replacement of defective goods both from the seller and the producer simultaneously.[550] However, the cumulative performance of his/her request is excluded.[551] It is fundamental to stress that the failure of the seller to successfully fulfil a repair or replacement is not a precondition for invoking the direct liability of the producer.[552]

Furthermore, the Hungarian legislator exempts the producer from liability if he/she demonstrates the existence of at least one of the following circumstances:

- that he/she did not produce or distribute the goods on the market in the course of his/her business activity or independent professional activity;
- that the lack of conformity could not have been discovered at the time when he/she placed the goods into circulation, considering the state of scientific and technical achievements;
- the lack of conformity was caused by applying a law or a regulatory provision prescribed by the authorities.[553]

[547] Ebers, Janssen and Meyer, 2009, p. 28; Fazekas and Sós, 2009, p. 369.
[548] HuCC, Sec. 6. 168 (1).
[549] Kemenés, 2014, cited in Dudás, 2020, p. 1055.
[550] Dudás, 2020, p. 1055.
[551] Kemenés, 2014, cited in Dudás, 2020, p. 1055.
[552] Dudás, 2021, p. 943.
[553] HuCC, Sec. 6. 168 (3).

The burden of proof is explicitly assigned to the producer. Conversely, the consumer must prove that the goods did not meet the quality requirements applicable when placing them on the market.[554] The Hungarian legal literature stressed that the producer would also be exonerated from liability if he/she proves that the goods were placed on the market without his/her knowledge or consent or were delivered to the consumer for charitable reasons.[555] It is worth noting that the exculpatory reasons resemble those related to the exemption from product liability outlined in Sec. 6: 555 of the HuCC.

The producer bears direct liability for the period of two years commencing from the date when the goods were placed on the market.[556] That initial moment shall correspond to when the producer relinquishes effective control over the goods.[557] The expiry of the mentioned two-year lapse of time results in the loss of rights.[558] Therefore, the legal nature of such a deadline is preclusive, contrary to the seller's two-year liability, characterized as a limitation period.[559]

Finally, the HuCC requires the consumer to inform the seller about the lack of conformity without delay after its discovery in order to be able to dispose of the available remedies.[560] Relying on Art. 5, Sec. 2 of Directive 1999/44/EC, the Hungarian legislator specified that in the event of consumer sales contracts, a lack of conformity notified to the seller by the consumer within two months from its discovery is to be considered communicated without delay.[561]

Interestingly, the HuCC does not prescribe any indication or specific requirement concerning the content and form of the consumer's notification of the lack of conformity. However, the CJEU's ruling in the Faber case is applicable in this context, as it asserted that "the notification to be given relates only to the existence of that lack of conformity and that it is not subject to rules of evidence which would make it impossible or excessively difficult for the consumer to exercise his rights."[562] If we accept that the

[554] Kemenés, 2014, cited in Dudás, 2020, p. 1056.
[555] Kemenés, 2014, cited in Dudás, 2020, p. 1056
[556] HuCC, Sec. 6. 169 (2).
[557] Kemenés, 2014, cited in Dudás, 2020, p. 1057.
[558] HuCC, Sec. 6. 169 (2).
[559] Frézer and Hajnal, 2020, p. 36.
[560] HuCC, Sec. 6. 162 (1).
[561] HuCC, Sec. 6. 162 (2).
[562] CJEU, C-497/13, para. 65.

purpose of this obligation is merely to notify the seller that a lack of conformity was discovered,[563] the legal solution contained in Hungarian law appears concordant with the requirements posed by the CJEU. The HuCC also stipulates that the consumer shall be liable for any damage resulting from delayed notification,[564] without being deprived of the remedies.[565]

Regarding the notification given to the producer, it is worth noting that the prescribed requirements do not differ from those applicable to informing the seller. The consumer must notify the producer of the lack of conformity without delay, while the notification made within two months of detecting it is deemed performed in due time. The consumer also bears liability for any damage caused by delayed notification.[566]

Essentially, the Government Decree has maintained the identical remedies at the consumer's disposal as stipulated by the HuCC following the amendments of 2021. Therefore, repair and replacement continue to be primary remedies. Since the provision excluding the consumer's freedom of choice between repair and replacement is not contained in the Government Decree, the proportionality test outlined in the abovementioned Sec. 6: 159 (2-a) of the HuCC is still applicable, with the relevant interpretation provided by the Hungarian Supreme Court.

However, the Hungarian legislator, transposing Art. 13, Sec. 3 of Directive (EU) 2019/771, allowed the seller to refuse to bring the goods into conformity if repair and replacement are impossible or would impose disproportionate additional costs to him/her, taking into account all the circumstances, including the value the goods would have if they conformed with the contract and the significance of the lack of conformity.[567] Moreover, the obligation to complete the repair or replacement within a reasonable timeframe, as specified by Sec. 6: 159 (4) of the HuCC, still finds its application.

Notably, the Hungarian lawmaker did not establish a fixed period for completing repair or replacement. Therefore, the determination of a reasonable time limit depends on the circumstances of the particular case. In line with Art. 14, Sec. 1 (b) of Directive (EU)

[563] Howells et al., 2018, p. 197.
[564] HuCC, Sec. 6: 162 (3).
[565] Fuglinszky, 2023, p. 342.
[566] HuCC, Sec. 6: 169 (1).
[567] Government Decree, Art. 12 (1).

2019/771, the Government Decree only envisages that the reasonable time limit shall be calculated from the moment the consumer has informed the seller about the lack of conformity.[568] However, it is worth noting that the Government Decree 19/2014 establishes the maximum 15-day deadline for the seller to complete repair or replacement.[569] In the case this deadline is exceeded, the seller is obliged to inform the consumer of the expected duration of repair or replacement.[570]

Repair and replacement presuppose the obligation posed to the consumer to make the goods available to the seller.[571] Conversely, the seller is obliged to give back the replaced goods at his/her expense.[572] These provisions represent the transposition of Art. 14, Sec. 2 of Directive (EU) 2019/771. The above-mentioned Sec. 6: 166 of the HuCC, that obliges the seller to bear all the costs incurred to fulfil repair or replacement, taking into account the consumer's contribution to the failure to fulfil maintenance, is still applicable. It appears that the seller's obligation to bear the expenses of repair and replacement comprises also transportation costs.[573]

Furthermore, the Hungarian legislator, according to Art. 14, Sec. 3 of the mentioned Directive, introduced a specific rule for cases when repair or replacement require the removal of goods that had been installed in accordance with their nature and purpose before the lack of conformity became apparent. In such instances, the obligation to repair or replace the goods includes the removal of the defective goods and installation of replacement or repaired goods or bearing the costs of removal and installation.[574] This provision reflects the influence of the jurisprudence of the CJEU on the European legislator.[575]

Transposing Art. 13, Sec. 4 of Directive (EU) 2019/771, the Government Decree stipulates that, given the gravity of the breach of contract, the appropriate price reduction and the termination of the contract, as the subsidiary set of claims, are available to the consumer if:

---

[568] Government Decree, Art. 13 (1).
[569] Government Decree 19/2014, Art. 5.
[570] Government Decree 19/2014, Art. 5.
[571] Government Decree, Art. 13 (2).
[572] Government Decree, Art. 13 (3).
[573] Fuglinszky, 2023, p. 346.
[574] Government Decree, Art. 13 (3).
[575] Rodrigo, 2022, p. 1300.; Loos, 2016, p. 12.

- the seller has not carried out repair or replacement or has not completed it following the conditions laid down in Art. 13 (3), or has refused to bring the goods into conformity according to the above-mentioned Art. 12 (1);
- a lack of conformity appears despite the seller's attempts to bring the goods into conformity;
- the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the contract; or
- the seller has not undertaken to bring the goods into conformity, or it is clear from the circumstances that he/she will not bring them into conformity within a reasonable time or without significant inconvenience to the consumer.[576]

To better understand the second case, it is important to consider Recital 52 of Directive (EU) 2019/771, recommending an objective assessment of whether the consumer should accept further attempts of the seller to rectify the lack of conformity. Namely, the circumstances, such as the type and the value of the goods, and the nature and the significance of the lack of conformity should be considered in this context. Another attempt should be granted to the seller in the case of expensive and complex goods. Furthermore, the consumer's confidence in the seller's ability to bring the goods into conformity shall also be taken into consideration. Hungarian legal theory interprets this instance as clarifying that the consumer's interest in the repair and replacement can cease to exist, as envisaged in Sec. 6:159 (2b) of the HuCC, even after a single unsuccessful attempt to rectify the defect.[577]

The Government Decree, in the spirit of Art. 15 of Directive (EU) 2019/771, specifies that price reduction is appropriate if it is equal to the difference between the value the goods would have had they conformed with the contract and the value the consumer received.[578] The consumer is also entitled to withhold payment of the remaining part of the purchase price, depending on the severity of the breach of contract, either in whole or in part, until the seller fulfils his/her obligations related to the lack of conformity of the goods.[579] However, the Hungarian legislator did not determine further conditions and modalities

[576] Government Decree, Art. 12 (2).
[577] Csitei, 2023, p. 89.
[578] Government Decree, Art. 14.
[579] Government Decree, Art. 12 (4).

connected to the exercise of this consumer's right, although Directive (EU) 2019/771 allowed it.[580]

Moreover, there are some significant additional rules concerning the termination of the contract. First, the mentioned provision of the HuCC stating that it is not permissible to terminate the contract when the lack of conformity is of minor relevance, is still applicable. At the same time, the Government Decree explicitly imposes on the seller the burden of proof that the lack of conformity is indeed minor.[581] The Hungarian legislator did not make use of the opportunity provided by Art. 3, Sec. 7 of Directive (EU) 2019/771 to allow consumers to choose a specific remedy if the lack of conformity becomes apparent within a period not exceeding 30 days after the delivery of the goods. Consequently, whether a lack of conformity arises immediately or shortly after the delivery of the goods does not alter the hierarchy of remedies at the consumer's disposal. When it comes to how the contract is terminated, the Government Decree envisions that the consumer exercises this remedy through a statement addressed to the seller expressing his/her decision to terminate the consumer sales contract.[582] This provision represents the transposition of Art. 16, Sec. 1 of Directive (EU) 2019/771. It may be inferred that the termination of the consumer sales contract can be accomplished out of court proceedings through the consumer's unilateral statement directed to the seller.[583]

However, following the letter and the spirit of Art. 16, Sec. 2 of the mentioned Directive, the Government Decree introduced a rule that when the lack of conformity affects only a portion of the delivered goods, the consumer may terminate the contract solely concerning those defective goods. Conversely, it is admissible to terminate the contract in relation to the remaining goods if the consumer cannot be reasonably expected to keep only the conforming goods.[584] It may be stated that such legal solution can be supported from the point of view of environmental protection because of its potential to reduce the environmental costs connected with the disposal of returned goods.[585]

[580] Fuglinszky, 2023, p. 345.
[581] Government Decree, Art. 12 (3).
[582] Government Decree, Art. 15 (1).
[583] Sartoris, 2020, p. 708.
[584] Government Decree, Art. 15 (2).
[585] Zoll et al, 2020, p. 544.

It is important to highlight that termination of the contract entails certain obligations for both contractual parties. Transposing Art. 16, Sec. 3 (a) of Directive (EU) 2019/771, the Hungarian legislator obliges the consumer to return the seller the goods at the seller's expense.[586] On the other hand, the seller's obligation concerns reimbursing the consumer the price paid upon receipt of the goods or of evidence demonstrating that the consumer has sent back the goods.[587] This provision is concordant with Art. 16, Sec. 3 (b) of Directive (EU) 2019/771. Interestingly, the Government Decree did not envisage any time limit for performing the abovementioned obligations. It is evident that the consumer's obligation to return the goods precedes the seller's obligation to refund the price paid.

It is important to accentuate that the Government Decree does not contain any specific provision regulating compensation for damages the consumer incurred because of the lack of conformity since it is governed by the HuCC. Therefore, the abovementioned provisions of the HuCC, linking compensation for damages to the impossibility of providing for repair or replacement and placing it essentially among the subsidiary set of claims, are still applicable. Moreover, its provisions stating that the court is not bound by the consumer's request but cannot order the performance of the remedy objected to by both parties, as well as those governing the direct liability of the producer, also remain applicable.

Finally, it is noteworthy that the Government Decree does not specify the consumer's obligation to inform the seller about the lack of conformity, as the HuCC already obliges the consumer to notify the seller without delay or within two months following the detection of the defect.

The future amendments affecting the consumer remedies will represent the transposition of Directive (EU) 2024/1799. Pursuing the goals of the circular economy and sustainable consumption, it is to be expected that the modifications will incentivize the use of the repair remedy by the consumer, although without expressly prioritizing it over replacement.

4.8. Consumer Guarantees

[586] Government Decree, Art. 16 (3a).
[587] Government Decree, Art. 16 (3b).

A peculiarity of the Hungarian law is the existence of both voluntary/contractual and mandatory guarantees. Since the Government Decree, implementing Directive (EU) 2019/771, introduced certain novelties to the Hungarian regulation of guarantees, without excluding the application of the provisions located in the HuCC, the provisions of both legal acts will be presented together. It is worth emphasizing that, in the consumer context, the Government Decree applies together with the HuCC, complementing and rendering the content of its provisions more precise.

The HuCC stipulates that whoever undertakes a guarantee for the performance of a contract or is obliged by law to offer a guarantee during the guarantee period is liable for the lack of conformity according to the conditions contained in the guarantee statement or legal act creating the guarantee.[588] Interestingly, this provision does not refer to the conditions outlined in associated advertising, contrary to Directive 1999/44/EC.

That is why in the Government Decree the guarantor's liability for the defective performance of the contract also becomes subject to the conditions laid down in associated advertising available at the moment of the conclusion of the sales contract or before it.[589] The Hungarian legislator resolved an eventual discrepancy between the conditions contained in the contractual guarantee statement and the associated advertising, where the latter is less favourable to the consumer than the former. In that case, priority is given to the conditions outlined in the associated advertising unless they were corrected in the same or similar way before the conclusion of the contract.[590] This provision represents the transposition of Art. 17, Sec. 1 (2) of Directive (EU) 2019/771.

However, the guarantor can be exonerated from the guarantee obligation if he/she demonstrates that the cause of the lack of conformity emerged after the performance.[591] The burden of proof for demonstrating this circumstance rests explicitly on the guarantor. It is worth noting that the Supreme Court of Hungary, in Decision No. Pfv.V.20.369/2014/4 established that the guarantor shall not be exempt from liability when he/she failed to prove that the cause of the lack of conformity occurred after the

[588] HuCC, Sec. 6:171 (1).
[589] Government Decree, Art. 16, Sec. 1.
[590] Government Decree, Art. 16, Sec. 3.
[591] HuCC, Sec. 6:171 (1).

performance because it was impossible to discern its cause or when that lack of conformity emerged.[592]

Moreover, the Government Decree, in concordance with Art. 17, Sec. 2 of Directive (EU) 2019/771, mandates that the contractual guarantee statement be made available to the consumer on a durable medium no later than at the moment of the delivery of the goods and drafted in plain, intelligible language.[593] Additionally, using the possibility granted by Art. 17, Sec. 4 of the same Directive, it also specifies that the contractual guarantee statement must be made available to the consumer in Hungarian.[594] A durable medium is defined as "any instrument that enables the consumer or the company to store information addressed to him/her personally in a way accessible for future reference for a period of time suitable for the purposes of the information and that allows the unchanged reproduction of the information stored".[595]

The Hungarian legislator has also specified the obligatory content of the contractual guarantee statement in line with Art. 17, Sec. 2 of Directive (EU) 2019/771. It must include the following:

- a clear statement that in a case of a lack of conformity, the consumer is entitled by law to exercise the remedies against the seller free of charge and that these remedies are not affected by the contractual guarantee;
- the name and address of the guarantor;
- the procedure to be followed by the consumer to invoke the contractual guarantee;
- information about the goods covered by the contractual guarantee;
- the terms of the commercial guarantee.[596]

However, the failure to comply with the rules from Art. 16, Sec. 4 and 5 does not influence the binding character of the contractual guarantee.[597] This provision is designed to protect the consumer from eventual abuses regarding the content of the contractual guarantee statement.

[592] Fézer and Hajnal, 2020, p. 31.
[593] Government Decree, Art. 16, Sec. 4.
[594] Government Decree, Art. 16, Sec. 5.
[595] Government Decree, Art. 2 (15).
[596] Government Decree, Art. 16, Sec. 4.
[597] Government Decree, Art. 16, Sec. 6.

The HuCC explicitly emphasizes that the guarantee does not affect the rights arising from the law.[598] Thus, the consumer could still use the remedies available to him/her according to the rules governing the warranty for the lack of conformity. It may be inferred that the guarantee serves to offer additional protection to the consumer.

Moreover, the transfer of ownership over the goods covered by the guarantee does not cause the cessation of its legal effect. Namely, in that case, the new owner can enforce the rights arising from the guarantee against the guarantor.[599] This legal solution was introduced in the novel HuCC.[600] It may be stated that it represents "a departure from the relative structure of the contractual relationship."[601]

The consumer is entitled to enforce the guarantee claim within the guarantee period.[602] It is worth noting that such a guarantee period is preclusive, signifying that the guarantor is liable for those defects appearing before its expiration.[603] However, the consumer can pursue in court his/her rights deriving from the guarantee within three months of the expiry of the time limit determined in the request when the guarantor failed to fulfil his/her obligations at the consumer's request within an appropriate time limit. This possibility remains available to the consumer even when the guarantee period has expired.[604] The Hungarian legislator underlined that failing to meet the mentioned deadline results in the forfeiture of rights.[605] Finally, the HuCC prescribes the *mutatis mutandis* application of the provisions governing the exercise of remedies for the warranty for the lack of conformity also in the event of the exercise of the rights deriving from the guarantee.[606]

The novelty brought by the Government Decree is also the introduction of the producer's commercial guarantee of durability for certain goods for a specified period. In that case, the consumer is entitled to request directly from the producer during the entire guarantee period to eliminate the lack of conformity by repair or replacement, adhering to the rules governing the exercise of the (legal) warranty rights.[607] Thus, the consumer is free to

[598] HuCC, Sec. 6:171 (2).
[599] HuCC, Sec. 6:172.
[600] Fézer and Hajnal, 2020, p. 31; Dudás, 2020, p. 1057.
[601] Kemenés, p. 1603, cited in Dudás, 2020, p. 1057.
[602] HuCC, Sec. 6:173 (1).
[603] Fézer and Hajnal, 2020, p. 31.
[604] HuCC, Sec. 6:173 (1).
[605] HuCC, Sec. 6:173 (1).
[606] HuCC, Sec. 6:173 (2).
[607] Government Decree, Art. 16, Sec. 2.

decide whether to demand repair or replacement from the seller or the producer. Additionally, in the commercial guarantee of durability, the producer may grant the consumer more advantageous conditions compared to those deriving from the rules on the commercial guarantee and legal warranty rights.[608] These rules are the implementation of Art. 17, Sec. 1 of Directive (EU) 2019/771.

Finally, the producer's guarantee of durability should be considered in parallel with the direct liability of the producer to perform repair and replacement, as envisaged in the HuCC. It may be stated that both institutes afford the consumer the same legal entitlement to choose whether to demand rectification of the lack of conformity by repair or replacement from either the seller or the producer.[609]

However, there are significant differences between these two institutes. First, the direct liability of the producer, as outlined in the HuCC, is mandatory since the producer's liability to provide for repair and replacement is not subject to his/her consent. Substantially, the consumer may require that the producer repair or replace the defective goods in each case. However, as previously noted, the HuCC envisioned specific circumstances exonerating the producer from liability. In contrast, the consumer's right to demand repair or replacement from the producer stemming from the guarantee of durability entirely depends on the producer's free will and decision to offer this kind of guarantee.

Another difference concerns the existence of the hierarchy of remedies. Specifically, in direct liability of the producer from the HuCC, the repair is prioritized over the replacement, forming a hierarchy of claims. In contrast, regarding the producer's commercial guarantee of durability, repair and replacement are treated as equal remedies.

Concerning the mandatory guarantee, the relevant rules establishing this type of guarantee are contained in the governmental regulations. A crucial legal reference for consumers in this context is Government Decree 151/2003 (IX. 22.) on the mandatory guarantee for certain durable consumer goods[610] (hereinafter referred to as "Government Decree no.

[608] Government Decree, Art. 16, Sec. 2.
[609] Cárcamo, 2022, p. 158; Vékás, 2021, p. 77.
[610] 151/2003. (IX. 22.) Korm. Rendelet az egyes tartós fogyasztási cikkekre vonatkozó kötelező jótállásró (Government Decree no. 151/2003 (IX. 22.) on the mandatory guarantee for certain durable consumer goods).

151/2003"), amended for the last time in 2024 by Government Decree no. 93/2024 amending government decrees relating to consumer protection.[611] The mandatory guarantee is also established by Government Decree no. 181/2003 (XI. 5.) on the mandatory guarantee associated with the construction of dwellings[612] and Government Decree no. 249/2004 on the mandatory guarantee for certain repair and maintenance services.[613]

The mandatory guarantee established by Government Decree 151/2003 applies solely to sales contracts concluded in the consumer context concerning new durable consumer goods listed in the ministerial decree on the designation of product groups of durable consumer goods.[614] The Ministerial Decree 10/2024 determining the durable goods covered by a mandatory guarantee[615] enumerates various household and technical goods, as well as motor vehicles, the sales price of which reaches 10,000.00 HUF. In this regard, the guarantor is a company that concluded the sales contract with the consumer. At the same time, the beneficiary of the guarantee is the owner of the consumer goods, provided that he/she qualifies as a consumer.[616] The consumer's position is bolstered by the provision that any contractual clause deviating from the rules of the mentioned Government Decree to the detriment of the consumer is null and void.[617]

The duration of the guarantee period is determined by the amount of the sales price. Specifically, it lasts for two years when the sales price reaches 10,000.00 HUF without exceeding 250,000.00 HUF and for three years if the amount of the sales price exceeds 250,000.00 HUF.[618] The guarantee period commences either on the date of delivery of the consumer goods to the consumer or on the date of the installation carried out by the

[611] 93/2024. (IV. 23.) Korm. Rendelet a fogyasztóvédelemmel összefüggő kormányrendeletek módosításáról (Government Decree no. 94/2024 amending government decrees on consumer protection).
[612] 181/2003. (XI. 5.) Korm. rendelet a lakásépítéssel kapcsolatos kötelező jótállásról (Government Decree no. 181/2003 (XI. 5.) on a mandatory guarantee associated with the construction of dwellings).
[613] 249/2004. (VIII. 27.) Korm. rendelet az egyes javító-karbantartó szolgáltatásokra vonatkozó kötelező jótállásról (Government Decree no. 249/2004 on the mandatory guarantee for certain repair and maintenance services).
[614] Government Decree 151/2003, Art. 1, Sec. 1.
[615] 10/2024. (VI. 28.) IM rendelet a kötelező jótállás alá tartozó tartós fogyasztási cikkek körének meghatározásáról (Ministerial Decree 10/2024 determining the durable goods covered by a mandatory guarantee).
[616] Government Decree 151/2003, Art. 1, Sec. 2.
[617] Government Decree 151/2003, Art. 1, Sec. 5.
[618] Government Decree 152/2003, Art. 2, Sec. 1 (a), (b).

company or its representative.[619] Notably, its duration is extended in the event of repair for the period starting from the date of delivery of the goods to be repaired, during which the consumer cannot use the goods because of the lack of conformity.[620]

The Government Decree 151/2003 mandates that the company must make the guarantee card available to the consumer alongside the consumer goods in a form that ensures the legibility of its content until the end of the guarantee period.[621] The mentioned act also determines the obligatory content of the guarantee card.[622] A particular emphasis is placed on indicating that this type of guarantee does not affect the consumer's legal rights.[623] Thus, the consumer retains the right to dispose of the remedies stemming from the warranty for the lack of conformity. The mandatory guarantee enhances the consumer's position, as it does not replace the consumer's remedies available in the event of the lack of conformity of the goods with the contract, but offers different possibilities.

Regarding the remedies at the consumer's disposal, the Government Decree 151/2003 distinguishes between repair, replacement, and refunding the sales price. The consumer is entitled to demand repair at the company's (seller's) registered office, any of its premises or branches, and the repair service indicated in the guarantee card.[624] It is explicitly required that only new components be incorporated into the consumer goods during the repair.[625]

The company is obliged to replace the consumer goods within eight days if, at the first repair during the guarantee period, it determines that these goods cannot be repaired unless otherwise specified by the consumer. If it is impossible to replace the consumer goods, the company must refund the sales price to the consumer within eight days.[626]

Replacement is also available to the consumer when the goods continue to exhibit deficiencies after three repair attempts unless otherwise specified by the consumer. The

[619] Government Decree 151/2003, Art. 2, Sec. 2.
[620] Government Decree 151/2003, Art. 2, Sec. 4.
[621] Government Decree 151/2003, Art. 3, Sec. 1.
[622] Government Decree, 151/2003 Art. 3, Sec. 2.
[623] Government Decree 151/2003, Art. 3, Sec. 4.
[624] Government Decree 151/2003, Art. 5, Sec. 1.
[625] Government Decree 151/2003, Art. 5, Sec. 2.
[626] Government Decree 151/2003, Art. 5, Sec. 5.

impossibility of replacing the goods, also in this situation, conditions the company's obligation to refund the sales price to the consumer within eight days.[627]

Finally, the company is obliged to replace the consumer goods if the repair is not performed within 30 days of the notification of the repair request unless otherwise specified by the consumer. In that case, the replacement is to be carried out within eight days of the expiration of the mentioned 30-day time limit. However, if it is impossible to replace the consumer goods, the company is required to refund the sales price to the consumer within eight days of the expiry of the 30-day time limit.[628]

It is worth noting that the Government Decree 151/2003 established a three-level hierarchy of remedies at the consumer's disposal. The repair is the primary remedy available to the consumer in case of a defect. At the same time, the replacement is the secondary remedy, contingent upon the impossibility of repair or the company's failure to carry it out. Refunding the sales price to the consumer constitutes the tertiary remedy, subject to the impossibility of replacing the consumer goods. It is essential to emphasize that replacement assumes the position of the primary remedy when the lack of conformity arises within three working days of the purchase or installation of the consumer goods and impairs their proper use.[629] In such instances, the company cannot invoke disproportionate additional costs from Sec. 6:159 (2a) of the Civil Code.[630]

5. THE CZECH REPUBLIC

5.1. Legal Sources

The transposition of Directive 1999/44/EC into the Czech law was initially carried out by adopting Act No. 136/2002[631] which brought substantial amendments to the old 1964 Civil Code,[632] regarding the conformity of the goods with the sales contract.[633] With the adoption of novel Czech Civil Code[634] (hereinafter referred to as "the CzeCC"), enacted

[627] Government Decree 151/2003, Art. 5, Sec. 6.
[628] Government Decree 151/2003, Art. 5, Sec. 7.
[629] Dudás, 2020, pp. 1051-1052.
[630] Government Decree 151/2003, Art. 7.
[631] Zákon, kterým se mění zákon č. 40/1964 Sb., občanský zákoník, ve znění pozdějších předpisů, a zákon č. 65/1965 Sb., zákoník práce, ve znění pozdějších předpisů [Act amending Act No. 40/1964 Coll., the Civil Code, as amended, and Act No. 65/1965 Coll., the Labour Code, as amended], Sbírka zákonů [Collection of Laws], No. 57/2002.
[632] Občanský zákoník [Civil Code], Sbírka zákonů [Collection of Laws], No. 19/1964.
[633] Fiala and Selucká, 2008, p. 243.
[634] Občanský zákoník [Civil Code], Sbírka zákonů [Collection of Laws], No. 89/2012.

in 2012, the provisions on the consumer's position in the event of the defective performance by the seller continued to be influenced by the mentioned Directive.

The relevant rules in this regard were found in Subsection 5 (Section 2158 – Section 2174), specifically addressing the sales of consumer goods. In addition, the general rules governing the sales of goods as well as those on the performance of the contract (Section 1916 – Section 1925) also found their application.[635] However, it is worth underlining that the rules of Subsection 5 were applicable when the buyer was not an entrepreneur and it was not evident from the circumstances at the moment of the conclusion of the contract that the purchase was connected to his/her professional activity, while the seller was an entrepreneur/company.[636] Thus, it may be inferred these provisions did not cover solely and exclusively consumers, but also other entities concluding the contract outside their business activity such as corporations, foundations, or associations.[637] Incorporating consumer legislation into the CzeCC has been considered laudable by the Czech legal theory as it simplifies and enhances its practical application and prepares this legal act to address future challenges effectively.[638]

Moreover, it is noteworthy that provisions delineating the procedure of handling and resolving the consumer's claims were encompassed in the Consumer Protection Act (hereinafter referred to as: "the CzeCPA").[639] These rules were of paramount importance for determining the duration of the deadline for settling the consumer's claim.

Finally, the Czech legislator transposed Directive (EU) 2019/771 by Act No. 374/2022,[640] amending the CzeCPA and the CzeCC. These legislative changes took effect on the thirtieth day following the promulgation of the Act,[641] i.e., their application commenced on 6 January 2023. These amendments did not bring any conceptual difference since the CzeCC continues to serve as the principal legal source (*sedes materiae)* governing

[635] Hrádek, 2020, p. 9.
[636] CzeCC, Sec. 2158 (1).
[637] Hrádek, 2020, p. 11.
[638] Simon and Hrádek, 2023, p. 168.
[639] Zákon o ochraně spotřebitele [Consumer Protection Act], Sbírka zákonů [Collection of Laws], No. 634/1992.
[640] Zákon, kterým se mění zákon č. 634/1992 Sb., o ochraně spotřebitele, ve znění pozdějších předpisů, a zákon č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů [Act amending Act No. 634/1992 Coll., on consumer protection, as amended, and Act No. 89/2012 Coll., Civil Code, as amended], Sbírka zákonů [Collection of Laws], No. 374/2022.
[641] Act no. 374/2022, Part III, Art. V.

defective performance issues in the event of consumer sales contracts. At the same time, the CzeCPA still outlines the procedures for handling and resolving the consumer's claims. However, the personal scope of Subsection 5, containing special rules on the sale of goods to consumers, became narrower as its provisions apply, in conjunction with the general rules on the sale of goods and the performance of the contract, to the sale of tangible movable goods only if the buyer is a consumer.[642]

5.2. Definitions

The fundamental notions of consumer sales law are incorporated into the CzeCC. The consumer is defined as any natural person who, outside the scope of his/her business activity or the independent performance of his/her profession, concludes a contract with an entrepreneur or deals with him/her in any other way.[643] This definition is in line with Art. 2, Sec. 2 of Directive (EU) 2019/771. Thus, this notion is restricted to natural persons, meaning that legal entities are excluded from its scope. In addition, that natural person has to enter into a sales contract for purposes outside his/her business or professional activity. However, the classification of the consumer needs to be determined objectively and independently of the will of the involved individual, taking into account the nature and purpose of the particular sales contract.[644] The guidelines provided by the CJEU in Faber case that the national court should of its own motion determine whether the buyer qualifies as a consumer, even when the buyer did not invoke this status, are applicable also in Czech law.[645]

The seller as the other contractual party to the consumer sales contract is covered by the notion of the entrepreneur (podnikatel). For consumer protection purposes, the entrepreneur is defined as any person who concludes contracts related to his/her business, production, or similar activity, or the independent performance of his/her profession, as well as the person acting in the name of or on behalf of an entrepreneur.[646] Therefore, the entrepreneur can be a natural or legal person. This determination, encompassing intermediaries, is concordant with Art. 2, Sec. 3 of Directive (EU) 2019/771. It should be

[642] CzeCC, Sec. 2158 (1).
[643] CzeCC, Sec. 419.
[644] Hrádek, 2020, pp. 10-11.; Hubková, 2017, p. 2182.
[645] Hubková, 2017, p. 2182.
[646] CzeCC, Sec. 420 (2).

noted that, regarding consumer sales contracts, the indication given by the CJEU in the Wathelet case that the notion of seller incorporates "a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual" is valid also in Czech law.[647]

For the provisions of the CzeCC on the sale of goods to consumers to apply, tangible movable goods have to be the subject of the sales contract.[648] The inclusion of this type of goods aligns with Art. 2, Sec. 5(a) of Directive (EU) 2019/771. However, the Czech legislator does not explicitly specify when water, gas, and electricity are to be considered goods, nor exclude the application of its provisions on the lack of conformity when the object of a sales contract are living animals or second-hand goods sold at public auction. Furthermore, the sales contract is defined as any contract under which the seller undertakes to hand over the goods to the buyer and allow him/her to acquire ownership of them, while the buyer undertakes to take over the goods and pay the purchase price.[649]

Finally, the CzeCC contains the definitions of interoperability[650] and compatibility[651] in line with Directive (EU) 2019/771. Curiously, although the terms functionality and durability are mentioned in the CzeCC, this legal act does not provide for their definitions.

5.3. Lack of Conformity

Before the transposition of Directive (EU) 2019/771, the requirements concerning the lack of conformity were contained in Section 2161 of the CzeCC, titled "Quality upon takeover" (Jakost při převzetí). Specifically, the CzCC established the seller's liability for the lack of conformity of the goods (the exact term used was vada – defect) toward the buyer (consumer) at the time of the takeover.[652] The Czech legal literature emphasized that the lack of conformity was to be determined by taking into account the sales contract concluded between the parties or eventual requirements contained in a legal act applicable

[647] Hubková, 2017, p. 2182.
[648] CzeCC, Sec. 2158 (1).
[649] CzeCC, Sec. 2085 (1).
[650] Interoperability is defined in Sec. 1811 (2i) as the ability of the digital content or digital service to function with hardware or software different from those with which goods of the same type is normally used.
[651] Compatibility is defined in Sec. 1811 (2i) as the ability of the digital content or digital service to function with hardware or software with which goods of the same type are normally used, without the need to convert them.
[652] CzeCC, Sec. 2161 (1).

to the specific case.[653] Thus, determining the existence of a defect implied the combination of both subjective and objective requirements. Such a legal solution was grounded in the principle of the seller's liability for each illegality.[654] It may be stated that the conformity criteria under Czech law were more extensive compared to those outlined in Directive 1999/44/EC, which in Art. 2, Sec. 1 obliged the seller to deliver the goods in conformity with the sales contract.

While the mentioned Directive introduced a rebuttable presumption of conformity of the goods, the Czech legislator stipulated that the seller was particularly liable to the buyer (consumer) that the goods, at the time he/she took them over:

- had the properties that the parties agreed upon and, in the absence of such an agreement, the properties that the seller or manufacturer described or which the buyer (consumer) expected given the nature of the goods and the advertising the seller or manufacturer presented;
- were suitable for the purpose stated by the seller or for which the goods of that kind were usually used;
- corresponded in quality and design to the agreed sample or model if the quality or design was determined according to the agreed sample or model;
- had the corresponding quantity, measure, or weight;
- met the requirements laid down by legal regulations.[655]

Moreover, as stated in the subdivision devoted to the purchase of movable goods, defects in the documentation necessary for using the goods were also considered a lack of conformity.[656] Although the Czech legislator did not explicitly and separately incorporate the provision on the incorrect installation of the goods from Art. 2, Sec. 5 of Directive 1999/44/EC among the requirements for quality upon takeover, it is worth noting that such incorrect installation could constitute a lack of conformity when the seller's obligation deriving from the (consumer) sales contract also comprised installation or assembly of the goods.[657]

[653] Hrádek, 2020, p. 11.; Hubková, 2017, p. 2186.
[654] Chvátalová, 2015, p. 231.
[655] CzCC, Sec. 2161 (1).
[656] CzCC, Sec. 2099 (1).
[657] Hubková, 2017, p. 2185.

Although retaining the title of the section (Quality upon takeover), the implementation of Directive (EU) 2019/771 introduced significant novelties reflecting subjective and objective requirements of conformity. The subjective requirements stem from the specific consumer sales agreement.[658] The seller's liability in this context particularly includes the prerequisite that the goods:

- correspond to the agreed description, type, and quantity, as well as quality, functionality, compatibility, interoperability, and other agreed features;[659]
- are suitable for the purpose for which the buyer requires them and to which the seller has agreed;
- are delivered with the agreed accessories and instructions for use, including assembly or installation instructions.[660]

Compared to the previous regulation, the seller has to accept the purpose of the goods required by the consumer. Unlike Directive (EU) 2019/771, the CzCC does not explicitly demand that the buyer (consumer) inform the seller about that purpose at the moment of the conclusion of the contract. Moreover, the requirement for delivery to include accessories and instructions has also been incorporated into the subjective requirements. It is worth noting that the determination and existence of the subjective requirements are generally connected to the buyer's ability to negotiate and reach an agreement about them with the seller.[661]

In addition to the subjective, the goods, to be in conformity, must also meet the objective requirements. They are applicable in each case, i.e., they are not subject to the parties' contractual determination.[662] Transposing Art. 7, Sec. 1 of Directive (EU) 2019/771, the CzCC envisages that the seller is liable to the buyer (consumer) that the goods:

- are suitable for the purpose for which the goods of the same type are usually used, also considering the rights of third persons, legal regulations, technical standards, or codes of conduct of the given industry, if there are no technical standards;

[658] Explanatory Memoranda to the Amendments, pp. 137-138.
[659] The properties of the goods that the seller is obliged to communicate to the consumer before the conclusion of the contract pursuant to Sec. 1820 of the CzCC are also included among the agreed features.
[660] CzCC, Sec. 2161 (1).
[661] Simon and Hrádek, 2023, p. 175.
[662] De Franceschi, 2019, p. 86.

- correspond in quantity, quality, and other features including durability, functionality, compatibility, and safety to the usual properties of the goods of the same kind that the buyer can reasonably expect, also considering the public statements made by the seller or another person in the same contractual chain, in particular in advertising or on labelling;
- are delivered with accessories, including packaging, assembly instructions, and other instructions for use that the buyer can reasonably expect;
- correspond to the quality or description of a sample or model that the seller provided to the buyer before the conclusion of the contract.[663]

The Czech legislator exempts the seller from liability for the public statement made by another person in the same contractual chain. Namely, in order to be exempt, the seller must demonstrate the existence of one of the following conditions:

- that he/she was not aware of the public statement in question;
- that it was modified at the time of the conclusion of the contract in at least a comparable way as it was made;
- that it could not have influenced the buyer's decision to purchase the goods.[664]

The burden of proof is explicitly attributed to the seller. This legal solution represents the transposition of Art. 7, Sec. 2 of Directive 2019/771. It is worth noting that the buyer's awareness or knowledge of the public statement is to be assessed by taking into account the knowledge that a person familiar with the case would reasonably acquire when considering the circumstances that must have been obvious to him/her in that position.[665] Finally, the CzCC has introduced the rule, already acknowledged in Czech legal theory, that the seller is liable for any lack of conformity deriving from the incorrect installation or assembly carried out by the seller or under his/her responsibility according to the contract.[666] It should be emphasized that the seller's liability is conditioned by the circumstance that the installation or assembly constitutes his/her contractual obligation. Additionally, the seller is also liable if the installation or assembly was carried out by the buyer (consumer) and the lack of conformity is attributable to the shortcomings in the

[663] CzCC, Sec. 2161 (2).
[664] CzCC, Sec. 2161 (3).
[665] CzCC, Sec. 4 (2).
[666] CzCC, Sec. 2161a.

instructions provided by the seller.[667] These legal solutions are concordant with Art. 8 of Directive (EU) 2019/771.

5.4. The Moment of the Emergence of the Seller's Liability

Before the implementation of Directive (EU) 2019/771, the Czech legislator established that the seller was liable to the buyer (consumer) for the lack of conformity of the goods existing at the moment of takeover, without referring to the irrelevance of the eventual seller's knowledge about the deficiencies of the goods.[668] It is worth underlining that the consumer acquired ownership over the goods at that moment.[669] It may be inferred that the seller's liability was not explicitly connected to the transfer of risk to the consumer but the priority was given to the moment of takeover of the goods.[670]

The CzCC envisaged cases in which the consumer did not have the rights arising from the lack of conformity, thus exonerating the seller from liability. First, the circumstance that the consumer, before the takeover of the goods, was aware of the lack of conformity extinguished the availability of consumer remedies.[671] This rule represented the transposition of Art. 2, Sec. 3 of Directive 1999/44/EC. However, the Czech legislator omitted to include that the same rule also applied when the consumer could not reasonably have been unaware of the lack of conformity. This exculpatory ground aimed to prevent bad faith behaviour by the consumer, as it implied that his/her cognizance of the defect influenced his/her decision to conclude the sales contract with the seller under the agreed conditions.[672]

Furthermore, the consumer could not use the remedies stemming from the lack of conformity also when he/she caused it.[673] Thus, the seller was exonerated when the defect could not be ascribed to his/her fault or omission but was caused by the consumer. This exculpatory ground was more extensive than the one from Art. 2, Sec. 3 of Directive

[667] CzCC, Sec. 2161a.
[668] CzCC, Sec. 2161 (1).
[669] CzCC, Sec. 2160 (1).
[670] Pipková, 2014, p. 135.
[671] CzCC, Sec. 2170.
[672] Howells et al., 2018, pp. 184-185.
[673] CzCC, Sec. 2170.

1999/44/EC stating that there is no lack of conformity when it has its origin in materials supplied by the consumer. It may be stated that such a defect could have been interpreted in Czech law as caused by the consumer, thereby exempting the seller from liability.

The transposition of Directive (EU) 2019/771 did not bring notable novelties in this regard. The relevant moment for determining the seller's liability remains the moment of takeover.[674] Moreover, the circumstance that the consumer caused the lack of conformity continues to be a reason for excluding the availability of consumer remedies and exonerating the seller.[675] The Explanatory Memoranda mentions the inappropriate handling of the goods as an example of a defect caused by the consumer.[676]

As a novelty, the CzCC specifically stipulates that the wear and tear of the goods caused by their usual use or, in the case of second-hand goods, corresponding to the extent of their previous use cannot be considered a lack of conformity.[677] While the legal solution regarding the normal use of the goods presupposes that they conformed to the consumer sales contract at the moment of their takeover, the one applying to the second-hand goods departs from the presumption that the consumer accepted the defect while concluding the sales contract.[678]

Finally, the application of the objective requirements for conformity can be excluded when the seller specifically informs the buyer before concluding the contract that a certain property of the goods differs, deviating from the objective requirements. Merely informing is not sufficient since the buyer (consumer) needs to expressly agree on such deviation at the time of concluding the contract.[679] This provision transposes Art. 7, Sec. 5 of Directive (EU) 2019/771.

5.5. Deadlines and Burden of Proof

When the Czech law was based on Directive 1999/44/EC, the CzCC, transposing its Art. 5, Sec. 1, envisaged that the consumer could use the available remedies arising from the defect that emerged within twenty-four months of the takeover.[680] Essentially, this twenty-

[674] CzCC, Sec. 2161 (1).
[675] CzCC, Sec. 2167 (1).
[676] The Explanatory Memoranda to the Amendments, p. 142.
[677] CzCC, Sec. 2167 (2).
[678] The Explanatory Memoranda to the Amendments, p. 142.
[679] CzCC, Sec. 2161 (4).
[680] CzCC, Sec. 2165 (1).

four-month deadline was a period during which the lack of conformity had to become apparent for the seller to be liable.[681] Interestingly, the existence of the defect at the moment of the takeover was considered an alternative indispensable requirement for establishing the seller's liability, which benefitted the consumer's position. It was sufficient that the non-conformity appeared within twenty-four months thereof. Such interpretation stemmed from the need to preserve continuity with the regulation on the liability for the lack of conformity from the old CzCC.[682] Namely, in relation to the old, previously valid legal regime, the Supreme Court of the Czech Republic affirmed that "the warranty applies to defects of the goods regardless of whether they existed at the time of takeover and appeared as the contradiction with the sales contract only subsequently, or arose and manifested themselves as a contradiction with the sales contract after the takeover of the goods during the warranty period".[683]

The Czech legislator established a specific rule applying to the situation when the duration for which the goods could be used was specified on the goods themselves, their packaging, instructions attached to the goods, or in the advertisement according to other legal regulations. In such cases, the provisions regarding the quality guarantee found their application.[684]

The consumer's position was improved by disregarding any agreement between the seller and the consumer by which the period for claiming the remedies would have been reduced.[685] Such a clause would have been null and void, signifying that the general twenty-four-month time limit would have applied.[686] However, the Czech legislator, using the opportunity provided by Art. 7, Sec. 1 of Directive 1999/44/EC, established an exception by allowing the contractual parties to reduce this period to half of the duration of the guarantee period (12 months) when the second-hand goods were the object of the sales contract. If the parties exceeded this limitation, by stipulating a period shorter than 12 months, it was presumed that they agreed to half of the guarantee period.[687]

[681] Hulmák in Hrádek, 2020, p. 13.
[682] Hubková, 2017, p. 2189.
[683] The Supreme Court of the Czech Republic, 33 Cdo 3744/2015.
[684] CzCC, Sec. 2165 (2).
[685] CzCC, Sec. 2168.
[686] Hrádek, 2020, p. 14., Hubková, 2017, p. 2192.
[687] CzCC, Sec. 2168.

Moreover, the CzCC stipulated that the provision from Sec. 2165 did not apply in the following cases:

- when the goods were sold for a lower price due to a defect for which such a lower price was agreed upon;
- when the defect concerned the wear and tear of the goods resulting from their normal use;
- when the defect in second-hand goods corresponds to the extent of their use or the wear or tear they exhibited at the moment of takeover by the buyer (consumer);
- when the lack of conformity stemmed from the inherent nature of the goods.[688]

The CzCC introduced a presumption that the lack of conformity had already existed upon takeover if it appeared within six months from that moment.[689] In line with the judgment rendered in the Faber case, Czech legal theory stressed that the consumer had to demonstrate only the existence of a non-conformity.[690] Additionally, in this context, the guidance of the CJEU provided in Faber case concerning the consumer's obligation to prove that the defect appeared within six months of the takeover, as well as the national court's duty to apply this presumption *ex officio*, applied also in Czech law.[691]

It may be stated that this presumption in the CzCC represented an incomplete transposition of Art. 5, Sec. 3 of Directive 1999/44/EC, as it was omitted that it did not apply if it was incompatible with the nature of the goods or the nature of the lack of conformity.[692] However, based on the guidance given by the CJEU in the Faber case, the seller was allowed to rebut such presumption by proving that the defect did not exist at the moment of the takeover of the goods in the manner that its cause or origin was attributable to "an act or omission which took place after the delivery".[693]

The transposition of Directive (EU) 2019/771 partly modified the mentioned issues of deadlines and burden of proof. For the seller to be held liable, the lack of conformity – now in addition to its existence at the time of the takeover due to the maximum

[688] CzCC, Sec. 2167.
[689] CzCC, Sec. 2161 (2).
[690] Hrádek, 2020, p. 14.; Hubková, 2017, p. 2186.
[691] Hubková, 2017, p. 2186.
[692] Hubková, 2017, p. 2186.
[693] CJEU, C-497/13, para. 73.; Hubková, 2017, p. 2186.

harmonization character of the mentioned Directive - has to manifest within two years of that moment.[694] Although this Directive allowed the Member States to extend this time limit beyond two years, the Czech legislator did not use this opportunity deeming that such an extension would impose additional costs on the seller that would consequently be reflected in a higher price of consumer goods.[695] It is specified that when the consumer asserts his/her rights deriving from the lack of conformity, this two-year long time limit does not run for the period during which the consumer cannot use the goods.[696]

Regarding second-hand goods, the CzCC, using the opportunity provided in Art. 10, Sec. 6 of Directive (EU) 2019/771, still allows the contractual parties to reduce the two-year time limit to one year.[697] However, the Czech legislator eliminated the provision presuming that the parties agreed upon half of the period if they stipulated a period shorter than 12 months. Therefore, it may be inferred that in the case of an agreement between the parties exceeding the permitted shortening of the time limit, the general two-year period of time would apply.

Moreover, the presumption that a lack of conformity existed at the moment of receipt became more advantageous to the consumer's position, as its duration has been extended from six months to one year. Thus, it is presumed that the lack of conformity existed upon takeover if it became apparent within one year from that moment. Transposing Art. 11, Sec. 1 of Directive (EU) 2019/771 and confirming what had already been stated by Czech legal theory, the CzCC acknowledges that this presumption is rebuttable by stipulating that it is excluded when it is incompatible with the nature of the goods or the nature of the lack of conformity.[698]

The Explanatory Memoranda mentions goods perishable by nature such as flowers as an example of incompatibility with the nature of the goods. At the same time, the circumstance that the consumer caused the defect or it is a consequence of an obvious external cause that took place after the handover of the goods is mentioned as an example when this presumption is contrary to the nature of the lack of conformity.[699] It is worth

[694] CzCC, Sec. 2165 (1).
[695] The Explanatory Memoranda for the Amenments, p. 141.
[696] CzCC, Sec. 2165 (4).
[697] CzCC, Sec. 2168.
[698] CzCC, Sec. 2161 (5).
[699] The Explanatory Memoranda for the Amendments, p. 138.

underlining that the one-year time limit does not run also in this case for the period during which the consumer cannot use the goods if he/she disposed of the available remedies.[700] Finally, the Explanatory Memoranda reaffirms the relevance of the above-mentioned judgment rendered by the CJEU in the Faber case by stating that it is sufficient for the consumer to demonstrate that there is a lack of conformity, without being forced to show that the goods were defective from the moment of their takeover and that he/she did not cause it.[701] The burden of proof that the goods conformed with the sales contract at the moment of their takeover is placed on the seller.

5.6. Goods with Digital Elements

The provisions contained in Subdivision 5 are also applicable when the subject of the sales contract are goods with digital elements defined as a movable tangible item that is connected to a digital content or digital service in such a way that without them it could not perform its functions.[702] Thus, the absence of digital elements hinders the goods from fulfilling their functions. The Explanatory Memoranda provides an example of the digital content interconnected to the goods in that manner, mentioning an operating system, an application, or other software. Regarding the digital service, it gives the example of the continuous supply of data about the traffic in the navigation system.[703] It is worth noting that the circumstance that a third party is obliged to provide digital elements does not exclude the application of the provisions of Subdivision 5. However, they are not applicable when it is clear from the content of the contract and the nature of the goods that digital content or digital service are to be provided separately, i.e., not under the same sales contract.[704] In that scenario, the provisions of Subsection 6, on the provision of digital content and based on Directive (EU) 2019/770, apply.[705]

Additionally, the rules contained in Subdivision 5, except those on handover of the goods (Sec. 2159) and withdrawal from the contract if the seller fails to perform his/her

[700] CzCC, Sec. 2161 (5).
[701] The Explanatory Memoranda for the Amendments, p. 138.
[702] CzCC, Sec. 2158 (2).
[703] The Explanatory Memoranda for the Amendments, p. 136.
[704] CzCC, Sec. 2158 (2).
[705] Simon and Hrádek, 2023, p. 172.

obligation within an additional reasonable period (Sec. 2159a), do not apply when the tangible movable item only serves as a carrier of digital content.[706]

The definition and determination of the goods with digital elements are in concordance with Art. 2, Sec. 5(b) and Art. 3, Sec. 3 of Directive (EU) 2019/771. The exclusion of the applicability of Subsection 5 only when it is clear or evident from the content of the sales contract that the digital properties are required to be supplied separately is to be interpreted as resolving the doubt as to whether the supply of these digital elements are included in the sales contract.[707]

Regarding the duration of the seller's liability in the event of goods with digital elements, the single and continuous supply of digital content or digital service can be differentiated. The general two-year time limit commencing from the moment of the takeover of goods applies to single supply. The Czech legislator, transposing Art. 10, Sec. 2 of Directive (EU) 2019/771, introduces a specific rule for the continuous supply of digital content or digital service for a certain period, envisaging that the consumer can complain about the defect that emerges within two years of the takeover and allowing the possibility of the extension of this timeframe when the contractual parties agree on a longer period of supply.[708] In that case, the seller's liability follows the agreed supply period, constituting an exception from the general rule that the defect has to appear within two years for the seller to be liable.[709]

Another particular legal solution related to the continuous supply of digital properties concerns the existence of the presumption of defectiveness. Specifically, if the lack of conformity manifests within two years or a longer period agreed upon by the contractual parties, it is presumed that the digital content or digital service was supplied defectively.[710] This rule constitutes the transposition of Art. 11, Sec. 3 of Directive (EU) 2019/771 and significantly bolsters the consumer's position compared to single supply.

Furthermore, when goods with digital elements are the subject of the sales contract, the parties are allowed to encompass the obligation to provide updates to digital content or

[706] CzCC, Sec. 2158 (3).
[707] The Explanatory Memoranda for the Amendments, p. 136.
[708] CzCC, Sec. 2165 (2).
[709] De Franceschi, 2019, p. 115.; Gsell, 2020, pp. 108-109.
[710] CzCC, Sec. 2161b (5).

digital service in their contract.[711] This seller's obligation concerns maintaining the agreed properties, as well as expanding and improving new functionalities and properties.[712] Essentially, such a requirement, stemming from the specific sales contract, forms part of the subjective requirements of conformity.

Nevertheless, in addition to the potentially agreed updates, the seller is obliged to ensure that the consumer is supplied with updates that are necessary for the goods to retain their conformity and notified of their availability.[713] The duration of this obligation is contingent upon the type of supply. In the event of continuous supply, the seller is required to provide updates and inform the consumer for two years or even longer, in which case the entire agreed supply period is covered.[714] On the other hand, the duration of the seller's obligation in single act of supply depends on the consumer's reasonable expectations, assessed by taking into account the nature and purpose of the goods, the nature of the digital content or digital service, as well as the circumstances of the conclusion of the contract and the nature of the obligation.[715] These rules are in line with Art. 7, Sec. 3 of Directive (EU) 2019/771. While the supply of agreed updates, comprising upgrades, derives from a specific sales contract, the seller is obliged to provide those updates that are necessary for the goods to remain conformant with the contract in each case. It is worth noting that this seller's obligation concerns solely and exclusively "corrective" updates.[716] However, the CzeCC allows for the exclusion of the mentioned update obligation. The seller needs to warn specifically the consumer before concluding the contract that the updates will not be provided, while the consumer has to expressly agree to this when concluding the contract.[717] It is worth underlining that the consumer's acceptance has to be explicit. Substantially, this provision corresponds to the exclusion of the application of the objective requirements for conformity.[718]

Finally, it should be accentuated that the seller is not required to install the supplied updates. The Czech legislator, transposing Art. 7, Sec. 4 of Directive (EU) 2019/771,

[711] CzeCC, Sec. 2161b (1).
[712] Explanatory Memoranda for the Amendments, p. 139.
[713] CzeCC, Sec. 2161b (2).
[714] CzeCC, Sec. 2161b (2a).
[715] CzeCC, Sec. 2161b (2b).
[716] Compte, 2024, p. 27.
[717] CzeCC, Sec. 2161b (3).
[718] Simon and Hrádek, 2023, p. 176.

deprives the consumer of using the remedies deriving from the defective performance when he/she fails to install the update within a reasonable time, provided that the defect emerged only as a consequence of this consumer's failure. Nevertheless, the remedies remain available to the consumer if the seller did not notify him/her of the update and the consequences of not installing it or if he/she did not install the update or installed it incorrectly due to a deficiency in the instructions.[719] The CzeCC does not provide any indication concerning the clarity of notifying the consumer of the consequences of the failure to install the updates.

5.7. Consumer Remedies

Substantially, before the transposition of Directive (EU) 2019/771, the CzeCC differentiated three categories of remedies available to the consumer: repair and replacement as rights aiming at fulfilling the contract, termination of the contract, and the appropriate price reduction[720].

Regarding replacement, the Czech legislator made it subject to the condition of proportionality, intended to safeguard the interests of the seller.[721] Specifically, if consumer goods did not conform to the contract, the CzeCC allowed the consumer to request the supply of new, flawless goods unless such replacement was deemed disproportionate to the nature of the defect.[722] Since the term "disproportionate" (nepřiměřený) lacked a precise definition in the CzeCC,[723] the Czech legal theory emphasized that it should have been interpreted by assessing the value of the goods and the costs of replacing the part of or repairing them.[724] Importantly, the consumer was entitled to request goods of equivalent or even superior quality.[725] However, if only a portion of the goods was affected by the lack of conformity, the consumer was entitled to request the replacement of that specific part.[726]

In cases where the right to replacement was deemed disproportionate due to the nature of the defect, particularly when the lack of conformity could be rectified without undue

[719] CzeCC, Sec. 2161b (4).
[720] Hrádek, 2020, p. 12.
[721] Tichý, 2014.
[722] CzeCC, Sec. 2169 (1).
[723] Chvátalová, 2015, p. 351.
[724] Hrádek, 2020, p. 12.; Hubková, 2017, p. 2193.
[725] Hajnal, 2022, p. 186; Hrádek, 2020, p. 12.; Hubková, 2017, p. 2193.
[726] CzeCC, Sec. 2169 (1).

delay, the consumer was entitled to have the goods repaired free of charge.[727] It may be inferred that the proportionality requirement implied a distinction between the rights to replacement and repair, as the disproportionality prevented the consumer from choosing replacement over repair.

Moreover, the CzeCC provides the consumer with the replacement remedy, whether for the entirety or part of the goods, even in cases when the lack of conformity was removable when the consumer could not effectively use the goods due to the repeated occurrence of the non-conformity following the attempted repair or because of a larger number of defects[728]. According to the case law of the Supreme Court of the Czech Republic, the repeated occurrence of the lack of conformity after the attempted repair referred to the situation where "the same defect, which has already been removed at least twice during the warranty period, occurs again."[729] Moreover, it was deemed that a defect was the same if it "had the same manifestations in the properties of the purchased goods", with no regard to the method of its initial rectification.[730] Interestingly, the consumer was also entitled to terminate the contract in such instances.[731] Therefore, the validity of the sales contract depended on the consumer's discretion, who could preserve it by selecting the replacement.

In addition to the mentioned situations of unsuccessful repair, another instance when the consumer was allowed to terminate the contract concerned the impossibility of replacing the goods or a part of them.[732] Thus, the applicable criterion required for the termination of the contract was the impossibility, which had to be interpreted as an objective obstacle existing on the side of the seller.[733] This legal solution was designed to safeguard the seller's position.[734] Nevertheless, the minor significance of the lack of conformity impeded the use of this remedy.[735] It is noteworthy that the legal consequence of the termination of the contract is the cessation of contractual obligations *ex tunc*[736]. This

[727] CzeCC, Sec. 2169 (1).
[728] CzeCC, Sec. 2169 (2).
[729] Decision of the Supreme Court of the Czech Republic, File No. 33 Cdo 1323/2013.
[730] Decision of the Supreme Court of the Czech Republic, File No. 33 Cdo 1323/2013.
[731] CzeCC, Sec. 2169 (2).
[732] CzeCC, Sec. 2169 (1).
[733] Hubková, 2017, p. 2193.
[734] Tichý, 2014.
[735] Eliáš, 2012, cited in Chvátalová, 2015, p. 351.
[736] Veress et al., 2022, p. 467.

implied that the consumer was required to return the goods to the seller at the latter's expense, while the seller was obligated to reimburse the price paid by the consumer.[737] The Supreme Court of the Czech Republic adjudicated that the seller is not entitled to compensation for the reduction in the value of the goods resulting from their "normal (usual) use and related wear and tear until the contract is cancelled" , provided that the buyer used them in good faith in the period when the contract was in force.[738]

Finally, the consumer was entitled to an appropriate price reduction if he/she did not exercise the right to terminate the contract or seek the remedies of replacement or repair of the goods[739]. Furthermore, the appropriate price reduction was available to the consumer when the seller was unable to replace the goods in whole or only in part, or to repair them, as well as when the seller failed to provide a remedy within a reasonable timeframe or when such a remedy would have caused substantial difficulties to the consumer.[740] The conditions regarding a reasonable timeframe and substantial difficulties caused to the consumer, rendering the appropriate price reduction possible, were introduced to safeguard the consumer's position.[741] The concept of reasonable timeframe was to be determined by considering the type of the lack of conformity, the difficulty of the repair, the specific circumstances of the case, and the urgency of the consumer's needs.[742]

Certain scholars in Czech legal literature argued that the appropriate price reduction under Czech law did not constitute a secondary or tertiary claim but rather a distinct primary claim at the consumer's disposal in the event of a lack of conformity of the goods with the contract.[743] Therefore, repair, replacement, and appropriate price reduction were deemed primary remedies, whereas termination of the contract was the exclusive subsidiary remedy available to the consumer. This suggests that the hierarchy of remedies in Czech law diverged from the legal framework established by Directive 1999/44/EC, which distinguished between repair and replacement, as primary, and price reduction and

[737] Hrádek, 2020, p. 13.
[738] Decision of the Supreme Court of the Czech Republic, File No. 30 Cdo 68/2007.
[739] CzeCC, Sec. 2169 (3).
[740] CzeCC, Sec. 2169 (3).
[741] Tichý, 2014;
[742] Tichý, 2014.
[743] Tichý, § 2169 in Švestka, Dvořák, Fiala et al., 2014, cited in Hrádek, 2020, p. 13; Hrádek, 2020, cited in Hajnal, 2022, p. 186.

termination of the contract, as secondary remedies.[744] Conversely, some legal scholars characterized the appropriate price reduction as a subsidiary right[745] and "the last means of legal protection."[746]

Additionally, the consumer was entitled to compensation for damage resulting from the lack of conformity. The CzeCC explicitly stipulated that a right arising from defective performance did not exclude the right to seek compensation for damages. At the same time, what could be obtained through the right to defective performance could not be pursued on other legal grounds[747]. The Supreme Court of the Czech Republic clarified the distinction between liability for defects (i.e., lack of conformity) and liability for damages, articulating that "liability for defects pursues deficiencies of the seller's own performance and ensures that the buyer receives from the binding legal relationship performance without any defect", while the purpose of liability for damage is "to compensate for material damage incurred as a result of a breach of a legal obligation or as a result of another fact recognized by law."[748]

Although Directive 1999/44/EC allowed the Member States to require the consumer to inform the seller of the lack of conformity within two months from the date of its detection, the CzeCC did not contain any provision in this regard in the subsection dedicated to the sale of consumer goods.[749] Nonetheless, Czech legal theory argued that good morals demanded that such notification be done without undue delay, considering any delay *contra bonos mores.*[750] Good morals are to be interpreted as "rules that must be unconditionally upheld in the society".[751] Furthermore, the CzeCPA mandated that the consumer's claim be settled without delay, no later than 30 days from the lodging of the claim, unless a longer period was agreed upon between the seller and the consumer.[752] Therefore, the contractual parties could mutually agree to extend the period within which the seller was obliged to rectify the lack of conformity.

[744] Directive 1999/44/EC, Art. 3, Sec. 2.
[745] Chvátalová, 2015, p. 351.
[746] Tichý, 2014.
[747] CzeCC, Sec. 1925.
[748] Decision of the Supreme Court of the Czech Republic, File No. 25 Cdo 1612/2004.
[749] Hajnal 2022, p. 186.
[750] Tichý, § 2169 in Švestka, Dvořák, Fiala et al., 2014, cited in Hrádek, 2020, p. 14.
[751] Dudás et al., 2022, p. 182.
[752] CzeCPA, Sec. 19 (3).

The transposition of Directive (EU) 2019/771 into Czech law introduced significant novelties. If the appropriate price reduction is considered a distinct primary claim, it may be stated that it changed its position within the remedial framework, aligning it with the termination of the contract as a secondary remedy. On the other hand, repair and replacement continue to be the primary set of remedies. It may be inferred that the novel regulation introduced a more precise and coherent interrelation between these remedies. Notably, the consumer retained the right to seek compensation for damages since the mentioned Sec. 1925 of the CzeCC remained unaltered.

Regarding primary claims, the Czech legislator, transposing Art. 13, Sec. 2 of Directive (EU) 2019/771, permits the consumer to demand from the seller the rectification of the lack of conformity through either delivering new goods without defect (replacement) or repair. It should be accentuated that the CzeCC does not preclude the possibility of replacing the defective item with goods of superior quality, in which case the consumer shall not be required to provide any additional payment.[753] However, the consumer's freedom of choice is not unrestricted, as the chosen remedy may not be applied if such a claim is impossible or disproportionate compared to another, taking into account particularly the significance of the lack of conformity, the value the goods would have if there were no lack of conformity, and whether it could be removed by the alternative remedy without significant inconvenience to the consumer.[754] The impossibility of the chosen remedy may be either legal or factual, as stated in Recital 48 of Directive (EU) 2019/771.[755]

It is worth emphasizing that the proportionality test is to be assessed in relation to another remedy.[756] More precisely, it applies specifically between repair and replacement, as affirmed by the CJEU in the Weber and Putz case (Joined Cases C-65/09 and C-87/09).[757] The Explanatory Memoranda explicitly mentions as disproportionate the consumer's request to replace the goods in their totality when the lack of conformity pertains only to

[753] Simon and Hrádek, 2023, p. 184.
[754] CzeCC, Sec. 2169 (1).
[755] The Explanatory Memoranda for the Amendments, p. 142.
[756] The Explanatory Memoranda for the Amendments, p. 142.
[757] Mišćenić et al., 2021, p. 67; Michel, 2018, p. 223.

a part of the goods and can be eliminated by replacing that specific part, as in the case of a non-functioning air conditioning unit in the car.[758]

Furthermore, the seller is entitled to refuse to bring the goods into conformity if it is impossible or disproportionate, particularly considering the significance of the lack of conformity and the value the goods would have without it.[759] This provision represents the transposition of Art. 13, Sec. 3 of Directive (EU) 2019/771.

The CzeCC mandates that the seller rectify the lack of conformity within a reasonable timeframe from the moment he/she has been notified about it by the consumer without causing significant inconvenience to the consumer and considering the nature of the goods and the purpose for which the consumer purchased them.[760] The concept of reasonable time is to be interpreted as "the shortest possible time necessary for completing repair or replacement".[761] In this context, the CzeCPA. stipulating that the consumer's complaint, comprising the rectification of the lack of conformity, must be settled, and the consumer must be informed thereof, no later than 30 days from the lodging of the claim unless the seller and the consumer mutually agree upon a longer period, is pivotal.[762] However, the rule from Sec. 2170 (1) of the CzeCC could be viewed as an incomplete transposition of Art. 14, Sec. 1 of Directive (EU) 2019/771 because it does not explicitly require the seller to eliminate the lack of conformity "free of charge". Although the Explanatory Memoranda explicitly stated that the seller is obliged to ensure the removal of the lack of conformity at his/her own expense,[763] the CzeCC only specifies that the seller shall bear the costs of taking over the goods[764]. Curiously, it has instituted the consumer's liability for the storage fee payment to the seller if the consumer fails to take over goods within a reasonable timeframe after being notified by the seller of their availability after repair.[765] This provision, not addressed in Directive (EU) 2019/771 reflects influences from business organizations.[766]

[758] The Explanatory Memoranda for the Amendments, p. 143.
[759] CzeCC, Sec. 2169 (2).
[760] CzeCC, Sec. 2170 (1).
[761] Directive (EU) 2019/771, Recital 55; The Explanatory Memoranda for the Amendments, p. 143.
[762] CzeCPA, Sec. 19 (3).
[763] The Explanatory Memoranda for the Amendments, p. 143.
[764] CzeCC, Sec. 2170 (2).
[765] CzeCC, Sec. 2170 (3) and Sec. 2159 (3).
[766] The Explanatory Memoranda for the Amendments, p. 143.

However, the CzeCC, in the subdivision devoted to proper performance, stipulates that the buyer (consumer) is entitled to reimbursement of the costs purposefully incurred in exercising his/her rights.[767] These costs generally encompass the expenses related to the transportation of goods, including postage.[768] It is worth underlining that Czech legal theory states that the awareness of the consumer that the seller in the specific case does not bear liability for the defect extinguishes the seller's obligation to reimburse the associated costs.[769]

Implementing Art. 14, Sec. 3 of Directive (EU) 2019/771, the Czech legislator has established a specific rule addressing situations where rectifying the lack of conformity necessitates disassembling goods that were initially assembled according to their nature and purpose before the lack of conformity became apparent. In such cases, the seller's obligation to repair and replace encompasses the dismantling of the non-conforming goods and the installation of the replacement or repaired goods or covering the associated costs.[770] It is important to note that this provision was incorporated into Directive (EU) 2019/771 under the influence of the jurisprudence of the CJEU, specifically Weber and Putz case.[771]

Concerning the secondary set of remedies, the consumer is entitled to seek an appropriate price reduction or terminate the contract in the following cases:

- if the seller refused to rectify the lack of conformity, or he/she did not eliminate it by Sec. 2170, para. (1) and (2);
- if the lack of conformity manifests itself repeatedly;
- if the lack of conformity constitutes a fundamental breach of contract or
- if it is evident from the seller's statement or the circumstances of the case that the lack of conformity will not be rectified within a reasonable timeframe or without causing significant inconvenience to the consumer.[772]

This provision represents the transposition of Art. 13, Sec. 4 of Directive (EU) 2019/771. The determination of the issue of the repeated occurrence of the lack of conformity is to

[767] CzeCC, Sec. 1924.
[768] Simon and Hrádek, 2023, p. 182.
[769] Simon and Hrádek, 2023, p. 182.
[770] CzeCC, Sec. 2170 (2).
[771] Rodrigo, 2022, p. 1300.; Loos, 2016, p. 12
[772] CzeCC, Sec. 2171 (1).

be assessed objectively based on the circumstances of each case. The Explanatory Memoranda, influenced by Recital 52 of the mentioned Directive, explicitly suggests that it would be justified to grant the seller an additional opportunity to remedy the lack of conformity in the case of goods of a complex nature or higher value.[773]

Additionally, a fundamental breach of contract, triggering the immediate availability of secondary remedies, is defined in Czech law as a situation where, at the time of the conclusion of the contract, the breaching party knew or should have known that the other party would not have entered into the contract had it anticipated such a breach.[774]

The termination of the contract is not permissible when the lack of conformity is minor.[775] The Czech legislator has introduced a rebuttable presumption that the lack of conformity is not minor, placing the burden of proof on the seller.[776] Thus, if the seller successfully proves the minor nature of the lack of conformity, the appropriate price reduction is the only secondary claim available to the consumer. These rules are the transposition of Art. 13, Sec. 5 of Directive (EU) 2019/771. It is worth mentioning that the indications provided by the CJEU in the Duarte case, allowing the national court to grant on its own motion the appropriate price reduction when the consumer's attempt to terminate the contract proves unsuccessful due to the minor relevance of the lack of conformity, and the national law impedes or excessively complicates the application of a price reduction are relevant also in Czech law.[777]

Moreover, the CzeCC, transposing Art. 16, Sec. 3 of Directive (EU) 2019/771, imposes an obligation on the seller, in cases where the contract is terminated, to reimburse the consumer the price paid without undue delay upon receipt of the goods or upon the consumer demonstrating that he/she sent them back.[778] This indicates that the consumer's action of returning the goods to the seller precedes and initiates the seller's obligation to

[773] The Explanatory Memoranda for the Amendments, p. 143.
[774] CzeCC, Sec. 2002 (1).
[775] CzeCC, Sec. 2171 (3).
[776] CzeCC, Sec. 2171 (3); The Explanatory Memoranda for the Amendments, p. 144.
[777] Jansen, 2014, p. 990.
[778] CzeCC, Sec. 2171 (4).

reimburse the price. It appears that the Czech legislator did not transpose Art. 16, Sec. 1,[779] and Sec. 2[780] of the mentioned Directive.

Consistently with Art. 15 of Directive (EU) 2019/771, the CzeCC specifies that the appropriate price reduction should be determined as a difference between the value the goods would have had without the lack of conformity and the value of non-conforming goods received by the consumer.[781]

Finally, the Czech legislator opted not to establish a specific deadline for the consumer to notify the seller of the lack of conformity, providing the reasoning that imposing such a notification deadline could restrict consumer rights.[782] Additionally, the consumer's position is bolstered by the provision stipulating that the court will grant the rights stemming from the lack of conformity even if it was not reported without undue delay after the consumer could have discovered it with sufficient care.[783]

The expected future amendments in the legal area of the consumer remedies will concern the stimulation of the use of the repair remedy, representing the transposition of Directive (EU) 2024/1799 and following the guidelines of the circular economy and sustainable consumption. Nevertheless, the hierarchical order between the remedies will probably remain unaltered.

5.8. Consumer Guarantees

The CzeCC, before the transposition of Directive (EU) 2019/771, included a definition of the quality (commercial) guarantee within the general section of contract law, as well as in the subsection dedicated to the purchase of movable goods. Specifically, concerning the guarantee given as part of the sales contract, it stipulated that the seller assured that the goods would be suitable for use for the usual purpose for a certain period or that they would maintain the usual properties.[784] Furthermore, the Czech legislator provided the

[779] Art. 16, Sec. 1: The consumer shall exercise the right to terminate the sales contract by means of a statement to the seller expressing the decision to terminate the sales contract.
[780] Art. 16, Sec. 2: Where the lack of conformity relates to only some of the goods delivered under the sales contract and there is a ground for termination of the sales contract pursuant to Article 13, the consumer may terminate the sales contract only in relation to those goods, and in relation to any other goods which the consumer acquired together with the non-conforming goods if the consumer cannot reasonably be expected to accept to keep only the conforming goods.
[781] CzeCC, Sec. 2171 (2).
[782] The Explanatory Memoranda for the Amendments, p. 141.
[783] CzeCC, Sec. 2165 (3).
[784] CzeCC, Sec. 2133.

same guarantee effect to the indication of the guarantee period or the period of use of the goods on the packaging or in advertising.[785] The application of these provisions was not restricted exclusively to the consumer sales contract. However, in the subsection devoted to the sales of consumer goods, the CzeCC extended the application of the provisions on the quality guarantee to situations when the period during which the (consumer) goods could be used was indicated in the instructions attached to the goods, apart from on the sold goods, their packaging, or in advertising.[786] It is worth noting that this rule applied solely to the sales contracts concluded in the consumer context.

Regarding the subject issuing the quality guarantee as part of the (consumer) sales contract, it was limited to the seller, signifying that the producer was not involved in this legal relationship. The CzeCC specified an exception from the general rule that the quality guarantee is issued for the goods in their totality, stipulating that it could also be provided for an individual part of the item.[787] The Czech legal theory underlined that the guarantee could concern solely a specific property or function of the goods, while the guarantee conditions were not required to be identical for each warrantied property.[788] It was not required that the guarantee was to be granted without extra charge, as stipulated in Directive 1999/44/EC.

Moreover, the CzeCC resolved a potential discrepancy between the lengths of the guarantee periods specified in the contract and the guarantee statement, by giving precedence to the longer one. The guarantee statement was to be interpreted as "any statement of the seller in the sense of the unilateral manifestation of will".[789] The Czech legislator also prioritized the guarantee period agreed upon by the parties over that indicated on the packaging as the period of use.[790] These legal solutions were not incorporated in Directive 1999/44/EC.

It is worth noting that the CzeCC did not contain any indication about the duration of the guarantee period and consumer rights stemming from the guarantee. Consequently, their

[785] CzeCC, Sec. 2133.
[786] CzeCC, Sec. 2165 (2).
[787] CzeCC, Sec. 2133.
[788] J. Zapletal, § 2116 in J. Petrov, M. Výtisk, V. Beran et al., 2017, p. 2143. In Hrádek, 2020, p. 17.
[789] Hrádek 2020, p. 17.
[790] CzeCC, Sec. 2114.

specification was essentially contingent upon the seller's will.[791] The CzeCC established moments from which the guarantee period commenced to run, determining the moment of delivery of the goods to the buyer (consumer) as a general rule. However, when the goods were dispatched according to the contract, it started to run from the moment they reached their destination. Another exception regarded the goods that were to be put into operation by someone other than the seller. In that instance, the guarantee period ran from the day the goods were put into operation, if the buyer (consumer) ordered commissioning no later than three weeks following the taking over of the goods and provided the required cooperation to properly and timely perform the service.[792]

Additionally, the Czech lawmaker established a situation when the buyer (consumer) could not use the rights deriving from the guarantee. Specifically, these rights were not available to him/her if an external event caused the defect after the risk of damage passed to the buyer. This provision was not applicable when the defect was caused by the seller.[793] The external event was interpreted as an occurrence that was not engendered by the seller or the buyer.[794]

The CzeCC did not explicitly state that the quality guarantee did not affect the consumer's rights deriving from the seller's liability for the defective performance, as required by Art. 6, Sec. 2 of Directive 1999/44/EC. However, the interpretation in line with the mentioned Directive, signifying that the guarantee constitutes an additional protection granted to the consumer, was valid also in Czech law.[795] Therefore, the consumer was not precluded from using the remedies stemming from the defective performance. Moreover, the CzeCC did not contain any provision on the mandatory content and the specific form of the guarantee. The Czech legal theory stressed that the guarantee could be granted in oral form, while the consumer was allowed to request the seller to make it available in writing.[796]

The transposition of Directive (EU) 2019/771 brought important modifications to this legal institute. The CzeCC establishes that the quality guarantee arises from a statement

[791] Hrádek, 2020, p. 16.
[792] CzeCC, Sec. 2115.
[793] CzeCC, Sec. 2116.
[794] Hrádek 2020, p. 17.
[795] Hrádek, 2020, p. 16.
[796] Hrádek, 2020, pp. 16-17.

given by the guarantor that he/she will satisfy the buyer (consumer) beyond the scope of his/her rights from the defective performance, in particular by reimbursing the purchase price, replacing or repairing the goods, or providing a related service if the goods do not possess the characteristics specified in the guarantee statement.[797] This provision defines the guarantee as a unilateral declaration of will of the guarantor, emphasizing its supplementary nature in relation to the consumer rights from the defective performance. It also determines its possible content by providing a non-exhaustive list of remedies available to the buyer. Refund of the purchase price (termination of the contract), repair, and replacement are explicitly mentioned as the remedies at the consumer's disposal, without establishing any hierarchical order between them. It is worth noting that the notion of guarantor does not incorporate solely the seller, but it is extended to the manufacturer or other person.[798]

Moreover, the guarantee also arises from a statement made in the advertisement available at the latest at the time of the conclusion of the sales contract.[799] The Czech legislator, transposing Art. 17, Sec. 1 (2) of Directive (EU) 2019/771, resolves a potential discrepancy when the content of the guarantee statement is less favourable to the buyer (consumer) than the warranty given in the advertisement, by giving precedence to the latter, unless it has been additionally modified before the conclusion of the sales contract in the same or comparable way as the advertisement was made.[800]

The CzeCC distinguishes a particular type of guarantee where the guarantor assures that the goods will retain their functions and performance during normal use for a certain period. In that case, the buyer (consumer) should at least be entitled to the rectification of the lack of conformity by the delivery of new goods devoid of defect (replacement) or repair. The same legal effect is given to the indication of the guarantee period or the period of use of the goods on their packaging.[801] This type of guarantee corresponds to the commercial guarantee of durability from Art. 17, Sec. 1 of Directive (EU) 2019/771.[802]

[797] CzeCC, Sec. 2113 (1).
[798] Simon and Hrádek, 2023, p. 185.
[799] CzeCC, Sec. 2113 (2).
[800] CzeCC, Sec. 2113 (2).
[801] CzeCC, Sec. 2114 (1).
[802] The Explanatory Memoranda for the Amendments, p. 134.

Unlike the mentioned Directive, the Czech lawmaker does not explicitly restrict its applicability exclusively to the producer.

The amendment did not substantially affect Sec. 2115 of the CzeCC, determining the moments from which the guarantee period starts. The only modification is the replacement of the term seller with guarantor. An external event causing the defect still precludes the buyer (consumer) from requesting remedies. However, the clause stating that this exclusion does not apply if the defect was caused by the seller has been removed, as it is already implied.[803]

Furthermore, concerning the guarantee provided to the consumer, the additional rules are contained in the subsection of the CzeCC devoted to the sales of consumer goods. Namely, the guarantor is required to issue a written quality guarantee certificate, using clear and understandable language, at the latest upon taking over the goods. Although the CzCC does not take advantage of the opportunity provided by Art. 17, Sec. 4 of Directive (EU) 2019/771 to establish the language in which the guarantee is to be delivered to the consumer, the CzCPA stipulates that the seller must ensure that the information on the scope, conditions, and methods of exercising the rights from the defective performance are provided in Czech.[804]

The Czech legislator, transposing Art. 17, Sec. 2 of Directive (EU) 2019/771 mandates that this certificate shall contain a statement that the buyer (consumer) has rights deriving from the seller's liability for the defective performance which are not affected by the quality guarantee, as well as the designation of the goods covered by the guarantee, the content of the guarantee, the name and place of residence or registered office of the guarantor, the procedure for exercising the rights from the guarantee, and the terms of the guarantee.[805] It may be stated that the transposition of Art. 17. Sec. 2 of the mentioned Directive is not complete since the CzeCC does not require the guarantee certificate to be provided to the consumer on a durable medium. Nevertheless, the guarantor's failure to fulfil his/her obligations regarding the formal and content requirements of the guarantee does not affect its validity.[806]

[803] The Explanatory Memoranda for the Amendments, p. 135.
[804] CzeCPA, Sec. 11 (1).
[805] CzeCC, Sec. 2174a (1).
[806] CzeCC, Sec. 2174a (2).

6. SLOVAKIA

6.1. Legal Sources

The transposition of Directive 1999/44/EC into the Slovak legal framework occurred in 2004 with the adoption of Act no. 150/2004 Coll,[807] amending the Slovak Civil Code[808] (hereinafter referred to as "the SlovCC"). Therefore, the principal legal act governing the consumer's position in the case of the defective performance by the seller was the SlovCC, while the Consumer Protection Act[809] (hereinafter referred to as "The SlovCPA") regulated in detail the process of claiming of consumer rights.[810] The relevant provisions were contained in the fourth subdivision of the SlovCC (Sec. 612 - Sec. 627), entitled "Special provisions on the sale of goods in a store (consumer sales contracts)". It is worth emphasizing that these rules found their application solely when one of the contractual parties was a consumer. In addition, the provisions from Chapter V of the first part of the SlovCC devoted to consumer contracts (Sec. 52 – Sec. 54), as well as the general provisions on the sales contract also applied to the consumer sales contracts.[811] Essentially, those general provisions constituted *lex generalis,* while the specific provisions on consumer sales contracts had the *lex specialis* position.[812] Finally, the general rules on the liability for the defect (Sec. 499 – Sec. 510) also bore relevance.[813]

The creation of the specific subdivision governing exclusively the seller's performance of the consumer sales contract and the consumer's position in the case of a defect caused legal uncertainty as to whether the contractual freedom of the consumer could be subject to commercial and civil regulation.[814] This issue was resolved by adopting the Act 102/2014[815] which amended the SlovCC. Specifically, it determines that the provisions of

[807] Zákon z 2. marca 2004,ktorým sa mení a dopĺňa zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov [Act of March 2, 2004 amending Act No. 40/1964 Coll. Civil Code as amended], *Zbierka zákonov* [Collection of Laws], No. 150/2004 Coll.

[808] Občiansky zákonník [Civil Code], *Zbierka zákonov* [Collection of Laws], No. 40/1964.

[809] Zákon o ochrane spotrebiteľa a o zmene zákona Slovenskej národnej rady č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov [Act on Consumer Protection and Amendment to Act of the Slovak National Council No. 372/1990 Coll. on offenses as amended], *Zbierka zákonov* [Collection of Laws], No. 250/2007.

[810] Mészáros, 2020, p. 74.

[811] SlovCC, Sec. 612.

[812] Križan et al., 2019, p. 2279.; Vojčík et al., 2009, p. 784.

[813] Števček et al., 2019, p. 690.

[814] Mészáros, pp. 74-75.

[815] Zákon o ochrane spotrebiteľa pri predaji tovaru alebo poskytovaní služieb na základe zmluvy uzavretej na diaľku alebo zmluvy uzavretej mimo prevádzkových priestorov predávajúceho a o zmene a doplnení niektorých zákonov [Act on Consumer Protection in the Sale of Goods or Provision of Services Based on a

the SlovCC are always preferentially applied to all the legal relationships involving the consumer, even if the rules of commercial law should be applied otherwise.[816] Thus, the application of the SlovCC in the consumer context became a matter of priority, superseding an eventual commercial law rule that would be applied otherwise. The Supreme Court of the Slovak Republic specified that the mentioned rule also applied to legal relationships established before it entered into force.[817]

Directive (EU) 2019/771 was transposed into Slovak law by adopting the Act 108/2024 on consumer protection[818], which, *inter alia*, amended the SlovCC. The manner of the regulation of the subject issue remained the same since the SlovCC continues to be the principal legal source, with the applicable special provisions contained in the fourth subdivision exclusively dedicated to the consumer sales contract. Additionally, the general rules on the sales contract are applicable if the special provisions on the consumer sales contract do not regulate the specific issue. The provision establishing the preferential application of the SlovCC in all legal relationships in which the consumer is a party remained unaltered.

6.2. Definitions

The most significant definition in the domain of consumer sales law are contained in the SlovCC. The consumer is defined as a natural person who in connection with a consumer contract or an obligation resulting from it does not act within the scope of his/her business activity or profession.[819] This notion is restricted to natural persons, signifying that legal persons are excluded. In addition, to be considered a consumer, a natural person has to conclude the sales contract outside of his/her professional activity. This definition is in line with Art. 2, Sec. 2 of Directive (EU) 2019/771. The indication of the CJEU provided in the Faber case that the national court should ascertain *ex officio* whether the purchaser qualifies as a consumer is valid also in Slovak law.

Distance Contract or a Contract Concluded Outside the Seller's Business Premises and on Amendments to Certain Acts], Zbierka zákonov [Collection of Laws], No. 102/2014.

[816] SlovCC, Sec. 52 (2).

[817] The Supreme Court of the Slovak Republic, 3MCdo/14/2014.

[818] Zákon o ochrane spotrebiteľa a o zmene a doplnení niektorých zákonov [Act on Consumer Protection and Amending Certain Laws], *Zbierka zákonov* [Collection of Laws], No. 108/2024

[819] SlovCC, Sec. 52 (4).

The SlovCC defines the trader, as the other contractual party, as a person who, in connection with a consumer contract or an obligation arising from it, acts within the scope of his/her business activity or profession, including through another person who acts on his/her behalf or for his/her account. It is worth noting that it is not required that the intermediary at the same time acts on behalf and for the account of the trader.[820] The affirmation of the CJEU in the Wathelet case that "a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual"[821] is relevant also in Slovak law.

Furthermore, the SlovCC defines consumer sales contract as a sales contract concluded between a trader as the seller and a consumer as the buyer if the subject of the sales is any movable item, including goods with digital elements, water, gas, and electricity sold in a limited volume or a specified quantity, even if the item has yet to be manufactured or produced, inter alia, according to the buyer's specifications.[822] Thus, this definition determines the trader and the consumer as the contractual parties, as well as the type of goods that can be the object of the contract. The determination of the goods constitutes the transposition of Art. 2, Sec. 5 of Directive (EU) 2019/771.

The Slovak legislator, transposing Art. 3, Sec. 4 of Directive (EU) 2019/771 excludes the application of the provisions governing the defective performance in consumer sales contracts (Sec. 615 – Sec. 626) if the purchase concerns a physical carrier which serves exclusively as a carrier of digital content or digital service or it is realized within the framework of execution or in a similar way of exercising public authority.[823] Moreover, relying on Art. 3, Sec. 4 of the mentioned Directive, the SlovCC restricts the scope of the application of these provisions also when the object of the consumer sales contract are living animals or second-hand goods sold at public auction, provided, in the second case, that the consumer was informed in advance of such non-application. In this regard, the public auction is defined as a method of sale in which the seller, through a transparent competitive bidding process carried out by the auctioneer, offers goods or services to

[820] The Explanatory Memoranda for the Amendments, p. 44.
[821] CJEU, C-149/14, para. 45.
[822] SlovCC, Sec. 612 (1).
[823] SlovCC, Sec. 612 (3).

consumers who participate in the auction in person or have the opportunity to participate in it in person, and the auctioneer is obliged to buy the goods or service.[824]

Finally, the definitions of the concepts of functionality, compatibility, interoperability, and durability are contained in the following subchapter on the lack of conformity.

6.3. Lack of Conformity

Prior to the transposition of Directive (EU) 2019/771, the requirements for the conformity of goods, contained in the section of the SlovCC titled "Quality and Quantity" (Akosť a množstvo), significantly diverged from the model established by Directive 1999/44/EC. The SlovCC mandated that sold goods had to possess the quality, quantity, measure, or weight as required or established by legal regulations. Moreover, they must be devoid of defects and, notably, comply with binding technical standards.[825] It is worth noting that this provision did not explicitly reference the stipulations agreed upon in the consumer sales contract, indicating that these requirements could be defined as objective[826], being subject to the applicable legal regulations or technical standards.

However, it would be erroneous to presume that the sales contract was excluded from considerations about the conformity of goods. The SlovCC, in the chapter devoted to general liability for defects, envisaged that anyone transferring goods for consideration to another person was liable to ensure that, at the moment of performance, the goods possessed the expressly stipulated or usual properties, could be used according to the nature and purpose of the contract or as agreed upon by the parties, and were free from legal defects.[827] This provision, applying also to consumer sales contracts, explicitly took into account the agreement made between the contractual parties. Consequently, it may be stated that the Slovak legislator combined both objective and subjective requirements. Moreover, the SlovCC delineated that in consumer sales contracts the agreement regarding the features, purpose, and quality of goods was considered to be the performance in which the consumer had expressed an interest, corresponding to the description provided by the supplier, manufacturer, or his/her representative in any

[824] SlovCC, Sec. 612 (3).
[825] SlovCC, Sec. 616.
[826] Števček et al., 2019, p. 693.
[827] SlovCC, Sec. 499.

publicly accessible form, particularly, through advertising, promoting, and labelling.[828] In instances where the contractual parties had not explicitly agreed upon the quality of the goods, the seller (debtor) was obligated to deliver goods of an average quality.[829]

It is worth emphasizing that the SlovCPA provided essential supplementary indications in this context. Specifically, it allowed for the sale of goods of standard quality,[830] which was defined as the quality that ensured the preservation of all essential properties of the goods, conditioning their immediate use and meeting the presumed consumer expectations.[831] However, if the quality was not stipulated, the seller could sell goods of lower than standard quality, provided that he/she informed the consumer of all deviations.[832]

The implementation of Directive (EU) 2019/771 significantly modified the legal framework in this regard bringing more preciseness, although the section of the SlovCC devoted to the conformity of goods retained the same title ("Quality and Quantity"). The Slovak legislator explicitly mandates that the sold goods must comply with both agreed and general requirements.[833] Additionally, the goods are considered defective if their use is prevented or restricted by the rights of a third party, including intellectual property rights.[834]

Agreed requirements, whose exact determination is contingent upon the specific contractual stipulations, correspond to subjective requirements of conformity in Art. 6 of Directive (EU) 2019/771. The SlovCC envisages that the sold goods conform with this type of requirements, in particular, when they:

- correspond to the description, type, quantity, and quality defined in the contract;
- are suitable for a specific purpose, about which the buyer (consumer) informed the seller at the latest at the moment of the conclusion of the contract and to which the seller agreed;

[828] SlovCC, Sec. 496 (1).
[829] SlovCC, Sec. 496 (2).
[830] SlovCPA, Art. 4 (1b).
[831] SlovCPA Act, Art. 2 (k).
[832] SloCPA, Art. 4 (1b).
[833] SlovCC, Sec. 615 (1).
[834] SlovCC, Sec. 618.

- are characterized by the ability to perform functions defined in the contract concerning their purpose (functionality);
- are characterized by the contractually defined ability to function with hardware or software with which the goods of the same type are commonly used, without the need to change the sold goods, hardware, or software (compatibility) and by the contractually defined ability to function with hardware or software different from those with which the goods of the same type are commonly used (interoperability);
- possess other features defined in the contract;
- are supplied with all the accessories specified in the contract;
- are supplied with instructions for use, including assembly and installation instructions, as defined in the contract.[835]

The Explanatory Memoranda, in concordance with Recital 26 of Directive (EU) 2019/771, also incorporates into the agreed requirements those emanating from the pre-contractual information supplied by the seller which constitutes an integral component of the consumer sales contract.[836]

Moreover, general requirements essentially represent the transposition of objective requirements of conformity in Art. 7, Sec. 1 of Directive (EU) 2019/771, stemming from the reasonable expectations of the consumer.[837] Specifically, the SlovCC determines that the sold goods comply with general requirements if they:

- are suitable for all the purposes for which goods of the same type are normally used, taking into account, in particular, legal regulations, technical standards, or codes of conduct applicable to the specific sector, if technical standards have not been developed;
- correspond to the description and quality of the sample or model made available to the buyer (consumer) by the seller before the conclusion of the contract;
- are supplied with accessories, packaging, and instructions, including assembly and installation instructions, that the buyer (consumer) can reasonably expect;

[835] SlovCC, Sec. 616.
[836] The Explanatory Memoranda for the Amendments, Commentary to Art. 616, p. 49.
[837] Afferni, 2022, p. 272.

- are supplied in the quantity, quality, and characteristics including functionality, compatibility, safety, and ability to maintain their functionality and performance under normal use (durability), that are common for goods of the same type and that the buyer (consumer) can reasonably expect given the nature of the sold goods and considering any public statement made by the seller or any other person in the same supply chain, including the manufacturer, or on their behalf, in particular when advertising the goods or on labelling.[838]

The Slovak legislator introduced the so-called "IKEA" clause, establishing the seller's liability for a lack of conformity attributable to improper assembly or installation of goods, provided that 1) the assembly or installation, forming part of the sales contract, was carried out by or under the responsibility of the seller or 2) the assembly or installation, intended to be carried out by the buyer (consumer), was performed incorrectly by the buyer due to deficiencies in the assembly or installation instructions provided by the seller or supplier of the digital content or digital service.[839] This legal solution constitutes the transposition of Art. 8 of Directive (EU) 2019/771.

Finally, it is should be noted that the seller is not liable for the aforementioned public statements in each case, as the SlovCC, transposing Art. 7, Sec. 1 of Directive (EU) 2019/771, introduces alternative conditions for his/her exoneration. Namely, the seller is not bound by such a public statement if:

- for a justified reason, he/she was not aware or could not have been aware of the public statement;
- by the time the contract was concluded, the public statement was corrected in the same or comparable manner as it was announced;
- the buyer's (consumer's) decision to conclude the contract could not have been influenced by the public statement.[840]

It is worth emphasizing that the burden of demonstrating the existence of at least one of the enumerated conditions is explicitly placed to the seller.[841] Since this possibility was not envisaged in the SlovCC when the Slovak legal framework was influenced by

[838] SlovCC, Sec. 617 (1).
[839] SlovCC, Sec. 619 (4).
[840] SlovCC, Sec. 617 (2).
[841] SlovCC, Sec. 617 (2).

Directive 1999/44/EC, it may be argued that the consumer's position in this context became less advantageous, thereby benefiting the seller.

6.4. The Moment of the Emergence of the Seller's Liability

Before the transposition of Directive (EU) 2019/771, for the seller to be held liable, the lack of conformity had to exist at the moment the consumer took over the goods.[842] Such condition was objective since it did not take into account the seller's eventual awareness of the defect.[843]

The Slovak legislator delineated specific circumstances under which the seller was exempt from liability, significantly diverging from the model established by Directive 1999/44/EC. In the case of second-hand goods, the seller was not liable for defects arising from ordinary wear and tear.[844] Additionally, a particular provision applied to goods sold at a reduced price. The SlovCC stipulated that goods with deficiencies not hindering their intended use had to be sold at a price lower than that of flawless goods. In such cases, the seller was required to inform the consumer about the existence and nature of the defect, unless it was self-evident from the nature of the sale.[845] Moreover, it was explicitly stated that defects for which a lower price was agreed upon did not fall within the seller's liability.[846] However, the seller remained liable for the non-conformity if he/she failed to notify the consumer about the defect.[847]

With the implementation of Directive (EU) 2019/771, the seller retains liability for any lack of conformity the sold goods had at the time of their delivery.[848] This provision constitutes the transposition of Art. 10, Sec. 1 of this Directive. The eventual seller's knowledge of the lack of conformity is still considered irrelevant.

It is worth emphasizing that goods are considered delivered at the moment when they are taken over by the buyer or a person designated by the buyer, or when the seller hands them over to a carrier commissioned by the buyer, provided this occurs outside the transport options offered by the seller.[849] A distinct solution applies when the goods require

[842] SlovCC, Sec. 619 (1).
[843] Vojčik et al., 2009, p. 784.; Števček et al., 2019, p. 697.
[844] SlovCC, Sec. 619 (1).
[845] SlovCC, Sec. 618.
[846] SlovCC, Sec. 619 (1).
[847] Števček et al., 2019, p. 695.
[848] SlovCC, Sec. 619 (1).
[849] SlovCC, Sec. 613 (2).

assembly or installation to be performed by the seller. In these instances, goods are deemed delivered only upon completion of the assembly or installation.[850]

Furthermore, the SlovCC, transposing Art. 7, Sec. 5 of Directive (EU) 2019/771, established when goods are permitted to deviate from objective requirements, thereby exempting the seller from liability. For this to occur, two equally significant conditions must be met. Firstly, the seller must explicitly inform the buyer (consumer) when concluding the contract that a certain feature of the goods does not conform to the objective requirements. Secondly, the consumer is required to explicitly and specifically consent to this non-conformity.[851] Thus, mere acquiescence on the part of the consumer is not sufficient for the seller to be exempt from liability, as the consumer must explicitly accept the deviation. Finally, the Explanatory Memoranda mandates that the consumer's statement must be unequivocal and distinct, ensuring that it is not embedded within ny other statement or agreement between the consumer and the seller.[852]

6.5. Deadlines and Burden of Proof

Before the 2024 amendments to the SlovCC, the consumer was entitled to claim remedies if a defect became evident within twenty-four months from the date of taking over the goods.[853] This provision adhered to Art. 5, Sec. 1 of Directive 1999/44/EC. Such a time limit was preclusive.[854] The successful realization of a consumer's claim was contingent upon two circumstances: the existence of the lack of conformity at the time of the takeover and its manifestation within the twenty-four-month period.[855]

However, the commencement of the twenty-four-month warranty period diverged from the general rule when the purchased goods were to be put into operation by an entrepreneur other than the seller. In such instances, the warranty period commenced from the day the goods were put into operation, provided that the consumer requested this installation no later than three weeks after taking over the goods and gave the necessary assistance for the service to be carried out effectively and on time.[856] It is worth noting that the SlovCC

[850] SlovCC, Sec. 613 (3).
[851] SlovCC, Sec. 615 (2).
[852] The Explanatory Memoranda for the Amendments, Commentary to Art. 615 to 617, p. 50.
[853] SlovCC, Sec. 620 (1); 621.
[854] Vojčik et al., 2009, p. 787.
[855] Števček et al., 2019, p. 696.
[856] SlovCC, Sec. 621.

emphasized the importance of the consumer's role and cooperation in facilitating the operational readiness of the goods. Without his/her request for the installation, the warranty period would have started to run from the moment of the takeover of the goods.[857]

The Slovak legislator introduced a specific solution concerning goods that had the period of use indicated on them, their packaging, or the accompanying instructions (expiration date). In such circumstances, the warranty period could not expire before the expiration of this designated time limit.[858] This provision, without restricting the maximum duration of the expiration date, allowed it to exceed the general warranty period, significantly benefitting the consumer's position. The shorter duration of the expiration date did not abolish the seller's liability for the defect within the general warranty period.[859] In addition, regarding the goods intended to be used for a longer period, the special regulations could establish a warranty period exceeding twenty-four months, with the possibility of applying such extended time limit selectively to particular components of the goods.[860]

Moreover, using the opportunity given by Art. 7, Sec. 1 (2) of Directive 1999/44/EC, the SlovCC allowed the contractual parties to agree on a reduced warranty period for second-hand goods, provided that such a period was not shorter than 12 months.[861] If the contractual parties went beyond this restriction, the minimum 12-month warranty period would have applied.[862]

The Slovak legislator incorporated the presumption that a lack of conformity that became evident within six months of the takeover was deemed to have existed at that moment unless it was contrary to the nature of the goods or the seller proved otherwise.[863] This presumption constituted an exception to the general rule, clarified by the CJEU in the Faber case that the consumer had to prove that the lack of conformity existed at the time of the takeover and that it became evident within twenty-four months thereafter. However,

[857] Vojčik et al., 2009, p. 787.
[858] SlovCC, Sec. 620 (1).
[859] Števček et al., 2019, p. 698.
[860] SlovCC, Sec. 620 (3).
[861] SlovCC, Sec. 620 (2).
[862] Števček et al., 2009, p. 698.
[863] SlovCC, Sec. 508 (2).

the indications connected to this presumption provided by the CJEU in the same case that the consumer was obliged to prove that there was a defect and that it appeared within six months of the takeover of the goods, as well as the obligation of the national court to apply this presumption *ex officio*, applied also in Slovak law. Finally, the SlovCC imposed on the seller the obligation to provide a written warranty certificate upon the consumer's request. However, where the nature of the goods permitted, a proof of purchase could suffice in place of a formal warranty certificate.[864]

With the transposition of Directive (EU) 2019/771, the seller continues to be liable for a lack of conformity that becomes apparent within two years of the delivery of goods.[865] However, the provision that allowed the extension of this time limit when the expiration date was indicated on the goods, their packaging, or the accompanying instructions has been abolished. The possibility of reducing the duration of this timeframe in the case of second-hand goods provided that it is not less than one year from the delivery of goods, has been retained.[866] It is worth noting that this reduction is contingent upon mutual agreement between the contractual parties. Therefore, in the absence of such an agreement, the general two-year time limit will prevail.

However, the most significant innovation concerns prolonging the duration of the presumption that the lack of conformity existed at the moment of delivery. Using the opportunity provided in Art. 11, Sec. 2 of Directive (EU) 2019/771, the SlovCC extends this presumption to cover any lack of conformity that manifests before the general two-year time limit or the curtailed timeframe in the event of second-hand goods expires. It is not applicable if the contrary is proven or if it is incompatible with the nature of the goods or the nature of the lack of conformity.[867] Incompatibility with the nature of the goods may pertain, for example, to perishable goods or goods intended for single use, while incompatibility with the nature of the lack of conformity relates to a defect that arose exclusively from external factors subsequent to the delivery of the goods or from actions undertaken by the consumer.[868]

[864] SlovCC, Sec. 620 (4).
[865] SlovCC, Sec. 619 (1).
[866] SlovCC, Sec. 619 (3).
[867] SlovCC, Sec. 620 (1).
[868] The Explanatory Memoranda for the Amendments, Commentary to Art. 620, p. 51.

By extending the duration of the presumption to encompass the entire period of the seller's liability, the consumer's position is significantly bolstered, to the seller's detriment. It should be accentuated that the indications provided by the CJEU in the Faber case are relevant also in Slovak law, signifying that the consumer is solely required to demonstrate that the lack of conformity appeared within the mentioned timeframe, while the national court must apply this presumption *ex officio*.

6.6. Goods with Digital Elements

The transposition of Directive (EU) 2019/771 brought the specific regulation of the lack of conformity concerning the goods with digital elements. First of all, these goods are defined as any movable goods containing or connected to digital content or digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions.[869] Digital content is defined as data that is created and delivered in digital form[870], while digital service is a service that enables the consumer to create, process, or store data in digital form or to have access to such data, or that enables the exchange or any interaction of data in digital form that are uploaded or created by users of the service.[871] These definitions are in the ninth chapter of the first part of the SlovCC containing general provisions. They constitute the implementation of Art. 2, Sec. 5 (b), 6, and 7 of Directive (EU) 2019/771. For an item to be considered goods with digital elements, it is indispensable that the absence of digital content or digital service renders the proper functioning of the goods impossible.

Moreover, for the provisions regulating the defective performance in consumer sales contracts to be applicable, the goods with digital elements are required to be an object of this type of contract. The SlovCC, transposing Art. 3, Sec. 3 of the mentioned Directive, introduces a presumption that in the case of doubt, the supply of digital content or the provision of a digital service represents a subject matter of the consumer sales contract involving the goods with digital elements.[872] Consequently, the provisions of the SlovCC governing consumer contracts with digital fulfilment are not applied in that instance. It is worth noting that the circumstance that the digital content or digital service is supplied or

[869] SlovCC, Sec. 119a (1).
[870] SlovCC, Sec. 119a (2).
[871] SlovCC, Sec. 119a (3).
[872] SlovCC, Sec. 612 (2).

provided by a person different than a seller does not have any influence on the requirement that the goods with digital elements must meet both the agreed and general requirements of conformity.[873] This rule is in concordance with Art. 3, Sec. 3 of Directive (EU) 2019/771.

Concerning the moment when the goods with digital elements are considered delivered, the SlovCC differentiates between single and continuous supply during an agreed period of digital content or digital service. In the event of a single supply, the delivery is realized when the digital content or digital service is made available to the buyer (consumer) for download and installation. The Explanatory Memoranda mentions the example of sending a hyperlink to download digital content, after which no further intervention of the seller is needed.[874] For the continuous supply, the decisive moment corresponds to the moment when the digital content or digital service starts being available to the buyer (consumer).[875] In that manner, the Slovak legislator set a uniform commencement of the seller's liability for the lack of conformity for the material part of the item and its digital element.[876]

The SlovCC distinguishes between a single and continuous supply of digital content or digital service also in the case of the duration of the seller's liability. The general rule that the seller is liable for any defect existing at the time of the delivery of goods and emerging within two years thereof applies to the single supply. On the other hand, regarding the continuous supply during the agreed period, the seller is liable for any lack of conformity affecting digital content or digital service that occurs during the entire agreed period, but at least during two years from the moment of delivery of the goods with digital elements.[877] Thus, the two-year duration of the seller's liability is determined as minimal, applicable in instances where the contractual parties did not agree on a longer period during which the continuous supply is to be performed. This legal solution constitutes the transposition of Art. 10, Sec. 2 of Directive (EU) 2019/771. The possibility to reduce the period of the seller's liability when second-hand goods are the object of the contract, with

[873] SlovCC, Sec. 615, (1).
[874] The Explanatory Memoranda for the Amendments, pp. 48-49.
[875] SlovCC, Sec. 613 (4).
[876] The Explanatory Memoranda for the Amendments, p. 49.
[877] SlovCC, Sec. 619 (2).

the limitation that it cannot be shorter than one year from the delivery, exists also in the event of the goods with digital elements.

Furthermore, the Slovak legislator, transposing Art. 11, Sec. 3 of Directive (EU) 2019/771, introduced a specific legal solution concerning the presumption of conformity in the case of the continuous supply of digital content or digital service. Specifically, the burden of proof that the digital content was delivered or digital service provided without defects is placed on the seller for the entire period from Sec. 619 (2) of the SlovCC.[878] This presumption covers the entire period of the seller's liability for the lack of conformity. Therefore, the consumer is not obliged to demonstrate that the digital content or digital service was not compliant.[879]

The type of supply conditions the duration of the seller's obligation to ensure that the buyer (consumer) is notified of and supplied with updates, including security updates, that are necessary for the goods with digital elements to maintain their conformity.[880] In the case of a single supply, the duration of the mentioned seller's obligation corresponds to the period during which the buyer can reasonably expect that the sold goods will meet the requirements from Sec. 615, considering the type and purpose of the goods and digital elements, the nature, and the circumstances of concluding the contract.[881] Conversely, when the contract provides for a continuous supply, the seller's obligation follows the agreed period and cannot be shorter than two years from the delivery of the goods with digital elements.[882] These rules represent the transposition of Art. 7, Sec. 3 of Directive 2019 (EU) 2019/771. It should be underlined that the seller is not obliged to deliver updates that would improve or innovate the delivered digital content or digital service unless the contractual parties have agreed otherwise.[883] Therefore, the seller should solely deliver updates necessary to maintain the conformity of the goods, in the absence of a contractual stipulation in favour of the improvements. The Slovak legislator expressly mentions security updates.

[878] SlovCC, Sec. 620 (2).
[879] The Explanatory Memoranda for the Amendments, p. 51.
[880] SlovCC, Sec. 617 (3).
[881] SlovCC, Sec. 617 (4).
[882] SlovCC, Sec. 617 (5).
[883] The Explanatory Memoranda for the Amendments, p. 49.

The seller's obligation is limited to notifying of and supplying with the updates, i.e. he/she is not required to install them. The seller is exonerated from liability if the defect is exclusively caused by the consumer's failure to install the updates, providing that the consumer did not install the update within a reasonable time after the delivery and the seller informed him/her about the availability of the update and the consequences of not installing it. Finally, the failure to install or the incorrect installation should not derive from deficiencies in the installation instructions.[884]

6.7. Consumer Remedies

Before the transposition of Directive (EU) 2019/771, the SlovCC distinguished between removable and irremovable defects and placed at the consumer's disposal the remedies of repair, replacement, the termination of the contract, and the appropriate price reduction.

The consumer was allowed to have the defect eliminated, provided that it was removable, through repair free of charge, and in a timely and proper manner.[885] Conversely, the seller was obliged to repair the goods without undue delay.[886] The notion of "without undue delay" was to be interpreted by taking into account the circumstances of the specific case, the nature of the lack of conformity, and the difficulty of removing it.[887] However, the SlovCPA further specified that the seller must have performed the repair immediately upon determining the method of resolving the consumer's complaint. At the same time, repairs could be completed even later in justified cases. However, they had to be performed within a maximum time limit of 30 days from the day the complaint was lodged.[888]

Moreover, the consumer could request the replacement of the goods or, if the defect affected only a part of the goods, the replacement of the defective component, unless such replacement imposed disproportionate costs on the seller considering the price of the goods or the gravity of non-conformity.[889] The SlovCC underscored the equivalence of the remedies of repair and replacement, considering them the primary set of claims, by allowing the seller to opt always for replacement of defective goods over repair, provided

[884] SlovCC, Sec. 619 (5).
[885] SlovCC, Sec. 622 (1).
[886] SlovCC, Sec. 622 (1).
[887] Števček et al., 2019, p. 700.
[888] SlovCPA, Sec. 18 (4).
[889] SlovCC, Sec. 622 (2).

that such replacement did not create significant difficulties for the consumer.[890] This restriction to the seller's choice was introduced to improve the consumer's position, ensuring that the replacement was performed in a fashion serving his/her interest.

The SlovCC stipulated that when the defect was irremovable and prevented the goods from being used properly as if they were free of defects, the consumer could request either the replacement of the goods or terminate the contract.[891] The same remedies were available to the consumer the non-conformity was removable, but the consumer could not use the goods properly due to the reoccurrence of the lack of conformity after a repair, or due to multiple defects.[892] The irremovable lack of conformity was interpreted as a defect that could not be eliminated from the technical standpoint or, if it could be removed, its severity justified classifying it as irremovable.[893] In addition, the circumstance that the seller failed to repair the goods according to Sec. 622 (1) also allowed the qualification of the non-conformity as irremovable.[894]

It may be asserted that the Slovak legislator demonstrated its intention to uphold the validity of the contract by allowing the consumer to select the replacement remedy. Thus, the validity of the contract depended on the consumer's choice, as expressed by his/her decision not to use the right to terminate the contract.[895] The Supreme Court of the Slovak Republic elucidated that the reoccurrence of the non-conformity after an attempted repair constitutes an instance "when the same defect that was removed during the warranty period occurs again", while the term "same defect" signifies that "the defect has the same manifestations in the properties of the goods, it is not important how the defect was removed."[896]

The appropriate price reduction was available to the consumer when the goods exhibited other irremovable defects.[897] Of particular importance was the provision of the SlovCC applicable to cases where the goods were sold at a reduced price, or where second-hand goods presented a defect for which the seller was liable. In such cases, the consumer was

[890] SlovCC, Sec. 622 (3).
[891] SlovCC, Sec. 623 (1).
[892] SlovCC, Sec. 623 (1).
[893] Števček et al., 2019, p. 701.
[894] Števček et al., 2019, p. 700.
[895] Števček et al., 2019, p. 702.
[896] The Supreme Court of the Slovak Republic, 4 Cdo 10/2009.
[897] SlovCC, Sec. 623 (2).

entitled to request the appropriate price reduction instead of replacing the goods.[898] This legal solution implied that the appropriate price reduction, substituting the replacement, became a primary claim. At the same time, the consumer retained the remedies of repair and termination of the contract.

The hierarchy of remedies delineated by the SlovCC, establishing repair and replacement as primary remedies, and appropriate price reduction and termination of the contract as subsidiary claims, broadly reflected the framework outlined in Directive 1999/44/EC. Notably, the Slovak legislator deviated from the model articulated in the mentioned Directive by considering the appropriate price reduction a primary remedy, instead of the replacement, when the goods were sold at a reduced price or the defect affecting second-hand goods was attributable to the seller's fault.

Furthermore, the SlovCPA granted the consumer the right to claim adequate financial compensation from the liable person for violations of rights or obligations specified by the SlovCPA and special regulations provided that the claim of such a violation was successful in court.[899] It is worth underlining that this provision specifically pertained to cases adjudicated in court, i.e., in judicial proceedings.[900]

Finally, the Slovak legislator did not implement the provision from Art. 5, Sec. 2 of Directive 1999/44/EC, which grants the consumer a two-month period to notify the seller, commencing from the detection of a defect. It may be stated that the SlovCC offered an approach that was more beneficial to the consumer by envisaging that claims arising from the liability for the lack of conformity would expire if they were not exercised within the warranty period.[901] It is worth mentioning that the warranty period was 24 months.[902]

However, the Slovak lawmaker introduced specific provisions for certain types of goods. For perishable goods, the consumer must have exercised his/her rights no later than the day following the purchase.[903] Concerning second-hand goods, the consumer's rights must have been exercised within 24 months from the date of receipt of the goods or within

[898] SlovCC, Sec. 624.
[899] SlovCPA, Sec. 3 (5).
[900] Mészáros, 2020, pp. 81-82.
[901] SlovCC, Sec. 626 (1).
[902] SlovCC, Sec. 620 (1).
[903] SlovCC, Sec. 626 (2).

a period agreed upon by the seller and consumer, which could not have been shorter than 12 months.[904]

With the amendments to the SlovCC representing the transposition of Directive (EU) 2019/771, while the specific remedies available to the consumer remained the same (repair, replacement, appropriate price reduction, termination of the contract), the interrelations between these remedies have been notably modified. The consumer is still entitled to compensation for damages incurred by the lack of conformity.[905]

The SlovCC, transposing Art. 13, Sec. 6 of Directive (EU) 2019/771, permits the consumer to withhold payment of the purchase price or a portion thereof until the seller has fulfilled his/her obligations concerning the lack of conformity. However, the consumer may exercise this right if he/she is not in default with the payment of the purchase price or part thereof at the time of lodging the complaint. Upon the seller's fulfilment of his/her obligations, the consumer is obliged to pay the purchase price without undue delay.[906]

Regarding the primary claims, the consumer is granted the freedom to choose between demanding the rectification of the lack of conformity by repair or replacement. However, this choice is not unrestricted since the consumer is precluded from selecting a method of removing the lack of conformity that is either impossible or that would cause the seller disproportionate costs compared to the other method, taking into account all the circumstances, especially the value the goods would have without the defect, the severity of the lack of conformity, and whether the other method would cause significant inconvenience to the consumer.[907] This legal solution is in concordance with Art. 13, Sec. 2 of Directive (EU) 2019/771. It is worth noting that, as affirmed by the CJEU in the Weber and Putz case,[908] the proportionality test is applied between repair and replacement. The Explanatory Memoranda mentions, as an example of disproportionality, the consumer's request to replace the goods due to a minor, easily repairable aesthetic flaw.[909]

[904] SlovCC, Sec. 626 (3) and Sec. 620 (2).
[905] SlovCC, Sec. 621 (4).
[906] SlovCC, Sec. 621 (2).
[907] SlovCC, Sec. 623 (1).
[908] Mišćenić et al., 2021, p. 67; Michel, 2018, p. 223.
[909] The Explanatory Memoranda for the Amendments, p. 52.

Furthermore, the SlovCC, transposing Art. 13, Sec. 3 of Directive (EU) 2019/771, allows the seller to refuse to rectify the lack of conformity if repair and replacement are impossible or if it would impose disproportionate costs considering all the circumstances, including those associated with the restriction of the consumer's liberty of choice.[910] This right can also be exercised by the seller when one of the remedies is impossible and the alternative method of eliminating the lack of conformity would incur disproportionate costs for the seller.[911]

The seller is obliged to repair or replace the goods within a reasonable time following the notification of the consumer about the lack of conformity. The concept of reasonable time is to be interpreted as the shortest time the seller needs to evaluate the defect and repair or replace the goods, taking into account the nature of the goods and the nature and severity of the defect.[912] The Slovak legislator has established a maximum timeframe for the completion of repair and replacement. Specifically, this period may not exceed 30 days from the day the lack of conformity is notified, unless an objective reason beyond the seller's control justifies a longer period.[913] The Explanatory Memoranda clarifies that this 30-day period serves as a reference, which may be shortened if the circumstances of the specific case allow or extended due to an objective reason.[914] In addition, repair and replacement are to be performed free of charge, at the seller's expense, and without causing serious inconvenience to the consumer, considering the nature of the goods and the purpose for which the consumer required them.[915] These rules constitute the transposition of Art. 14, Sec. 1 of Directive (EU) 2019/771.

In the event of repair or replacement, the consumer is required to hand over or make the goods available to the seller or a person designated by the seller. Concurrently, the costs associated with taking over the goods are to be borne by the seller.[916] The seller is further obliged to deliver the repaired or replacement goods to the consumer, covering the related costs, in the same or a similar manner in which the consumer handed them over, unless

[910] SlovCC, Sec. 623 (2).
[911] The Explanatory Memoranda for the Amendments, p. 53.
[912] SlovCC, Sec. 507 (1).
[913] SlovCC, Sec. 622 (3).
[914] The Explanatory Memoranda for the Amendments, p. 53.
[915] SlovCC, Sec. 623 (3).
[916] SlovCC, Sec. 623 (4).

otherwise agreed upon by the parties.[917] These obligations are in concordance with Art. 14, Sec. 2 of Directive (EU) 2019/771. Curiously, the Slovak lawmaker permits the seller to sell the goods if the consumer fails to take them over within six months from the day he/she was supposed to do so.[918] The legislative intention is to mitigate the burden on the seller in instances where he/she incurs the storage costs for the goods, without knowing when or if the consumer will retrieve them.[919]

The SlovCC, transposing Art. 14, Sec. 3 of Directive (EU) 2019/771 influenced by the jurisprudence of the CJEU in the Weber and Putz case,[920] introduced a specific provision for cases necessitating the removal of defective goods that had been installed in accordance with their nature and purpose prior to the manifestation of the lack of conformity. In such instances, the seller is required to ensure the removal of the flawed goods and the installation of the repaired or replacement goods. Alternatively, the contractual parties may agree that the consumer will undertake both the removal and installation, with the costs and risks borne by the seller.[921]

Finally, when the lack of conformity is remedied by replacement, the seller is not entitled to compensation for damages attributable to normal wear and tear of the goods, nor compensation related to the normal use of the goods before their replacement.[922] This provision represents the transposition of Art. 14, Sec. 4 of Directive (EU) 2019/771, shaped by the judgment of the CJEU in the Quelle case.[923] The seller is also liable for any lack of conformity in the replacement goods, under the same conditions as for the originally delivered goods.[924]

Concerning the secondary set of remedies, the appropriate price reduction and termination of the contract may be invoked by the consumer in the following instances:

1) if the seller fails to repair or replace the goods;
2) if the seller has not repaired or replaced the goods in accordance with the above-mentioned Sec. 623 (4) and (6);

[917] SlovCC, Art. 623 (5).
[918] SlovCC, Art. 623 (5).
[919] The Explanatory Memoranda for the Amendments, p. 54.
[920] Rodrigo, 2022, p. 1300.; Loos, 2016, p. 12.
[921] SlovCC, Sec. 623 (6).
[922] SlovCC, Sec. 623 (7).
[923] Van Gool and Michel, 2021, p. 144; Mišćenić et al., 2021, p. 70.
[924] SlovCC, Sec. 623 (8).

3) if the seller refused to rectify the lack of conformity as prescribed in Sec. 623 (2);
4) if, following repair or replacement, the goods continue to exhibit the same lack of conformity;
5) if the severity of the lack of conformity justifies immediate recourse to a price reduction or termination of the contract;
6) if the seller has either stated or it is evident from the circumstances that he/she will not remove the lack of conformity within a reasonable timeframe or without imposing serious inconvenience to the consumer.[925]

These requirements constitute the transposition of Art. 13, Sec. 3 of Directive (EU) 2019/771. The Slovak legislator has introduced additional clarifications regarding the application of secondary remedies in cases of repeated lack of conformity and its severity. Specifically, in such instances, all the circumstances are to be evaluated, with particular consideration given to the type and value of the goods, the nature and significance of the lack of conformity, and whether the consumer is objectively expected to maintain confidence in the seller's ability to bring the goods into conformity.[926]

The SlovCC, transposing Art. 13, Sec. 5 of Directive (EU) 2019/771, prohibits the consumer from terminating the contract if the lack of conformity is minor.[927] Nevertheless, in that case, the consumer may resort to other remedies, whereby the appropriate price reduction constitutes the sole secondary claim.[928] It is noteworthy that the guidance provided by the CJEU in the Duarte case, which permits the national court to unilaterally grant the appropriate price reduction when the consumer's attempt to terminate the contract fails due to the minor importance of the lack of conformity, and the national law impedes or excessively complicates the application of a price reduction is also applicable to Slovak law. Moreover, the termination of the contract is precluded if the consumer has contributed to the emergence of the lack of conformity. It is worth noting that, in both contexts, the burden of proof is expressly assigned to the seller.[929] Interestingly, the Slovak legislator does not specify or quantify the degree of the consumer's contribution to the

[925] SlovCC, Sec. 624 (1).
[926] SlovCC, Sec. 624 (2).
[927] SlovCC, Sec. 624 (4).
[928] The Explanatory Memoranda for the Amendments, p. 54.
[929] SlovCC, Sec. 624 (4).

occurrence of the lack of conformity, thus only partly taking advantage of this opportunity provided in Art. 13, Sec. 7 of Directive (EU) 2019/771.

Furthermore, as a general rule, the consumer is entitled to terminate the contract solely with respect to the defective item, if the object of the contract are more items. However, the termination of the contract may also be extended to other items if it is unreasonable to expect the consumer to retain the other goods, without the defective item.[930] This legal solution represents the transposition of Art. 16, Sec. 2 of Directive (EU) 2019/771.

The termination of the contract entails certain obligations for both parties. First, the consumer must return the goods (or the defective item only) to the seller at the seller's expense. It is worth noting that the seller is liable for the removal of any item installed in accordance with its nature and purpose prior to the manifestation of the lack of conformity. Should the seller fail to carry out this removal within a reasonable timeframe, the consumer is entitled to arrange for the removal and delivery of the item to the seller, with all associated costs and risks incurred by the seller.[931]

On the other hand, the seller is required to refund the purchase price to the consumer no later than 14 days from either the return of the goods or receipt of proof that the goods have been dispatched, whichever occurs first.[932] Therefore, the consumer's obligation to return the goods precedes the seller's obligation to effectuate the refund of the purchase price. Additionally, it is essential to emphasize that, similarly to the replacement of the goods, the seller is not entitled to compensation for damages caused by normal wear and tear of the goods or their normal use before the termination of the contract.[933]

Concerning the price reduction, the SlovCC mandated that it be proportionate to the disparity between the actual value of the sold goods and the value the goods would have if they were free of defects.[934] This requirement is in concordance with Art. 15 of Directive (EU) 2019/771.

Using the opportunity provided by Art. 16, Sec. 3 of the mentioned Directive, the Slovak legislator prescribes the precise manner in which the seller is required to refund the

[930] SlovCC, Sec. 624 (5).
[931] SlovCC, Sec. 624 (7).
[932] SlovCC, Sec. 624 (7).
[933] SlovCC, Sec. 624 (9).
[934] SlovCC, Sec. 624 (3).

purchase price and implement the price reduction. Specifically, these actions must be fulfilled using the same method initially employed by the consumer, unless the consumer explicitly agrees to an alternative payment method. Additionally, all costs associated with the payment are to be borne by the seller.[935]

Finally, a significant novelty introduced by the transposition of Directive (EU) 2019/771 is the temporal restriction imposed on the exercise of consumer remedies, which is contingent upon the notification provided to the seller. In particular, the consumer is required to notify the seller of the lack of conformity within two months of its detection, but no later than the expiration of the time limits determined in Sec. 619 (1) to (3).[936] It is worth noting that the two-month notification period depends on when the consumer discovers and becomes aware of the lack of conformity. Interestingly, the SlovCC does not explicitly specify the required content of the consumer's notification. Nevertheless, the guidance provided by the CJEU in the already mentioned Faber case, which does not mandate the consumer to provide detailed information regarding the lack of conformity[937], is equally applicable to Slovak law.

The expected future modifications regarding the consumer remedies will constitute the transposition of the provisions of Directive (EU) 2024/1799. More precisely, they will stimulate the use of the repair remedy by consumer, influenced by the precepts of the circular economy and sustainability, although without explicitly altering the hierarchical order between the available remedies.

6.8. Consumer Guarantees

Prior to the transposition of Directive (EU) 2019/771, the provisions on the (commercial) guarantee were contained in the first chapter of the eight part of the SlovCC, applying to each sales contract, as well as in a section devoted particularly to consumer sales contracts. Specifically, the seller could provide a guarantee, exceeding the scope of his/her legal liability for the lack of conformity, to the consumer by a statement in the guarantee certificate or in advertising.[938]

[935] SlovCC, Sec. 624 (8).
[936] SlovCC, Sec. 621 (3).
[937] Patti, 2016, p. 13.
[938] SlovCC, Sec. 620 (5).

Therefore, the guarantor could be only the seller, meaning that the producer was precluded from granting this kind of protection. In this regard, the Slovenian lawmaker did not follow Directive 1999/44/EC, which in Art. 1, Sec. 2 (e) stated that the guarantee could be provided by a seller or producer. The requirement that it was to be given without extra charge, i.e., its gratuitousness character, was not contained in the SlovCC. It is worth underlining that the guarantee represented an additional and supplementary protection to the consumer in relation to the seller's legal liability. The consumer's position was supposed to be more advantageous when he/she could dispose of the rights stemming from the guarantee. Although the SlovCC did not explicitly stipulate it, the interpretation in line with Directive 1999/44/EC suggests that the guarantee did not affect the consumer's rights deriving from the seller's legal liability. Consequently, the consumer had the liberty of choice as to whether to claim his/her rights based on the seller's legal liability or guarantee.

Moreover, the guarantee could be granted by a statement in a guarantee certificate or the associated advertising. This rule constitutes the transposition of Art. 6, Sec. 1 of Directive 1999/44/EC. The SlovCC did not resolve the situation of a discrepancy between the conditions laid down in the guarantee certificate and advertising. Concerning the content of the guarantee, the Slovak legislator did not establish any mandatory hierarchical interrelation between the consumer remedies. The specification of the conditions and scope of the guarantee in the guarantee certificate was within the discretion of the seller.[939] Thus, determining the exact content of the commercial guarantee, including the available consumer remedies and the duration of the guarantee period, was contingent upon the seller's free will.

The seller was obliged to issue a guarantee certificate in writing upon the consumer's request.[940] However, when the nature of the goods allowed it, it was sufficient for the seller to issue a proof of purchase instead of a guarantee certificate.[941] The SlovCC, in the part applying to each sales contract, specified that the guarantee certificate shall have contained the name and surname, trade name or business name of the seller, his/her registered office or place of business, the content of the guarantee, its scope and

[939] SlovCC, Sec. 620 (5).
[940] SlovCC, Sec. 620 (4).
[941] SlovCC, Sec. 620 (4).

conditions, the duration of the guarantee period and the information necessary for the application of the guarantee.[942] In accordance with Art. 6, Sec. 5 of Directive 1999/44/EC, it was stipulated that the absence of some of the mentioned elements of the guarantee did not affect its validity.[943]

The transposition of Directive (EU) 2019/771 introduced significant modifications to the Slovak legal framework. First, the guarantee can also be offered by the producer, defined as the manufacturer of the goods, the importer of the goods to the European Union market from a third country, or another person who identifies as the producer by affixing his/her name, trademark, or other distinguishing mark on the goods.[944] By providing the commercial guarantee, the producer or the seller undertakes to refund the purchase price to the consumer, repair or replace the sold goods or ensure their maintenance beyond the scope of the rights arising from the legal liability for the lack of conformity.[945] Thus, the rectification of the defect by repair or replacement and the refund of the purchase price are particularly mentioned in the SlovCC, without establishing any hierarchical order between them. Moreover, the consumer is allowed to demand the performance of the guarantee from the producer or seller under the conditions specified in the guarantee certificate or the associated advertising, available before the conclusion of the sales contract or before that moment.[946] These rules represent the transposition of Art. 17, Sec. 1 of Directive (EU) 2019/771.

The eventual discrepancy between the terms of the guarantee contained in the guarantee certificate and the associated advertising is solved in favour of the latter if they are more favourable to the consumer than the terms set out in the former. However, this provision is not applicable if the producer or seller as guarantors, before the conclusion of the contract, brought the associated advertising into line with the guarantee certificate in the same or similar manner as that advertising was made.[947] These provisions are in concordance with Art. 17, Sec. 1 of Directive (EU) 2019/771.

[942] SlovCC, Sec. 502 (3).
[943] SlovCC, Sec. 502 (3).
[944] SlovCC, Sec. 617 (1d).
[945] SlovCC, Sec. 626 (1).
[946] SlovCC, Sec. 626 (1).
[947] SlovCC, Sec. 626 (5).

The SlovCC mandates the producer or seller to provide the consumer with a guarantee certificate on a durable medium no later than at the moment of delivery of the goods.[948] The Slovak legislator took advantage of the opportunity granted by Art. 17, Sec. 4 of Directive (EU) 2019/771, specifying that the guarantee certificate has to be written in Slovak or, with the consent of the consumer, in another language.[949] Together with the abovementioned information expressed in a clear and understandable manner required by Sec. 502 (3), the guarantee certificate shall state that the consumer's rights deriving from the seller's legal liability for the defective performance are not affected by the guarantee.[950] Any breach of these obligations by the producer or the seller does not affect the validity of the guarantee.[951] This provision represents the transposition of Art. 17, Sec. 3 of Directive (EU) 2019/771.

Finally, the SlovCC, transposing Art. 17, Sec. 1 of the mentioned Directive, introduced a consumer guarantee of durability, to be granted by the producer. In this case, the consumer can demand the rectification of the lack of conformity directly from the producer in accordance with Sec. 623, during the consumer warranty period, unless the producer has provided more beneficial conditions in the consumer guarantee of durability statement.[952]

7. POLAND

7.1. Legal Sources

Directive 1999/44/EC was initially transposed into the Polish legal system in 2002, outside the Polish Civil Code[953] (hereinafter referred to as: "the PoCC"), through the adoption of the Act on Special Conditions of Consumer Sales.[954] This approach was primarily driven by practical considerations. Specifically, Poland's impending accession to the European Union necessitated a swift transposition of the acquis communautaire, and incorporating the mentioned Directive into a separate, specialized act was considered a more straightforward and expedient solution.[955] The Polish legislator's understanding of

[948] SlovCC, Sec. 626 (3).
[949] SlovCC, Sec. 626 (3).
[950] SlovCC, Sec. 626 (3).
[951] SlovCC, Sec. 626 (4).
[952] SlovCC, Sec. 626 (2).
[953] Kodeks cywilny [Civil Code], *Dziennik Ustaw* [Journal of Laws], 1964/16/93.
[954] Ustawa z dnia 27 lipca 2002 r. o szczególnych warunkach sprzedaży konsumenckiej oraz o zmianie Kodeksu cywilnego [Act of July 27, 2002 on Special Conditions of Consumer Sales and Amending the Civil Code], *Dziennik Ustaw* [Journal of Laws], 2002/141/1176.
[955] Hejbudzski, 2018, p. 218; Jagielska, 2020, p. 42; Namysłowska et al., 2021, p. 243.

the extent to which it could modify legal solutions deriving from the EU law during the transposition process further justified this approach.[956]

As a result, the legal position of the buyer principally depended on whether he/she could be qualified as a consumer, in which case the provisions of the Act on Special Conditions of Consumer Sales became applicable, thereby leading to legal uncertainty.[957] Polish legal scholars severely criticized this dual legal regime, arguing that it undermined the systematic coherence of the PoCC and created inconsistencies with the established conceptual framework of national contract law.[958] Paradoxically, the legal position of the buyer proved more advantageous when governed by the provisions of the PoCC.[959]

Aware of these deficiencies, the Polish legislator repealed the Act on Special Conditions of Consumer Sales in 2014,[960] incorporating Directive 1999/44/EC into the PoCC.[961] This legislative reform was undertaken concurrently with the transposition of certain provisions of Directive 2011/83/EU into the PoCC.[962] Notably, this legislative intervention abolished the previously existing dual legal regime, establishing a unified framework within the PoCC for liability arising from a lack of conformity. Specifically, the rules from the PoCC became applicable to both consumer sales contracts and contracts concluded outside the consumer context. However, the exclusive application of certain provisions to consumer sales contracts was explicitly specified.[963]

Curiously, the dual legal regime was reintroduced with the transposition of Directive (EU) 2019/771, through the Act of 4 November 2022, amending the Consumer Rights Act, the Civil Code, and the Private International Law Act.[964] The revised legal framework entered into force on 1 January 2023.[965] The legal rules governing the consumer's position in the

[956] Jagielska, 2020, p. 43; Hejbudzsky, 2018, p. 218.
[957] Południak-Gierz, 2022, p. 31.
[958] Pecyna, pp. 14–23 in Namysłowska et al., 2021, p. 243.
[959] Łętowska, pp. 294–295 in Południak-Gierz, 2022, p. 31., Namysłowska et al., p. 243.
[960] Dębski, 2016, p. 76.
[961] Ustawa z dnia 30 maja 2014 r. o prawach konsumenta [Act of May 30, 2014 on Consumer Rights], Dziennik Ustaw [Journal of Laws], 2014/827.
[962] Jagielska, 2020, p. 43; Hejbudzski, 2018, pp. 218-219.
[963] Jagielska, 2020, p. 43.
[964] Ustawa z dnia 4 listopada 2022 r. o zmianie ustawy o prawach konsumenta, ustawy - Kodeks cywilny oraz ustawy - Prawo prywatne międzynarodowe [Act of 4 November 2022 amending the Act on Consumer Rights, the Civil Code and the Private International Law Act], *Dziennik Ustaw* [Journal of Laws], 2022/2337.
[965] Act of 4 November, Art. 5.

event of a defective performance are now located in the Consumer Rights Act (hereinafter referred to as: "the PoCRA"). The PoCRA explicitly stipulates that the provisions of Book Three of Title XI, Section II of the PoCC shall not apply to agreements involving the transfer of ownership of goods to the consumer, including, in particular, sales contracts.[966] While the avoidance of systemic inconsistencies and interpretative challenges was achieved by not transposing Directive (EU) 2019/771 into the PoCC, there are nonetheless specific areas where the consumer's position has been adversely affected compared to the previous regulatory framework, resulting in systematic disparities in the consumer protection standards.[967] In addition, the adoption of terminology differing from that used in the PoCC could disrupt the functioning of the sales law system.[968]

7.2. Definitions

The PoCC defines the consumer as a natural person who enters into a legal transaction with an entrepreneur, provided that the transaction is not directly related to his/her business or professional activity.[969] This notion also extends to entrepreneurs as long as the transaction is only indirectly linked to their professional activity.[970] The Supreme Court of the Republic of Poland affirmed that "the existence of only an indirect link" between the legal transaction and professional activity "does not exclude the recognition of the person performing the transaction as a consumer".[971] The Polish legal literature has interpreted this indirect link to imply that the primary purpose of the transaction is to satisfy the personal needs of that natural person or that such a purpose prevails over professional or business considerations.[972] However, it is worth noting that the guidance provided by the CJEU in the Faber case requiring that the national court independently assess whether a buyer qualifies as a consumer is also applicable under Polish law.

The PoCRA further extends the category of individuals to which the consumer protection regulation applies. It explicitly stipulates that the consumer-related provisions contained in Chapters 4, 5a, and 5b apply to a natural person concluding a contract directly connected

[966] PoCRA, Art. 43a (1).
[967] Jurczyński, 2023, p. 184.
[968] Zoll, 2023, p. 514.
[969] PoCC, Sec. 22.
[970] Słotwiński, 2018, p. 20.
[971] Supreme Court of the Republic of Poland, Ref. no. I CSK 477/16.
[972] Słotwiński, 2018, p. 23.

to his/her business activity, provided that the content of the contract indicates that it is not professional in nature for that person. This assessment is based, in particular, on the subject of the business activity conducted by the natural person, as indicated in the data recorded in the Central Register and Information on Business Activity.[973] This legal solution is not contrary to the maximum harmonization character of Directive (EU) 2019/771 as Recital 21 specifies that Member States can extend the protection granted to the consumers to other natural or legal persons, such as non-governmental organizations, start-ups, and small and medium-sized enterprises.

Furthermore, the entrepreneur, corresponding to the concept of the seller, is defined in the PoCC as a natural person, legal person, and organizational unit conducting business or professional activity on its own behalf.[974] This definition does not explicitly include intermediaries acting on behalf of the entrepreneur. However, their inclusion aligns with the definition of a seller from Art. 2 (3) of Directive (EU) 2019/771 and the ruling of the CJEU in the Wathelet case, which affirmed that the concept of a seller encompasses "a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual".

The sales contract is defined in the PoCC as any agreement in which the seller undertakes to transfer ownership of goods to the buyer and deliver them to him/her, while the buyer undertakes to collect the goods and pay the price to the seller.[975] For the purposes of the PoCRA, the goods, as the object of the (consumer) sales contract, are exclusively movable items, as well as water, gas, and electricity, when offered for sale in a specified volume or quantity.[976] This determination of goods constitutes the transposition of Art. 2, Sec. 5a of Directive (EU) 2019/771. The Polish legislator did not make use of the opportunity to exclude the application of the provisions on the lack of conformity given by Art. 3, Sec. 5 of the mentioned Directive when the object of the sales contract are living animals or second-hand goods sold at public auction.

[973] PoCRA, Art. 7aa.
[974] PoCC, Sec. 43 1
[975] PoCC, Sec. 535.
[976] PoCRA, Art. 2 (2-4a).

The PoCRA also introduces and defines the concepts of durability,[977] functionality,[978] interoperability,[979] and compatibility.[980]

7.3. Lack of Conformity

Prior to the transposition of Directive (EU) 2019/771, the regulatory framework for consumer sales contracts was embodied in the PoCC. It is noteworthy that the Polish legislator used the term "defect" (wada), corresponding to the concept of lack of conformity as articulated in Directive 1999/44/EC.[981] The PoCC imposed liability on the seller for both physical and legal defects in goods.[982]

The lack of conformity/defect in the physical sense was defined as the non-compliance of the sold goods with the contract.[983] This provision is in concordance with the spirit of Art. 2, Sec. 1 of Directive 1999/44/EC stating that the seller has to deliver goods to the consumer that conform with the contract. Additionally, the PoCC delineated specific circumstances under which the sold goods were particularly non-compliant with the contract. This delineation, referred to in the Polish legal theory as "a negative catalogue", provided an enumeration of instances wherein the goods were not in compliance with the (consumer) sales contract.[984]

First, a lack of conformity existed when the goods lacked the properties that goods of the same type should have, considering the purpose specified in the sales contract or resulting from the circumstances or their intended use.[985] This provision presupposed, on the one hand, that the purpose of the goods was explicitly articulated within the consumer sales contract. Concurrently, it accounted for external factors, such as the particular

[977] Art. 2 (4b) of the PoCRA, transposing Art. 2 (13) of Directive (EU) 2019/771, defines durability as the ability of the goods to retain their functions and properties during normal use.
[978] Art 2 (5f) of the PoCRA, transposing Art. 2 (9) of Directive (EU) 2019/771, defines functionality as the ability of digital content, digital service or goods to perform their functions, taking into account their intended use.
[979] Art. 2 (5g) of the PoCRA, transposing Art. 2 (10) of Directive (EU) 2019/771, defines interoperability as the ability of digital content, digital service, or goods to interface with hardware or software other than that typically used to access digital content, digital service, or goods of the same type.
[980] Art. 2 (5e) of the PoCRA, transposing Art. 2 (8) of Directive (EU) 2019/771, defines compatibility as the interoperability of digital content, digital service, or goods with hardware or software with which digital content, digital service, or goods of the same type are typically used, without the need to transform them.
[981] Zoll, 2023, p. 516.
[982] PoCC, Sec. 556.
[983] PoCC, Sec. 551-1 (1).
[984] Jurczyński, 2023, p. 185.
[985] PoCC, Sec. 551-1 (1-1).

circumstances of the case and the intended use of the goods, which dictated the requisite properties of the sold goods.

Moreover, a lack of conformity was identified when the goods did not exhibit the properties that the seller had assured the buyer (consumer) of, including through the presentation of a sample or model.[986] This situation required the seller to undertake additional measures to assure the consumer of the attributes of the goods, particularly by showcasing a sample or model. Essentially, this assurance to the consumer could be interpreted as a description given to the consumer about the goods. Consequently, this legal solution aligned with Art. 2, Sec. 2 (a) of Directive 1999/44/EC.

Another instance of the specific inconsistency of the goods with the contract concerned the situation where the goods were unsuitable for the purpose communicated by the buyer (consumer) to the seller at the time of the conclusion of the contract, and the seller did not object to this intended use.[987] This provision presupposed that the consumer had notified the seller of the specific purpose for which the goods were needed at the moment of the conclusion of the sales contract. The PoCC did not require the seller to explicitly accept this purpose; rather, the seller's failure to raise any objection to the intended use, was deemed sufficient. It may be considered a crucial difference compared to the legal solution from Art. 2, Sec. 2 (b) of Directive 1999/44/EC which necessitated the seller's acceptance of the particular purpose communicated by the consumer.

Lastly, a lack of conformity also existed when the goods were delivered to the buyer (consumer) in an incomplete condition.[988] The PoCC further identified a lack of conformity in cases where the goods were incorrectly installed and put into operation, provided that these actions were performed by the seller, a third party for whom the seller was liable, or the buyer who followed the instructions provided by the seller.[989] This provision, often referred to as the "IKEA" clause, diverged from the legal solution from Art. 2, Sec. 5 of Directive 1999/44/EC. Notably, the PoCC did not explicitly require that the incorrect installation be due to inadequacies in the instructions given by the seller.

[986] PoCC, Sec. 551-1 (1-2).
[987] PoCC, Art. 556-1 (1-3).
[988] PoCC, Art. 556-1 (1-4).
[989] PoCC, Art. 556-1 (3).

The Polish legislator established that in the context of consumer sales contracts, public statements made by the manufacturer or his/her representative, the person who placed goods on the market within the scope of his/her business activity, and the person who by affixing his/her name, trademark or other distinctive mark to the goods purports to be the manufacturer are treated equivalently to statements made by the seller.[990] This provision applied exclusively when one of the contractual parties was a consumer. However, the seller could be released from liability for such public statements if he/she was unaware or could not have reasonably been aware of these statements, if they could not have influenced the consumer's decision to conclude the sales contract, or if their content was corrected before the conclusion of the sales contract.[991] These conditions were considered as alternative bases for exemption from liability.

Regarding legal defects, the PoCC established the seller's liability to the buyer (consumer) if the sold goods were owned by a third party or were encumbered with third-party rights, and if the restriction on the use or disposal of the sold goods stemmed from a decision or ruling issued by a competent authority.[992]

The transposition of Directive (EU) 2019/771 into the PoCRA introduced notable modifications to the concept of lack of conformity. Specifically, in the context of sales contracts for movable goods concluded with consumers, the Polish lawmaker substituted the notion of defect (wada) from the PoCC with the concept of "non-conformity of the goods with the contract", as articulated in the PoCRA (brak zgodności towaru z umową). Transposing Art. 6 of Directive (EU) 2019/771, the PoCRA stipulates that the goods conform with the contract, particularly if they:

1) possess the description, type, quantity, quality, completeness, and functionality, and in the case of goods with digital elements, also compatibility, interoperability, and availability of updates as required by the sales contract;
2) are suitable for a specific purpose for which the consumer requires them, about which he/she notified the seller at the latest at the time of the conclusion of the contract, and which the seller accepted.[993]

[990] PoCC, Art. 556-1 (2).
[991] PoCC, Art. 557 (3).
[992] PoCC, Art. 556-3.
[993] PoCPA, Art. 43b (1).

This provision substantially reiterates the subjective requirements for conformity contained in Art. 6, Sec. 1 and 2 of Directive (EU) 2019/771, even though the Polish legislator does not explicitly reference this term. The determination of these requirements relies on the contract or agreement between the consumer and the seller. In contrast to the legal solution from the PoCC, the PoCPA stipulates that the seller must accept the specific purpose for which the consumer requires the goods.

In addition to the aforementioned subjective criteria, for goods to be considered to be in conformity with the contract, they must:

1) be suitable for the purposes for which goods of that kind are typically used, taking into account applicable legal regulations, technical standards, and good practices;
2) be of such quantity and possess such characteristics, including durability and safety, and in the case of goods with digital elements, also functionality and compatibility, which are typical for goods of that kind and which the consumer can reasonably expect, having regard to the nature of the goods and any public assurance given by the seller, his/her legal predecessors, or persons acting on their behalf, in particular in advertising or on labelling;
3) be delivered with packaging, accessories, and the instructions that the consumer can reasonably expect to receive;
4) be of the same quality as the sample or model that the seller provided to the consumer before the conclusion of the contract and correspond to the description of that sample or model.[994]

By incorporating these criteria, which correspond to the objective requirements for conformity outlined in Art. 7, Sect. 1 of Directive (EU) 2019/771, the consumer's position has been enhanced with respect to contracts involving movable goods, compared to the prior legal framework under the PoCC.[995] Moreover, it should be emphasized that the PoCPA employs “a positive catalogue” approach in defining the lack of conformity. Specifically, it delineates, through a synthesis of subjective and objective criteria, the conditions under which goods are deemed to conform with the sales contract. Conversely,

[994] PoCPA, Art. 43b (2).
[995] Garnowski, 2024, p. 59.

the PoCC utilized a "negative catalogue" approach, determining when there was a lack of conformity.[996]

Transposing Art. 7, Sec. 2 of Directive (EU) 2019/771, the PoCPA permits the seller to be exempt from liability for public assurances specified in Art. 43b, Sec. 2 (2). The burden of proof explicitly falls on the seller, who has to demonstrate the presence of at least one of the following circumstances:

1) that he/she did not know about the given public assurance and could not have reasonably known about it;
2) that, before the conclusion of the contract, the public assurance was corrected while observing the conditions and form in which it was given, or in a comparable manner;
3) that the public assurance did not influence the consumer's decision to conclude the contract.[997]

Finally, the seller is also liable for any lack of conformity resulting from the incorrect installation of the goods. In this regard, the seller's liability extends to cases where the installation was performed by the seller or under his/her responsibility and when the incorrect installation carried out by the consumer was attributable to the shortcomings in the instructions provided by the seller or a third party referred to in Art. 6, Sec. 2.[998] This legal solution represents the transposition of Art. 8 of Directive (EU) 2019/771.

7.4. The Moment of the Emergence of the Seller's Liability

The PoCC established the seller's liability for any lack of conformity (defect) that existed at the moment of the passing of the risk to the buyer (consumer). In addition, the seller was also accountable for any lack of conformity arising from a cause inherent in the sold goods at the moment of the passing of the risk.[999] It is worth highlighting that in the case of consumer sales contracts the risk of accidental loss or damage shifts to the consumer upon the delivery of the sold goods to him/her.[1000] Thus, such a legal solution aligns with Art. 3, Sec. 1 of Directive 1999/44/EC. In concordance with Art. 20 of Directive

[996] Jurczyński, 2023, p. 185.
[997] PoCPA, Art. 43b (2-2).
[998] PoCPA, Art. 43b (5).
[999] PoCC, Art. 559.
[1000] PoCC, Art. 548 (3).

2011/83/EU, delivery of the goods is also considered to have taken place when the seller entrusted them to the carrier, provided that the seller did not influence the consumer's choice of the carrier.[1001] Although these rules were not mandatory, they possessed a semi-mandatory nature within consumer law, allowing for deviations from them in favour of the consumer.[1002]

The PoCC exonerated the seller from liability if the buyer (consumer) was aware of the lack of conformity at the time of the conclusion of the contract.[1003] This provision represents the transposition of Art. 2, Sec. 3 of Directive 1999/44/EC. It assumed that the consumer's awareness of the defect influenced his/her decision to enter into the sales contract under the specified conditions or that the seller relied on that circumstance.[1004] Curiously, the Polish legislator did not transpose the provision from Directive 1999/44/EC absolving the seller from liability when the lack of conformity originated from materials provided by the consumer.

The consumer's position was strengthened by the provision stipulating that, when the purchaser was a consumer, the seller's liability could be limited or excluded only in cases outlined in specific provisions.[1005] However, the PoCC extinguished the possibility of limiting or excluding the seller's liability if he/she in bad faith concealed the lack of conformity from the consumer.[1006] In that manner, the Polish legislator penalized actions committed *in mala fide* by the seller.

With the transposition of Directive (EU) 2019/771 in Polish law, the seller remained liable for the lack of conformity of the goods existing at the moment of their delivery.[1007] Furthermore, the seller can be released from liability if the consumer, no later than at the time of the conclusion of the contract, has been exlicitly informed that a specific feature of the goods diverges from the objective criteria for conformity outlined in Art. 43b, Sec. 2 and 3 of the PoCPA, and has explicitly and separately accepted the absence of said specific feature of the goods.[1008] This provision mirrors Art. 7, Sec. 5 of Directive (EU)

[1001] PoCC, Art. 548 (3).
[1002] Zoll, 2023, p. 521.
[1003] PoCC, Art. 557 (1).
[1004] Affermi, 2022, p. 203.
[1005] PoCC, Art. 558 (1).
[1006] PoCC, Art. 558 (2).
[1007] PoCPA, Art. 43c (1).
[1008] PoCPA, Art. 43b (4).

2019/771. It is worth emphasizing that the seller's exemption from liability has raised the level of consumer protection compared to the legal solution from the PoCC since it became more stringent.[1009] The consumer's knowledge of the lack of conformity alone does not suffice anymore for the seller to be absolved from liability. Namely, in addition to the circumstance that this type of awareness has to derive from a notification, the consumer's consent to the absence of a particular feature of the goods must be given explicitly and separately.

7.5. **Deadlines and Burden of Proof**

Prior to the implementation of Directive (EU) 2019/771 in Polish law, the PoCC delineated the seller's liability for the defect (lack of conformity) discovered before the expiration of two years of the date of delivery of the goods to the consumer.[1010] Consequently, the seller's accountability was contingent upon the manifestation of the lack of conformity, present at the time of delivery, within the two-year timeframe from that moment. This rule aligns with Art. 5, Sec. 1 of Directive 1999/44/EC. However, the buyer's (consumer's) position was improved by the provision stating that the expiry of the deadline for the occurrence of the lack of conformity did not prevent the exercise of warranty rights if the seller fraudulently concealed it.[1011] In addition, a specific rule was applicable when the shelf life of the goods designated by the seller or manufacturer extended beyond two years from the date of delivery of the goods to the buyer (consumer). In such cases, the seller was liable for any lack of conformity (defect) identified before the expiry of such timeframe.[1012]

Using the opportunity in Art. 7, Sec. 1 (2) of Directive 1999/44/EC, the Polish legislator allowed the contractual parties to reduce the duration of the seller's liability in instances involving second-hand goods as the object of the consumer sales contract, albeit not falling below one year from the date of delivery of the goods to the consumer.[1013] It is crucial to accentuate that this provision was applicable solely when one of the contractual parties was a consumer.

[1009] Ostrowski, 2023, p. 104.
[1010] PoCC, Art. 568 (1).
[1011] PoCC, Art. 568 (6).
[1012] PoCC, Art. 568-1.
[1013] PoCC, Art. 568 (1).

Concerning the burden of proof, the guidance provided by the CJEU in the previously noted Faber case was significant also within the Polish legal framework. Thus, it primarily rested upon the consumer to substantiate that the defect (lack of conformity) existed at the moment of the passing of the risk and that it surfaced within two years after that event. As per the CJEU, "the onus is, in principle, on the consumer to furnish the evidence that a lack of conformity exists and that the lack of conformity existed at the time when the goods were delivered".[1014]

However, the PoCC notably enhanced the consumer's position by instituting a presumption that the lack of conformity or its cause existed at the moment of the passing of the risk to the consumer if it was discovered within one year from the date of delivery of the sold goods.[1015] Notably, the Polish legislator did not explicitly delineate the inapplicability of this presumption in the event of its incompatibility with the nature of the goods or the character of the lack of conformity. The one-year timeframe provided by the PoCC was more favourable to consumers compared to the six-month period stipulated by Directive 1999/44/EC. It may be stated that the indications offered by the CJEU in Faber case *mutatis mutandis* applied in this context as well. Consequently, the consumer was obligated to demonstrate the presence of the lack of conformity and its occurrence within one year from the delivery of the goods.

Following the transposition of Directive (EU) 2019/771, the seller continues to be liable for any lack of conformity revealed within two years from the moment of delivery. Nonetheless, the seller's liability may exceed the general two-year time boundary when the shelf life of the goods, as determined by the seller, his/her legal predecessors, or persons acting on their behalf exceeds two years.[1016] Fundamentally, these rules do not differ from the legal stipulations contained in the PoCC concerning the sale of movable goods. The consumer's position remains reinforced by the provision that prevents the seller from invoking the expiration of this timeframe if he/she deceitfully concealed the lack of conformity.[1017]

[1014] CJEU, C-497/13, para. 52.
[1015] PoCC, Art. 556-2.
[1016] PoCPA, Art. 43c (1).
[1017] PoCPA, Art. 43c (2).

It may be argued that the most significant novelty is the extension of the temporal scope of the presumption regarding the existence of the lack of conformity at the time of delivery. This presumption applies when the defect is identified within two years from the moment of delivery. The PoCPA explicitly specifies that this presumption is rebuttable since it ceases to apply if proven otherwise or if it cannot be reconciled with the specificity of the goods or the nature of the lack of conformity.[1018]

The Polish lawmaker invoked Art. 11, Sec. 2 of Directive (EU) 2019/771, which permits the Member States to introduce a two-year period commencing from the moment of delivery of the goods to the consumer. In that manner, this presumption encompasses the entire duration of the seller's liability for the lack of conformity, thereby significantly enhancing the level of consumer protection compared to the PoCC.[1019] Curiously, the Polish legal theory contends that the protection of consumer's interests in this respect might be considered excessively extensive, potentially facilitating abuse to the detriment of the seller.[1020] Nonetheless, this legal arrangement appears to be legitimate, as it does not contravene the principle of maximum harmonization outlined in Directive (EU) 2019/771.

Moreover, the jurisprudential guidance provided by the CJEU in Faber case remains applicable. Likewise, Directive (EU) 2019/771 in Recital 45 specifies that the consumer is required only to demonstrate that the goods do not conform to the contract. The burden of rebutting this presumption rests with the seller who must prove that the lack of conformity did not exist at the moment of delivery of the goods. It is noteworthy that the exclusion of this presumption based on its contradiction with the specificity of the goods incorporates especially perishable products. Simultaneously, the exclusion based on the nature of the lack of conformity refers to a deficiency stemming from consumer actions or overt external factors occurring after the delivery of the goods to the consumer.[1021]

Finally, the PoCPA does not contain any provision regarding the potential reduction of the duration of the seller's liability to one year for second-hand goods, indicating that this

[1018] PoCPA, Art. 43c (1).
[1019] Garnowski, 2024, p. 61.
[1020] Jurczyński, 2023, p. 189.
[1021] Recital 45 of Directive (EU) 2019/771; Ostrowski, 2023, p. 96.

is no longer permissible.[1022] Such a legal solution does not violate the maximum harmonisation character of Directive (EU) 2019/771. On the contrary, the same Directive views the reduction of the general two-year timeframe as an option granted to the Member States. The Polish legislator has further strengthened the consumer's position by not including this provision.

7.6. Goods with Digital Elements

The PoCPA defines goods with digital elements as goods containing digital content or digital service or connected to them in such a way that the lack of digital content or digital service would prevent the goods from functioning properly.[1023] This definition is in line with Art. 2, Sec. 5b of Directive (EU) 2019/771. Therefore, the presence of digital content or digital service is essential for the proper functioning of the goods. Moreover, the provisions of the PoCPA governing the consumer's position in the case of a lack of conformity apply also to contracts on transfer of ownership of goods with digital elements, including digital content or digital service, even if they are supplied by a third party.[1024] The doubt as to whether digital content or digital service is covered by the contract requiring the transfer of ownership of goods with digital elements is resolved by introducing the presumption of their inclusion.[1025] These rules constitute the transposition of Art. 3, Sec. 3 of Directive (EU) 2019/771.

Concerning the duration of the seller's liability, the Polish legislator differentiates between continuous and single supply. When digital content or digital service is to be supplied continuously, the entrepreneur (seller) is liable for any lack of conformity occurring or becoming apparent at the time when they are to be supplied according to the contract. This lapse of time may not be shorter than two years from the moment of delivery of the goods with digital elements.[1026] Thus, the two-year time limit is considered minimal, and the contractual parties are allowed to exceed it. On the other hand, in the case of a single supply, the general rule that the seller is liable for any defect existing at the moment of delivery of the goods and emerging two years thereof is applicable.[1027]

[1022] Ostrowski, 2023, p. 96.
[1023] PoCPA, Art. 2 (5b).
[1024] PoCPA, Art. 6 (2).
[1025] PoCPA, Art. 6 (3).
[1026] PoCPA, Art. 43c (3).
[1027] PoCPA, Art. 43c (1).

A particular rule on the existence of the presumption of the lack of conformity applies to the continuous supply. Specifically, it is presumed that the defect of digital content or digital service already existed at the moment of delivery of the goods with digital elements if it manifested within two years thereof or in a longer period agreed upon by the contractual parties.[1028] These special rules governing the continuous supply represent the transposition of Art. 10, Sec. 2 and Art. 11, Sec. 3 of Directive (EU) 2019/771.

In the case of goods with digital elements, the entrepreneur (seller) has some additional obligations towards the consumer. Namely, transposing Art. 7, Sec. 3 of Directive (EU) 2019/771, the PoCPA obliges the seller to inform the consumer about the updates, including those concerning security measures, which are necessary to maintain the compliance of digital content or digital service with the contract. The duration of this obligation of the seller also depends on the type of supply. When the supply of digital content or digital service is continuous, the duration of the obligation to provide updates is linked with the contractual specification of the supply.[1029] Conversely, in the event of a single supply, it is subject to the reasonable expectation of the consumer, considering the type of digital content or digital service, the purpose for which it is used, and the circumstances and nature of the contract.[1030] It is worth noting that the seller's obligation concerns exclusively updates that should maintain the conformity of digital content or digital service with the contract. The supply of upgrades, improving the quality of the goods with digital elements, depends on the specific contractual stipulation.

Moreover, it should be underlined that the seller is obliged to provide the consumer with updates, without installing them. If the consumer fails to install them within a reasonable time, the seller will not bear any liability for the lack of conformity of digital content or digital service resulting solely from this consumer's omission, provided that he/she informed the consumer of the availability of the update and consequences of the omission to install them, and the failure to install or incorrect installation of the update was not due to shortcomings in the instructions provided by the seller.[1031] This provision constitutes the implementation of Art. 7, Sec. 4 of Directive (EU) 2019/771.

[1028] PoCPA, Art. 43c (3).
[1029] PoCPA, Art. 43k (3).
[1030] PoCPA, Art. 43k (3).
[1031] PoCPA, Art. 43k (4).

7.7. Consumer Remedies

Before the transposition of Directive (EU) 2019/771, the hierarchy of consumer remedies adhered to the framework established by Directive 1999/44/EC. Specifically, in the event of a lack of conformity, the consumer was entitled to request a price reduction or termination of the contract.[1032] Nevertheless, the seller could preclude the performance of these remedies by immediately and without excessive inconvenience to the consumer replacing the defective goods or rectifying the lack of conformity by repair.[1033] This restriction on the consumer's rights did not apply if the goods had already been replaced or repaired by the seller or if the seller had failed to fulfill his/her obligation to replace the goods or repair the lack of conformity.[1034]

According to the Polish legal theory, the stipulation that repair or replacement should have occurred immediately implied that these remedies were to be undertaken as soon as the consumer handed over the goods, and their defectiveness was confirmed through a preliminary examination.[1035] At the same time, the concept of excessive inconvenience was to be evaluated in light of the specific situation of a particular consumer.[1036] It is also worth noting that a minor significance of the lack of conformity precluded the possibility of termination of the contract.[1037] Consequently, in that case, the price reduction emerged as the sole secondary remedy available to the consumer.

Furthermore, the PoCC allowed the consumer to request replacement of the defective goods instead of eliminating the lack of conformity by repair as proposed by the seller and *vice versa*, to demand a repair rather a replacement if the seller preferred the latter. However, this option was not applicable if the method for removing the lack of conformity chosen by the consumer was either not feasible or would have incurred excessive costs compared to the remedy proposed by the seller. The concept of excessive costs was to be evaluated considering the value the goods would have had if there were no lack of conformity, the type and the severity of the lack of conformity, and the extent of inconvenience to the buyer (consumer) if the remedy preferred by the seller was to be

[1032] PoCC, Art. 560 (1).
[1033] PoCC, Art. 560 (1).
[1034] PoCC, Art. 560 (1).
[1035] Dębski, 2016, p. 79.
[1036] Dębski, 2016, p. 79.
[1037] PoCC, Art. 560 (4).

implemented.[1038] It is crucial to emphasize that this provision, which granted the consumer the discretion to choose between repair and replacement as primary remedies, applied exclusively when one of the contractual parties was a consumer.

In essence, the consumer was entitled to either terminate the contract or obtain the price reduction upon the initial manifestation of the lack of conformity, provided that the seller did not promptly and effectively rectify it through repair or replacement without causing excessive inconvenience to the consumer.[1039] Since the termination of the contract and the price reduction were contingent upon the feasibility of remedying the defect through repair or replacement, assessed in terms of the duration and the degree of inconvenience imposed on the consumer, it appears that repair and replacement were considered primary remedies. Conversely, price reduction and termination of the contract were considered as secondary or subsidiary claims.

The consumer could also request replacement or repair independently.[1040] Notably, the Polish legislator established that if a consumer requested replacement or repair or made a statement specifying a price reduction amount, and the seller failed to respond within fourteen days, the request was to be considered justified.[1041] This provision applied exclusively to consumers. However, it is important to note that this rule did not apply to the termination of the contract.[1042]

In addition to the primary and secondary claims, the consumer was entitled to seek compensation for damages. Specifically, if the consumer made a statement on termination of the contract or chose a price reduction, he/she could claim compensation for damage incurred by entering into the contract without knowledge of the defect, even if the damage was caused by factors not ascribable to the seller's liability. The PoCC explicitly referenced reimbursement for expenses associated with concluding the contract, as well as costs related to collecting, transporting, storing, and insuring the goods, and any expenditures made provided that these did not benefit the consumer.[1043] This right to compensation did not affect the obligation to compensate damage according to the general

[1038] PoCC, Art. 560 (2).
[1039] Jagielska, 2020, p. 45; Dębski, 2016, p. 77.
[1040] PoCC, Art. 561 (1).
[1041] PoCC, Art. 561.
[1042] Jagielska, 2020, p. 50.
[1043] PoCC, Art. 566 (1).

principles of tort law.[1044] This provision applied accordingly if the defect was remedied by repair or replacement.[1045]

Finally, the Polish legislator removed the two-month time limit for the consumer to notify the seller of the lack of conformity following its discovery. As a result, the consumer was permitted to notify the seller of a defect and assert his/her claims throughout the entire two-year warranty period, irrespective of the defect was discovered.[1046]

The hierarchical structure of the remedies – with repair and replacement as primary claims, and price reduction and termination of the contract as secondary - has been preserved in the PoCRA, during the transposition of the Directive (EU) 2019/771. However, the PoCRA does not explicitly address the right to compensation for damage. Moreover, the Polish lawmaker did not introduce the timeframe for the consumer to inform the seller about the defect after its detection.

Thus, the consumer is primarily entitled to seek the rectification of the defect by repair or replacement.[1047] However, the consumer's freedom of choice is not absolute since the seller is allowed to perform replacement instead of repair and *vice versa* when rectifying the lack of conformity in the manner requested by the consumer is impossible or would require excessive costs for the seller.[1048] Moreover, the seller can refuse to bring the goods into conformity by repair and replacement when both remedies are impossible or would require excessive costs for the seller.[1049] The excessiveness of the expenses is to be assessed by taking into account all circumstances of the case, particularly the significance of the lack of conformity, the value the goods would have if they were conformant to the contract, and the excessive inconvenience caused to the consumer by the change of the method of eliminating the defect.[1050] These provisions constitute the transposition of Art. 13, Sec. 2 and 3 of Directive (EU) 2019/771.

The PoCRA explicitly requires the seller to cover all costs related to repair and replacement. This includes but is not limited to postage, transport, labour, and

[1044] PoCC, Art. 566 (1).
[1045] PoCC, Art. 566 (2).
[1046] Jagielska, 2020, p. 47; Dębski, 2016, p. 78; Hajnal, 2022, p. 187.
[1047] PoCRA, Art. 43d (1).
[1048] PoCRA, Art. 43d (2).
[1049] PoCRA, Art. 43d (2).
[1050] PoCRA, Art. 43d (3).

materials.[1051] This requirement, together with the stipulation that repair or replacement must be performed within a reasonable time following the consumer's notification of the lack of conformity and without causing undue inconvenience to the consumer, reflects the provisions of Art. 14, Sec. 1 of Directive (EU) 2019/771. Notably, while postage, transport, labour, and materials are cited as examples, the seller's liability encompasses all associated costs. The Polish lawmaker does not specify the duration of the reasonable time for the elimination of the defect by repair and replacement. In this regard, a crucial indication is provided in Recital 55 of Directive (EU) 2019/771, interpreting the reasonable time as "the shortest time necessary for completing the repair or replacement", that is to be assessed objectively "by considering the nature and complexity of the goods, the nature and complexity of the lack of conformity, and the effort needed to complete repair or replacement".

Furthermore, the PoCRA mandates that the consumer make the goods subject to repair and replacement available to the seller. In contrast, the seller is obliged to collect the goods from the consumer at his/her own expense.[1052] The Polish legislator does not impose a storage fee on the consumer if he/she fails to retrieve the goods within a reasonable period following the seller's notification of the availability of the goods after repair.

Transposing Art. 14, Sec. 3 of Directive (EU) 2019/771, the PoCRA, when the goods were installed before the discovery of the lack of conformity, mandates the seller to dismantle the goods and install them again after the completion of repair or replacement or to have these activities performed at his/her expense.[1053]

Concerning replacement, the consumer is not liable for any compensation related to the normal use of the goods that are replaced.[1054] This provision is consistent with Art. 14, Sec. 4 of Directive (EU) 2019/771, influenced by the judgment of the CJEU rendered in the Quelle case.[1055] Recital 57 of the mentioned Directive is particularly relevant in this context, determining that the use is deemed normal when it is in line with the nature and purpose of the goods.

[1051] PoCRA, Art. 43d (4).
[1052] PoCRA, Art. 43d (5).
[1053] PoCRA, Art. 43d (6).
[1054] PoCRA, Art. 43d (7).
[1055] Van Gool and Michel, 2021, p. 144; Mišćenić et al, 2021, p. 70.

The price reduction and the termination of the contract as the secondary remedies are available to the consumer in the following cases:

1) when the seller has refused to bring the goods into conformity according to Art. 43d (2);
2) when the seller has not rectified the defect in accordance with Art. 43d (4-6);
3) when the lack of conformity persists despite the seller having attempted to eliminate it;
4) when the lack of conformity is so significant as to justify a price reduction or termination of the contract, without necessitating repair or replacement beforehand;
5) when it is clear from the seller's statement or the circumstances that the seller will eliminate the defect within a reasonable time or without causing excessive inconvenience to the consumer.[1056]

The PoCRA explicitly specifies that a consumer exercises the subsidiary remedies of a price reduction or termination of the contract by submitting a statement.[1057] This provision is in line with Art. 16, Sec. 1 of Directive (EU) 2019/771, extending its application to include price reduction and thereby eliminating any ambiguity regarding its exercise.[1058] Transposing Art. 16, Sec. 2 of the mentioned Directive, the Polish legislator establishes that when the lack of conformity pertains only to some of the goods delivered under the contract, the consumer may terminate the contract solely concerning the defective goods. However, full termination of the contract is permissible if the consumer cannot be reasonably expected to retain only the conforming goods.[1059] This approach reflects the principle of the preservation of the contract.[1060]

Moreover, the consumer is not allowed to terminate the contract when the lack of conformity is irrelevant. However, the Polish legislator has introduced a rebuttable presumption that the defect is relevant.[1061] This provision is in line with Art. 13, Sec. 5 of Directive (EU) 2019/771. In that instance, the price reduction is the only secondary

[1056] PoCRA, Art. 43e (1).
[1057] PoCRA, Art. 43e (1).
[1058] Romanò, 2020, p. 358.
[1059] PoCRA, Art. 43e (5).
[1060] Afferni, 2022, p. 292.
[1061] PoCRA, Art. 43e (4).

remedy available to the consumer. It is worth underlining that the indications provided by the CJEU in the Duarte case, which permits the national court to independently grant the price reduction when the consumer's attempt to terminate the contract fails due to the minor significance of the lack of conformity, and the national law hinders or overly complicates the application of a price reduction are relevant also in Polish law.[1062]

In the event of the termination of the contract, the PoCRA mandates that the consumer return the goods to the seller immediately at the seller's expense. Concurrently, the seller must reimburse the purchase price to the consumer promptly, and no later than 14 days from the receipt of the returned goods or proof of their return.[1063] This 14-day timeframe is intended to provide legal certainty for the consumer and to incentivize the seller to fulfill his/her obligations.[1064]

Similarly, a deadline of the same length (promptly but no later than 14 days) applies to the reimbursement of a portion of the purchase price, starting from receipt of the consumer's request by the seller.[1065] The PoCRA envisages that the reduced price must be in the same proportion to the price stipulated in the contract as the value of non-conforming goods is to the value of the goods without the defect.[1066] Lastly, taking advantage of the opportunity to establish the modalities of reimbursement from Art. 16 of Directive (EU) 2019/771, the Polish legislator specifies that the seller must use the same payment method for reimbursing the price as the one used by the consumer unless the consumer expressly agrees to an alternative method that incurs no additional costs to him/her.[1067] Thus, an alternative reimbursement method is only permissible with the explicit consent of the consumer, provided that it does not involve any cost to him/her.

Finally, the expected future amendments affecting the consumer remedies will represent the transposition of Directive (EU) 2024/1799. In that regard, they will aim to incentivize the utilization of the repair remedy by the consumer, influenced by the principles of the circular economy and sustainable consumption, although without expressly modifying the hierarchy of the remedies at the consumer's disposal.

[1062] Jansen, 2014, p. 990.
[1063] PoCRA, Art. 43e (7).
[1064] The Reasoning, p. 9.
[1065] PoCRA, Art. 43e (3).
[1066] PoCRA, Art. 43e (2).
[1067] PoCRA, Art. 43e (7).

7.8. Consumer Guarantees

The relevant rules on commercial guarantees are contained in the PoCC and the PoCRA. Since the transposition of Directive (EU) 2019/771 did not introduce numerous novelties in this regard, the provisions in force today will be examined in this subchapter. It will be particularly emphasized when certain legal solutions differ from those applicable before implementing the mentioned Directive.

The PoCC stipulates that the guarantee is provided by issuing a guarantee statement, which specifies the obligations of the guarantor and the rights of the buyer (consumer) when the goods do not possess the properties outlined in the statement.[1068] Additionally, the guarantee statement can also be included in an advertisement.[1069] The PoCRA does not allow any deviation from the guarantee conditions specified in the advertisement to the detriment of the consumer, unless the guarantee statement made in the advertisement before the conclusion of the contract has been corrected, adhering to the conditions and form in which the advertisement was conducted, or in a comparable manner.[1070] It should be noted that the seller's liability stemming from the guarantee covers only defects arising from causes inherent in the sold goods, unless otherwise stipulated in the guarantee.[1071]

The guarantee statement has to be formulated clearly and understandably, and if the type of information permits it, in a commonly understandable graphic form. It is required that the guarantee statement be issued in Polish when the goods are placed on the market of the Republic of Poland. However, this requirement does not apply to proper names, trademarks, trade names, indication of the origin of goods, and commonly used scientific and technical terminology.[1072] Thus, this information does not have to be written in Polish. The determination of the obligatory language of the guarantee statement is not contrary to the maximum harmonization character of Directive (EU) 2019/771 which leaves such possibility to the Member States in Art. 17, Sec. 4.

[1068] PoCC, Sec. 577 (1).
[1069] PoCC, Sec. 577 (1).
[1070] PoCRA, Art. 43g (1).
[1071] PoCC, Sec. 578.
[1072] PoCC, Art. 577 1 (1).

Moreover, the PoCC specifies the mandatory content of the guarantee statement in line with Art. 17, Sec. 2 of Directive (EU) 2019/771. Namely, it must contain the following information:

1) an explicit statement that, in the case of a lack of conformity, the buyer (consumer) is entitled by law to legal remedies provided by and at the expense of the seller, and that the guarantee does not affect these legal remedies;
2) the name and address of the guarantor;
3) a description of the procedure that the entitled party has to follow to be able to use the guarantee;
4) the indication of the goods covered by the guarantee;
5) the conditions of the guarantee.[1073]

Before the transposition of Directive (EU) 2019/771, the PoCC required that the guarantee statement contain the essential information necessary for the exercise of the rights stemming from the guarantee, in particular, the name and address of the guarantor or his/her representative in the Republic of Poland, the duration and territorial scope of the guarantee, the available rights, as well as a statement that the guarantee did not exclude, limit, or suspend the buyer's rights deriving from the seller's legal liability for the defect.[1074]

It is worth underlining that the failure to comply with the requirements concerning the language of the guarantee and its mandatory content does not affect the validity of the guarantee statement and does not deprive the buyer (consumer) of the rights arising from it.[1075]

Moreover, the consumer is allowed to request the guarantor to issue a guarantee statement printed on paper or recorded on another durable medium (guarantee document).[1076] However, the seller is obliged to provide the buyer (consumer) with a guarantee document along with the sold goods and verify the consistency of the indications on the goods with

[1073] PoCC, Art. 577 1 (2).
[1074] PoCC, Art. 577 1 (2).
[1075] PoCC, Sec. 577 1 (3).
[1076] PoCC, Sec. 577 2.

the information contained in the guarantee document, as well as the condition of seals and other security features placed on the goods.[1077]

The Polish legislator specifically determined which remedies could be available to the consumer based on the guarantee. Specifically, the guarantor's obligation, in particular, includes refunding the price paid, the elimination of the defect by repair or replacement, as well as providing other services.[1078] The PoCC does not establish a mandatory hierarchical order between these remedies. A particular legal solution applies to the situation where the issued guarantee concerns the quality of the goods. In that instance, there is a presumption that, in the case of doubt, the guarantor is obliged to eliminate the physical defect of the goods or to deliver the goods devoid of defects when the lack of conformity manifests within the period outlined in the guarantee statement.[1079] It may be stated that in that regard the repair and replacement constitute the primary remedies. The PoCRA states that a durability guarantee cannot provide terms for repair or replacement that are less favourable to the consumer than those specified in Art. 43d.[1080]

When exercising his/her rights, the consumer is required to deliver the goods at the guarantor's expense to the place specified in the guarantee or to the place where the goods were handed over when the guarantee was offered, unless the circumstances indicate that the lack of conformity should be eliminated at the place where the goods were located at the time the defect was discovered.[1081] Conversely, the guarantor is obliged to perform his/her obligations within the timeframe specified in the guarantee statement. The PoCC also provides a solution for situations where the guarantee statement does not determine any period for the performance of the guarantor's obligations. In that case, they should be fulfilled immediately, but no later than 14 days from the date the goods were delivered by the buyer (consumer). In addition, the seller must return the goods at his/her expense to the location specified in Art. 580 (1).[1082] It should be emphasized that the guarantor bears

[1077] PoCC, Sec. 577 3.
[1078] PoCC, Sec. 577 (2).
[1079] PoCC, Sec. 577 (3).
[1080] PoCRA, Art. 43g (2).
[1081] PoCC, Sec. 580 (1).
[1082] PoCC, Sec. 580 (2).

the risk of accidental loss or damage to the goods from the time they are handed over to the guarantor until they are returned to the buyer (consumer).[1083]

The PoCC envisages that the duration of the guarantee period is two years commencing from the date the goods were delivered to the buyer (consumer), unless another time period is stipulated.[1084] In the event of replacement of the goods or a significant repair, the guarantee period restarts from the moment of delivery of the replaced goods or return of the repaired goods. When the replacement concerns solely a portion of the goods, the guarantee period runs again only for the replaced part.[1085] In other situations, the guarantee period is extended by the time the buyer could not use the goods because of the lack of conformity.[1086]

Finally, it is worth noting that the buyer (consumer) is free to choose whether to use the remedies stemming from the guarantee or the seller's legal liability for the defect. His choice to exercise the remedies deriving from the guarantee does not affect the seller's legal liability.[1087] However, when the consumer invokes remedies from the guarantee, the period for asserting rights from the seller's legal liability is suspended on the day the consumer informed the seller of the defect and it will resume from the day the guarantor refuses to fulfil his/her obligations from the guarantee or upon the ineffective expiration of the timeframe allocated for performing those obligations.[1088]

8. SERBIA

8.1. Legal Sources

The significance of consumer protection in Serbian law is accentuated by the Constitution of the Republic of Serbia.[1089] Namely, the highest legal-political document mandates the Republic of Serbia to safeguard consumers and strictly prohibits actions that endanger the health, safety, and privacy of the consumers, as well as all unfair commercial practices.[1090]

[1083] PoCC, Sec. 580 (3).
[1084] PoCC, Sec. 577 (4).
[1085] PoCC, Sec. 581 (1).
[1086] PoCC, Sec. 581 (2).
[1087] PoCC, Sec. 579 (2).
[1088] PoCC, Sec. 579 (3).
[1089] Ustav Republike Srbije [Constitution of the Republic of Serbia].Službeni glasnik RS [Official Gazette of the Republic of Serbia] 83/06, 115/2021.
[1090] Constitution of the Republic of Serbia, Art. 90.

By ratifying the Stabilisation and Association Agreement in 2008,[1091] Serbia committed to align its consumer legislation with that of the European Community. This obligation entails the harmonization of the standards of consumer protection with those applied within the Community, necessitating cooperation between Serbia, on the one hand, and the European Union and its Member States on the other.[1092]

The adoption of the Consumer Protection Act of 2010[1093] marked the commencement of endeavours to harmonize consumer law.[1094] Notably, the transposition of Directive 1999/44/EC into Serbian law was achieved through this enactment.[1095] Subsequently, Serbia implemented a new Consumer Protection Act in 2014,[1096] and the most recent iteration in 2021[1097] (hereinafter referred to as "the SrCPA"), which repealed the Act of 2014.[1098] The provisions pertaining to the consumer's position in the event of a lack of conformity of the goods with the sales contract, including the rules concerning the contractual guarantee, contained in the SrCPA, remain rooted in Directive 1999/44/EC.

Moreover, it should be underlined that the Obligations Act (hereinafter referred to as "the OA"), as sedes materiae for contract law, encompasses provisions addressing the seller's liability for material defects (Art. 478–500). They are applicable to transactions involving two natural persons, two legal persons, or a natural person and a legal entity, falling outside the realm of consumer law.[1099] Conversely, the provisions concerning the consumer's position and the seller's liability in the case of a lack of conformity, as outlined in the SrCPA, pertain specifically to sales contracts concluded within a consumer context,

[1091] Zakon o potvrđivanju Sporazuma o stabilizaciji i pridruživanju između evropskih zajednica i njihovih država članica, s jedne strane, i Republike Srbije, s druge strane [Act on Ratification of the Stabilisation and Association Agreement between the European Communities and Their Members on One Side and the Republic of Serbia on the Other Side].Službeni glasnik RS [Official Gazette of the Republic of Serbia] 83/08.

[1092] Act on the Ratification of the Stabilisation and Association Agreement, Art. 78, Sec. 1.

[1093] Zakon o zaštiti potrošača [Consumer Protection Act]. Službeni glasnik RS [Official Gazette of the Republic of Serbia] 73/2010.

[1094] Karanikić Mirić, 2011, p. 174.

[1095] Karanikić Mirić 2010, p. 137.; Dudaš, 2021, p. 946.

[1096] Zakon o zaštiti potrošača [Consumer Protection Act]. Službeni glasnik RS [Official Gazette of the Republic of Serbia] 62/2014, 6/2016 – special laws and special law 44/2018.

[1097] Zakon o zaštiti potrošača [Consumer Protection Act]. Službeni glasnik RS [Official Gazette of the Republic of Serbia] 88/2021.

[1098] The repeal of the Act of 2014 occurred upon the commencement of the application of the novel Act of 2021. It stipulated that, for the most part, its application shall start three months after its entry into force (19 September). This implies that the new Act of 2021 became applicable as of 20 December 2021.

[1099] Karanikić Mirić, 2011, p. 177.

i.e., when one of the contractual parties qualifies as a consumer. [1100]Nevertheless, in instances where a particular legal matter is not addressed by the SrCPA, the provisions of the OA find their application[1101] provided that they do not undermine the level of consumer protection afforded by the SrCPA.[1102]

In connection to contractual guarantees, it should be mentioned that the OA also addresses the warranty for the proper functioning of the goods (Art. 501-507), with its scope limited to the category of technical goods.[1103] Given that the SrCPA is *lex specialis* in consumer matters, its provisions apply to guarantees issued to the consumer. However, if, in a specific case, the protection offered by the OA proves more beneficial to the consumer's position than that of the SrCPA, the consumer should not be hindered from invoking remedies provided by the OA.[1104]

8.2. Definitions

The SrCPA provides essential definitions crucial to consumer sales law. First, the consumer is defined as any natural person who acquires goods or services on the market for purposes unrelated to his/her business or other commercial activity.[1105] This definition, mirroring Art. 1, Sec. 2 (a) of Directive 1999/44/EC, entails simultaneously fulfilling two conditions. First, only natural persons can be considered consumers, excluding legal persons. Additionally, a natural person must acquire goods or services for purposes falling outside his/her professional activity. It may be stated that the guidance provided by the CJEU in Faber case that the national court shall independently verify whether a buyer qualifies as a consumer is applicable also in Serbian law. The Serbian legal theory suggested introducing a presumption that each natural person acquires goods or services for purposes other than his/her professional activity, consequently acting in the capacity of a consumer.[1106]

Furthermore, the Serbian legislator defines the trader as any legal person, entrepreneur, or natural person acting on the market within his/her professional or other commercial

[1100] Jokanović and Dudás, 2022, p. 27.
[1101] SrCPA, Art. 3, Sec. 7.
[1102] Karanikić Mirić 2011. 177; Dudás 2020, 1059; Dudás, 2021, p. 225.
[1103] SrOA, Art. 501.
[1104] Jovičić, 2018, 720.
[1105] SrCPA, Art. 5, Sec. 1 (1).
[1106] Karanikić Mirić, 2010, p. 132.

activity. This notion also encompasses individuals acting on behalf or for the account of the trader.[1107] Notably, the seller is a trader with whom the consumer concluded the sales contract.[1108] Moreover, the indication provided by the CJEU in the Wathelet case that the notion of seller comprises "a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual"[1109] should also be relevant in Serbian law.

Unlike Directive 1999/44/EC, the SrCPA contains the definition of a consumer sales contract. Namely, for transactions involving consumer goods, it is delineated as any contract by which the seller either transfers or commits to transfer ownership of the goods to the consumer, and in return, the consumer pays or undertakes to pay the stipulated price.[1110]

Finally, goods are any tangible movable items, excluding those sold in an enforcement proceeding or otherwise by authority of law. Notably, water, gas, and electricity are categorized as goods if they are put up for sale in a limited value or set quantity.[1111] Interestingly, while Directive 1999/44/EC uniformly excludes electricity from the definition of goods, the SrCPA considers it as goods when offered for sale in a limited value or set quantity. This indicates that the exclusion of electricity is not unconditional, as it is in the mentioned Directive.

It is noteworthy that even the definition of goods from the previous SrCPA exhibited an essential discrepancy when compared to Directive 1999/44/EC. Water and gas were deemed goods if they were not put up for sale in a limited volume and set quantity.[1112] On the contrary, if water and gas were sold under those conditions, they were not considered goods. Thus, such a legal solution was clearly in contrast with the approach adopted in Directive 1999/44/EC.[1113]

[1107] SrCPA, Art. 5, Sec. 1 (2).
[1108] SrCPA, Art. 5, Sec. 1 (3).
[1109] CJEU, C-149/14, para. 45.
[1110] SrCPA, Art. 5, Sec. 1 (6).
[1111] SrCPA, Art. 5, Sec. 1 (7).
[1112] SrCPA, Art. 5, Sec. 1 (7).
[1113] Jokanović and Dudás, 2022, p. 33.

8.3. Lack of Conformity

The SrCPA established a general obligation of the seller to deliver the goods that conform with the contract.[1114] This statutory provision aligns with Art. 2, Sec. 1 of Directive 1999/44/EC. The Serbian legislator emphasized the autonomy of contractual parties to delineate the specific requirements concerning the goods within their contract. Consequently, any deviation from the stipulated requirements may constitute a lack of conformity.[1115] The focal point resides in the subjective criteria delineated within the consumer sales contract.[1116]

Moreover, the SrCPA, in line with Art. 2, Sec. 2 of Directive 1999/44/EC, establishes a presumption of conformity of delivered goods with the contract under the following conditions:

1) when the goods correspond to the description provided by the seller and possess the qualities of the goods demonstrated by the seller to the consumer as a sample or model;
2) when the goods are suitable for any specific purpose the consumer requires them for, provided that such purpose was known or must have been known to the seller at the time of the conclusion of the contract;
3) when the goods are suitable for the purposes for which goods of the same type are normally used;
4) when the goods exhibit the quality and performance that are normal for goods of the same type and that the consumer can reasonably expect, considering the nature of the goods, and taking into account any public statement on the specific characteristics of the goods made about them by the seller, the producer, or their representatives, particularly in advertising or on labeling.[1117]

It is pivotal to underline that this presumption is rebuttable. Consequently, even if the goods meet the specified conditions in a given case, they may still be deemed non-conforming to the sales contract.[1118] In such instances, the burden of proof rests with the

[1114] SrCPA, Art. 49, Sec. 1.
[1115] Jokanović and Dudás, 2022, p. 33.
[1116] Howells et al., 2018, p. 179.
[1117] SrCPA, Art. 49, Sec. 2.
[1118] Howells et al., 2018, p. 180; Twigg-Flesner, 2008, p. 91.

consumer.[1119] Conversely, the seller can demonstrate the absence of any lack of conformity in the goods, even if the applicable conditions are not fulfilled.[1120] Recital 8 of Directive 1999/44/EC provides a significant indication in this context. Namely, although the conditions included in the presumption of conformity of the delivered goods are cumulative, „if the circumstances of the case render any particular element manifestly inappropriate, the remaining elements of the presumption nevertheless still apply". Thus, the determination of which specific conditions are relevant and apply cumulatively depends on the circumstances of the individual case.[1121] This interpretation seems applicable to the Serbian law, given its alignment with the legal framework from the aforementioned Directive. For example, if the consumer did not specify any particular purpose for the goods at the time of the conclusion of the contract or the seller did not furnish any sample or model to the consumer, these elements of the presumption will not be applicable in that specific instance.

The first requirement of the presumption comprises two distinct cases. The first requires the delivered goods to "comply with the description given by the seller", while the second relates to possessing "the qualities of the goods that the seller has shown to the consumer as a sample or model". It is worth underlining that both the SrCPA and Directive 1999/44/EC explicitly refer to the description provided by the seller. Consequently, the interpretation that the descriptions given by producers are excluded from this requirement[1122] may be deemed acceptable in Serbian law.

It is noteworthy that the second requirement pertaining to the specific purpose of the goods deviates from Directive 1999/44/EC. The European legislator requires that the consumer inform the seller about the particular purpose of the goods at the time of the conclusion of the contract, and the seller must accept it.[1123] Conversely, the SrCPA does not impose such an obligation on the consumer. It is sufficient if the particular purpose was known or must have been known to the seller when the contract was concluded, without specifying how this knowledge was obtained. Consequently, the seller may potentially acquire knowledge

[1119] Karanikić, 2011, p. 180; Afferni, 2022, p. 202.
[1120] Fadda in Mariconda, 2002, p. 1099.
[1121] Afferni, 2022, p. 202.; Vujičić, 2024, pp. 229-230.
[1122] Canavan, 2016, p. 274.
[1123] Howells et al., 2018, p. 181.

of the specific purpose for which the consumer purchases the goods from various sources, not necessarily directly from the consumer.

Additionally, the third aspect of the presumption of conformity addresses the suitability of the goods „for the purposes for which goods of the same type are normally used". The SrCPA does not offer explicit clarification regarding the concept of "normal use". However, an interpretation consistent with Directive 1999/44/EC, where "normally used" focuses "on the manner in which consumers use goods, even if they were not commonly supplied for such a purpose"[1124] appears to be acceptable within the framework of Serbian law.

The fourth case considers the consumer's reasonable expectations concerning „the quality and performance" of the goods, which can be influenced by the nature of the goods and public statements made by the seller, the producer, or their representatives. Concerning the nature of the goods, Directive 1999/44/EC in Recital 8 explicitly indicates that „the quality and performance which the consumer can reasonably expect will depend inter alia on whether the goods are new or second-hand". The legal theory has underscored that the consumer's reasonable expectation concerning quality, as derived from the mentioned Directive, may encompass durability.[1125] This interpretation, advantageous from an environmental protection perspective, appears to be applicable to Serbian law. Furthermore, producers and their representatives, despite not being direct parties to the sales contract, are encompassed in this requirement because consumers often rely on their public statements when deciding to purchase the goods.[1126]

At this stage, it is noteworthy that the Serbian legislator, in accordance with Art. 2, Sec. 4 of Directive 1999/44/EC, permits the seller to be absolved of liability for his/her own public statements, as well as those made by the producer and his/her representative. This exemption from liability applies under the following conditions:

- if the seller neither knew nor could not have known about the statement in question;
- if a correction to the statement was published before the time of the conclusion of the contract;

[1124] Howells et al., 2018, p. 182.
[1125] Howells et al., 2018, p. 183.
[1126] Afferni, 2022, p. 201; Staudenmayer, 2000, p. 552.

- if the consumer's decision to enter into the contract could not have been influenced by the statement.[1127]

The burden of proof lies with the seller, who must demonstrate the existence of at least one of these circumstances to be exempt from liability.[1128]

Finally, implementing Art. 2, Sec. 5 of the mentioned Directive, the Serbian legislator incorporated the so-called „IKEA clause". The seller is held liable for any lack of conformity stemming from improper packaging, incorrect installation, or assembly whether carried out by the seller himself/herself or under his/her direction. Moreover, the seller assumes liability if the incorrect installation or assembly performed independently by the consumer can be traced back to deficiencies in the instructions provided by the seller.[1129]

It is noteworthy that the scope of the seller's liability outlined in this provision of the SrCPA extends beyond that specified in Directive 1999/44/EC. While the Directive solely mentions „incorrect installation" in its English version, the legal theory expands this to encompass both installation and assembly of the goods.[1130] Conversely, the SrCPA broadens liability to include the lack of conformity due the improper packaging, in addition to issues with incorrect installation and assembly. Furthermore, the Serbian legislator does not explicitly mandate that the obligation to perform these activities or services arise from the sales contract. Regarding deficiencies in the instructions, an interpretation considering an average consumer's capacity to install and assemble the goods properly[1131] appears appropriate within the Serbian legal framework. The SrCPA defines the average consumer as „a consumer who is well-informed and reasonably prudent, considering social, cultural, and linguistical peculiarities".[1132]

8.4. The Moment of the Emergence of the Seller's Liability

Transposing Art. 3, Sec. 1 of Directive 1999/44/EC, the Serbian legislator anchored the moment determining the seller's liability to the presence of a lack of conformity at the time of the passing of risk to the consumer, irrespective of the seller's awareness of such

[1127] SrCPA, Art. 50, Sec. 5.
[1128] Jokanović and Dudás, 2022, p. 35.
[1129] SrCPA, Art. 50, Sec. 2.
[1130] Howells et al., 2018, p. 184-185.
[1131] Howells et al., 2018, p. 185.
[1132] SrCPA, Art. 5, Sec. 1 (20).

non-conformity.[1133] It is noteworthy that under Serbian law, the passing of risk typically occurs upon the consumer's taking into possession of the goods, namely, upon their delivery.[1134] The SrCPA specifies that the risk of accidental loss or damage to the goods after their delivery to the consumer or to a third party designated by the consumer, who is not the carrier or shipper, is assumed by the consumer.[1135]

Importantly, the seller's liability is not contingent upon his/her knowledge of the lack of conformity with the sales contract. Moreover, the consumer's legal position is improved by the provision stipulating that the seller's liability extends to instances where the lack of conformity arises after the passing of risk provided that it originated from a cause existing before the delivery.[1136]

The SrCPA further delineates the seller's accountability in cases where the consumer could have easily detected the lack of conformity had the seller asserted that the goods conformed with the sales contract.[1137] However, the Serbian legislator does not specify the required form of the seller's assertion. While a written declaration is typically considered more secure for evidentiary purposes during potential legal proceedings, it appears that an oral statement may suffice for imposing a more stringent liability on the seller. Additionally, it is not clarified whether such statement should be addressed directly to the consumer as a party to the sales contract, or it can be communicated to a broader audience. Nevertheless, it is crucial to note that the underlying intent of this provision, absent from Directive 1999/44/EC, is to hold the seller accountable for the lack of conformity when acting in bad faith.[1138]

The SrCPA exempts the seller from liability when the consumer was aware or could not have been unaware of the lack of conformity at the time of the conclusion of the contract.[1139] This exoneration, mirroring Art. 2, Sec. 3 of the mentioned Directive, assumes that the consumer's awareness of the lack of conformity influenced his/her to enter into the sales contract under the specified conditions or that the seller relied on this

[1133] SrCPA, Art. 50, Sec. 1 (1).
[1134] Karanikić Mirić, 2011, p. 180.
[1135] SrCPA, Art. 48, Sec. 2.
[1136] SrCPA, Art. 50, Sec. 1 (2).
[1137] SrCPA, Art. 50, Sec. 1 (3).
[1138] Jokanović and Dudás, 2022, p. 34.
[1139] SrCPA, Art. 50, Sec. 3.

circumstance.[1140] If the consumer was aware of the defect, which influenced him/her in the decision to purchase the goods, he/she is barred from seeking remedies against the seller. This legal solution may serve as an incentive to sellers to disclose any defect to consumers, as it is regarded as „an encouragement to provide information".[1141]

The interplay of this exemption and the previously mentioned instance, where the seller explicitly asserted conformity of the goods with the sales contract despite an easily detectable defect, requires careful examination. Both provisions hinge on the presumption that the consumer could have been aware of the defect at the moment of the conclusion of the contract given its conspicuous nature. However, it can be argued that the most rational approach would be for the seller's assertion of conformity to override the application of this exemption. Prioritizing the exemption would render such a provision on a more stringent seller's liability redundant, as the circumstance where the consumer could easily detect the defect may, in each case, satisfy the requirement that the consumer could not have been unaware of the lack of conformity, thus absolving the seller, acting *in mala fide*, from liability.

Another instance where the seller is exempted from liability pertains to situations when the lack of conformity arises from materials provided by the consumer.[1142] This provision, in line with Art. 2, Sec. 3 of Directive 1999/44/EC, applies specifically when the goods are to be manufactured by the seller, with the consumer supplying the necessary materials.[1143] Essentially, it pertains to contracts "for the delivery of goods that are the subject of manufacturing".[1144] It is important to highlight that the burden of proof in both cases enabling the seller's exemption from liability lies on the seller, who must demonstrate the existence of at least one of them.[1145]

The mandatory nature of the rules governing the seller's liability for the lack of conformity is underscored by the provision that such liability cannot be restricted or excluded in violation of the requirements of the SrCPA.[1146] It is crucial to highlight that any

[1140] Afferni, 2022, p. 203.
[1141] Twigg-Flesner, 2005, pp. 141-142.
[1142] SrCPA, Art. 50, Sec. 3.
[1143] Howells et al., 2018, p. 184.
[1144] SrCPA, Art. 4, Sec. 3.
[1145] Karanikić, 2011, p. 180; Jokanović and Dudás, 2022, p. 35.
[1146] SrCPA, Art. 50, Sec. 4.

contractual clause or other expression of intent aimed at limiting or denying consumer rights derived from the SrCPA is deemed null and void.[1147]

8.4. Deadline and Burden of Proof

The SrCPA envisages the seller's liability for any lack of conformity of the goods with the contract that arises within two years from the moment of the passing of risk to the consumer.[1148] This provision mirrors Art. 5, Sec. 1 of Directive 1999/44/EC. It is noteworthy that this two-year timeframe pertains to the lack of conformity existing at the moment of the passing of risk, namely, the delivery of goods, and manifesting within the specified two-year period.[1149] As a general principle, the burden of proof lies with the consumer to substantiate the existence of both circumstances.[1150] In this respect, it worth mentioning that the indication of the CJEU in the Faber case that the burden of proof regarding the existence of the lack of conformity rested with the consumer is applicable also to Serbian law.

The CJEU in Faber case upheld that "the onus is, in principle, on the consumer to furnish the evidence that a lack of conformity exists and that the lack of conformity existed at the time when the goods were delivered".[1151] This interpretation holds true within the framework of Serbian law as well.

However, in accordance with Art. 5, Sec. 3 of Directive 1999/44/EC, the Serbian legislator introduced an exception to the general rule, establishing a presumption that any lack of conformity is considered to have existed at the time of the passing of risk to the consumer provided that it manifests within six months from said moment, unless such a presumption contradicts the nature of the goods and the specific lack of conformity in question.[1152] Notably, the concept of the nature of the goods pertains particularly to perishable items.[1153] This presumption is characterized as rebuttable (*praesumptio iuris tantum*) since the burden of proving the absence of any lack of conformity is assigned squarely on the seller.[1154] Consequently, to forestall the consumer from using the available remedies, the

[1147] SrCPA, Art. 3, Sec. 2.
[1148] SrCPA, Art. 52, Sec. 1.
[1149] Staudenmayer, 2000, p. 556.
[1150] Mariconda, 2022, p. 1105; Howells et al., 2018, p. 196; Afferni, 2022, p. 209.
[1151] CJEU, C-497/13, para. 52.
[1152] SrCPA, Art. 52, Sec. 2.
[1153] Staudenmayer, 2000, p. 557.
[1154] SrCPA, Art. 52, Sec. 2.

seller must substantiate that the goods adhered to the terms of the sales contract at the time of delivery.[1155] Notably, the jurisprudence of the CJEU in the Faber case, which elucidated the consumer's obligation to substantiate the presence of the lack of conformity and its occurrence within six months of delivery, alongside the national court's obligation to apply this presumption *ex officio*, should also be relevant in Serbian law.[1156]

Utilizing the opportunity delineated in Art. 6, Sec. 1 (2) of Directive 1999/44/EC, the Serbian legislator permits the contractual parties to establish a reduced timeframe for the seller's liability concerning the lack of conformity in relation to second-hand goods.[1157] Nonetheless, this time period cannot be shorter than one year, a restriction instituted to mitigate the risk of potential abuses.[1158]Any contractual clause prescribing the seller's liability within a duration shorter than one year is rendered null and void.[1159] It is crucial to emphasize that, within the domain of second-hand goods, the reduction of the timeframe is contingent solely upon the voluntary agreement between the contractual parties. Absent such concordance between the seller and consumer, the default regulation mandating the seller's liability for any defect emerging within two years from the moment of the passing of risk to the consumer remains operative.

The SrCPA explicitly stipulates that the specified timeframes do not elapse during the period in which the seller is engaged in rectifying the lack of conformity.[1160] This provision is derived from the guidance provided in Recital 18 of Directive 1999/44/EC, which grants the Member States the authority to implement provisions allowing for suspension or interruption of the limitation period "in the event of repair, replacement or negotiations between seller and consumer with a view to an amicable settlement".

8.5. Consumer Remedies

The hierarchy of remedies specified in Serbian law comprises repair and replacement as the primary options, while adequate price reduction and termination of the contract are secondary remedies.[1161] Moreover, the consumer is entitled to claim compensation for

[1155] Howells et al., 2018, p. 185; Afferni, 2022, p. 210.
[1156] Mišćenić et al., 2021, p. 89.
[1157] SrCPA, Art. 52, Sec. 3.
[1158] Staudenmayer, 2000, p. 561.
[1159] Jokanović and Dudás, 2022, p. 43.
[1160] SrCPA, Art. 52, Sec. 4.
[1161] SrCPA, Art. 51, Sec. 1.

damage incurred due to the lack of conformity, adhering to the general rules of liability for damage.[1162]

The SrCPA provides the consumer with the autonomy to choose between repair and replacement.[1163] Notably, the Serbian legislator did not limit this freedom of choice by compelling the consumer to use the other alternative right in certain situations, as outlined in Art. 3, Sec. 2 of Directive 1999/44/EC. Additionally, the SrCPA requires that any repair or replacement be carried out within a reasonable timeframe, without causing any significant inconvenience to the consumer, and with his/her consent, taking into account the nature of the goods and the intended purpose for which they have been acquired.[1164] It is worth noting that the Serbian lawmaker did not specify the longest possible duration of this reasonable time.

Furthermore, the SrCPA mandates that any repair or replacement must be carried out at no cost to the consumer (free of charge), thereby indicating that all expenditures required to rectify the non-conformity of the goods are to be borne by the seller.[1165] This encompasses specifically the expenses related to labor, materials, taking over, and delivery, as explicitly outlined in the SrCPA. It is worth mentioning that during the preparatory phases for the Bill of the CPA of 2010, there were proposals to incorporate provisions allowing the consumer to have the goods repaired at the seller's expense or to purchase new goods elsewhere if the seller failed to comply with the repair or replacement request. In such scenarios, the seller would have been obligated to promptly reimburse the consumer for the expenses incurred.[1166]

The consumer is entitled to invoke the secondary set of claims under the following conditions:

1) when rectifying the lack of conformity through repair or replacement is not feasible or cannot be accomplished within a reasonable timeframe;
2) when the consumer is unable to exercise the right to repair or replacement, i.e., the seller fails to complete the repair or replacement within a reasonable timeframe;

[1162] SrCPA, Art. 51, Sec. 12.
[1163] SrCPA, Art. 51, Sec. 2.
[1164] SrCPA, Art. 51, Sec. 6.
[1165] SrCPA, Art. 51, Sec. 9.
[1166] Karanikić, 2011, p. 181.

3) when it is not possible to complete the repair or replacement without causing significant inconveniences for the consumer due to the nature of the goods and their purpose or
4) when rectifying the lack of conformity through repair or replacement imposes a disproportionate burden on the seller.[1167]

The concept of disproportionate burden to the seller is to be understood in terms of excessive costs that would arise from performing the repair or replacement, in comparison to the appropriate price reduction or the termination of the contract. This evaluation considers the following factors: the value the goods would have if they conformed with the contract, the significance of the conformity in the specific case, and the feasibility of rectifying the lack of conformity without causing significant inconveniences to the consumer.[1168] This provision resembles to Art. 3, Sec. 3 of Directive 1999/44/EC, which restricts the consumer's liberty to choose between repair and replacement. The Serbian legislator has, however, transformed it into one of the situations allowing the adequate price reduction and the termination of the contract.

The termination of the contract raises the question of whether the consumer is required to grant the seller an additional reasonable timeframe to fulfil his/her contractual obligation, as mandated by the OA.[1169] Notably, the SrCPA remains silent on this matter. It could be argued that subsidiarily applying the OA, implying the obligation of the consumer to grant such an additional reasonable timeframe, might unjustly and significantly diminish the level of consumer protection afforded by the SrCPA. This assertion stems from the premise that the seller had already been provided the opportunity to repair or replace the goods, and either failed to do so or it was not possible.[1170] The termination of the contract is exercised through a unilateral statement from the consumer, consistent with the extrajudicial termination of the contract due to non-performance under the general rules

[1167] SrCPA, Art. 51, Sec. 3.
[1168] SrCPA, Art. 51, Sec. 4.
[1169] Pursuant to Art. 490 of the SrOA, the buyer is obliged to allow the seller a subsequent reasonable time limit to perform the contract. However, it is possible to terminate the contract without granting the subsequent adequate time limit if the seller informed the buyer that he/she will not perform the contract or if the circumstances of the specific case indicate without doubt that the seller will not be able to perform the contract even in the subsequent adequate time limit.
[1170] Dudás and Jokanović, 2023, p. 227.

of Serbian contract law.[1171] Therefore, the consumer should be entitled to terminate the contract through a simple declaration to the seller, without the obligation to provide another opportunity to repair or replace the goods.

Additionally, the hierarchy of consumer remedies undergoes alterations in two distinct cases introduced in Serbian law by the CPA of 2014, which were not addressed within the purview of Directive 1999/44/EC. Specifically, the consumer in entitled to choose between replacing the goods, appropriate price reduction, and terminating the contract, while the repair is permissible solely upon the explicit consent of the consumer, in the following cases:

1) when the same or a different lack of conformity becomes apparent after the first repair;[1172]
2) when the lack of conformity arises within six months of the delivery of the goods to the consumer.[1173]

In essence, within these two contexts, the consumer is entitled to immediately terminate the contract or obtain the appropriate price reduction, without being obliged to previously request repair and replacement. The provision mandating the consumer's explicit consent for repair aims to prevent the seller from unduly imposing the repair.[1174] In practice, particularly concerning technical goods, the seller frequently refuses to replace non-conforming goods and prioritizes repairs over replacement.[1175] Nonetheless, the SrCPA posed a restriction applicable to all instances of the lack of conformity. Specifically, the possibility of the termination of the contract is explicitly excluded when the lack of conformity is minor.[1176]

To exercise any of the mentioned remedies, the consumer is mandated to notify the seller about the lack of conformity by lodging a reclamation/complaint to the seller.[1177] The SrCPA stipulates that the seller is required to assess whether to approve or reject the complaint and notify the consumer of the decision within eight days. If the seller considers

[1171] Mišković, 2016, p. 758
[1172] SrCPA, Art. 51, Sec. 5.
[1173] SrCPA, Art. 51, Sec. 7 and 8.
[1174] The Explanatory Memoranda for the 2014SrCPA, p. 97.
[1175] Mišković, 2016, p. 757
[1176] SrCPA, Art. 51, Sec. 11.
[1177] SrCPA, Art. 55. Sec. 1.

the complaint justified, an obligation emerges to resolve it within 15 days, or 30 days when the contract pertains to technical goods or furniture.[1178] Consequently, the designated timeframe of 15 or 30 days applies to all remedies for addressing non-conformity: repair, replacement, price reduction, or contract termination.[1179]

The Serbian legislator did not use the option from Art. 5, Sec. 2 of Directive 1999/44/EC, allowing for a two-month deadline for the notification, commencing from the discovery of the lack of conformity. Consequently, the consumer retains his/her rights even if he/she does not promptly notify the seller of the lack of conformity upon discovery.[1180] Concerning the content of the complaint, it can be inferred indirectly from the prescribed content of the records of received complaints maintained by the seller that, besides specifying the chosen remedy, it should entail a brief description of the nature of the lack of conformity.[1181]

8.6. Consumer Guarantees

The SrCPA defines a guarantee as any statement where the guarantor makes a promise related to the goods that is legally binding in line with the terms outlined in the statement and related advertising.[1182] In this context, the guarantor is the trader, be it the producer, importer, wholesaler, or retailer, who assumes the obligation to the consumer based on a given guarantee.[1183] Moreover, the SrCPA defines the producer as an entity:

1) that produces or imports finished products, goods, raw materials, or parts within the Republic of Serbia for sale, leasing, or other commercial transactions;
2) that purports to be a producer by affixing his/her name, trademark, or another distinctive sign onto the goods;
3) trader of a product that does not contain information on the producer if he/she failed to inform the person suffering damage in due time of the identity of the producer or the entity from which the product was purchased;

[1178] SrCPA, Art. 55, Sec. 9.
[1179] Dudás and Jokanović, 2023, p. 228.
[1180] Karanikić, 2011, p. 188.
[1181] SrCPA, Art. 55, Sec. 5.
[1182] SrCPA, Art. 53, Sec. 1.
[1183] SrCPA, Art. 5, Sec. 1 (40).

4) trader of an imported product that contains information on the producer but not on the importer.[1184]

Including the producer, importer, wholesaler, and retailer (i.e., seller) as potential guarantors serves the consumer's interest and is necessary for ensuring a comprehensive array of products in the market.[1185] Notably, the scope of application of the guarantee, encompassing these entities, exceeds that of the liability for the lack of conformity, which presupposes the liability of the sole seller towards the consumer. This approach, including the extensive interpretation of the producer, mirrors the legal framework outlined in Directive 1999/44/EC (Art. 1, Sec. 2 (d) and (e)).

However, it is questionable why the Serbian legislator specifically mentions the importer without furnishing a distinct definition for this term, given that the notion of the producer inherently encompasses it. The separate mention of the importer within the definition of the guarantor may seem superfluous and redundant, considering the extensive interpretation of the producer. It could potentially lead to confusion regarding any differentiation between the importer from the definition of the guarantor and the importer integrated into the notion of the producer. Directive 1999/44/EC does not delineate the importer as a separate category, as it is subsumed within the notion of the producer.[1186]

The guarantor's obligation is contingent upon the promise made regarding the goods. Curiously, the SrCPA does not expressly mandate that the promise be provided without extra charge. This omission may represent a fundamental difference compared to the definition of the guarantee outlined in Directive 1999/44/EC.[1187] Specifically, the requirement that the commitment be made "without extra charge" was introduced to distinguish the after-sale services from the guarantee.[1188] Consequently, the rules of the mentioned Directive did not apply if the consumer was asked to pay separately for the guarantee.[1189] It was possible to exclude the application of its provisions by stipulating a

[1184] SrCPA, Art. 5, Sec. 1 (16).
[1185] Jovičić, 2018, 715.
[1186] Wiewiórowska-Domagalska, 2012, 60.
[1187] In Art. 1, Sec. 2 (e) of Directive 1999/44/EC the guarantee is defined as any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising.
[1188] Ninane, 2015, 106; Vujisić, 2016, 705.
[1189] Howells et al., 2018, 198; Wiewiórowska-Domagalska, 2012, 65.

symbolic remuneration to be paid by the consumer to the guarantor.[1190] Although the SrCPA does not explicitly contain the gratuitousness requirement in the definition of a guarantee, the Serbian legal theory suggests an interpretation concordant with the legal framework established by Directive 1999/44/EC.[1191]

Additionally, the SrCPA does not specify the content of the guarantor's promise concerning the consumer's remedies. In contrast, Directive 1999/44/EC mentions the reimbursement of the price paid, repair, replacement, and handling of consumer goods in any other way.[1192] It is noteworthy that the Directive does not establish any hierarchical order among these remedies, nor does it provide any exhaustive list because of the possibility of offering to handle consumer goods in any other way.[1193] Albeit the SrCPA is reticent on this aspect, it may be stated that nothing hinders the guarantor from providing the consumer the same remedies as the ones from Directive 1999/44/EC. However, the guarantor is prohibited from restricting the consumer's rights stemming from the warranty for the lack of conformity.[1194] The SrCPA explicitly envisages that any contractual clause or expression of intent that directly or indirectly waives or restricts the rights of consumers resulting from that law is null and void.[1195]

The guarantor's promise is legally binding in accordance with the terms of his/her statement and related advertising. This aspect of the definition align with Directive 1999/44/EC. However, challenges arise regarding how to reconcile potential conflicts and divergences between the terms of the statement and the associated advertising. The legal theory addressing this issue from the point of view of the mentioned Directive adopted a *contra proferentem* approach, allowing the provision more favourable to the consumer's position to prevail.[1196] Consequently, if the guarantee statement proves less advantageous to the consumer compared to the advertising, the latter is given precedence.[1197] Conversely, some arguments advocate for prioritizing the guarantee statement, asserting

[1190] Ninane, 2015, 106; Stijns, 2005, 164-165;
[1191] Karanikić Mirić, 2011, 182.
[1192] Directive 1999/44/EC, Art. 1, Sec. 2 (e).
[1193] Wiewiórowska-Domagalska, 2012, 76; Vujisić, 2016, 708.
[1194] Jovičić, 2018, 716.
[1195] SrCPA, Art. 3, Sec. 2.
[1196] Howells et al., 2018, 199; Wiewiórowska-Domagalska, 2012, 86.
[1197] Tenreiro in Stijns, 2005, 167.

that it could correct the advertising.[1198] This conflict is resolved by Directive (EU) 2019/771 in favour of a more advantageous solution to the consumer.[1199] The interpretation allowing the *contra proferentem* approach should be supported in Serbian law. It derives from the *favor consumatoris* principle enshrined in the rule that ambiguous provisions of the contract concluded between the trader and the consumer are to be interpreted in the consumer's favour.[1200] The Serbian legal theory emphasized the contractual nature of the guarantee.[1201]

The SrCPA emphasizes the importance of the guarantee card, stipulating that it is a document in written or electronic form or on another durable medium containing all the information from the guarantee presented in a plain, intelligible manner, in an easily comprehensible language.[1202] Interestingly, the Serbian legislator did not specify the language in which the guarantee card should be drafted.[1203]

Moreover, the SrCPA introduced the guarantor's obligation to issue and deliver to the consumer a guarantee card for the given guarantee.[1204] The burden of proof that the guarantee card was delivered to the consumer falls upon the seller.[1205] Consequently, in the event of any dispute concerning the guarantee, the seller is obliged to demonstrate that he/she handed over the guarantee card to the consumer. The obligation to deliver the guarantee card to the consumer represents a novelty in Serbian law since the previous SrCPA subjected its issuance to the consumer's request.[1206]

Concerning the form of the guarantee card, the general rule is that it should be drafted in writing.[1207] However, with the consumer's consent, it can also be issued in electronic form or on other durable medium accessible to the consumer.[1208] It is important to note that the

---

[1198] Malinvaud in Wiewiórowska-Domagalska, 2012, 86.
[1199] Art. 17, Sec. 1 (2) of Directive (EU) 2019/771: If the conditions laid out in the commercial guarantee statement are less advantageous to the consumer than those laid down in the associated advertising, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee, unless, before the conclusion of the contract, the associated advertising was corrected in the same way or in a comparable way to that in which it was made.
[1200] SrCPA, Art. 41.
[1201] Karanikić Mirić, 2011, 183.
[1202] SrCPA, Art. 53, Sec. 2.
[1203] Nikolić, 2018, 62.
[1204] SrCPA, Art. 53, Sec. 4.
[1205] SrCPA, Art. 53, Sec. 6.
[1206] SrCPA, Art. 54, Sec. 3.
[1207] SrCPA, Art. 53, Sec. 3.
[1208] SrCPA, Art. 53, Sec. 5.

SrCPA defines a durable medium as "any instrument that enables the consumer or trader to store data addressed personally to them in a way such data remain accessible for future reference, for a period of time appropriate to the purpose of the data that allows the unchanged reproduction of the stored data, such as paper, e-mail, CD-ROM, DVD, memory card and computer hard disc".[1209] This legal approach from Serbian law differs from Directive 1999/44/EC, which stipulates that, upon the consumer's request, the guarantee shall be made available in writing or featured in another durable medium available and accessible to him/her.[1210] The legal theory interpreted this provision as granting the consumer the right to demand the guarantee be communicated to him/her before the conclusion of the sales contract.[1211] On the other hand, in Serbian law, the guarantee card should be issued and drafted in writing as a general rule in each case, without being contingent on to the consumer's request.

Furthermore, the SrCPA explicitly stipulates that the guarantee card should contain particularly information on the following:

1) the rights at the consumer's disposal under the law, emphasizing that the guarantee does not exclude or affect the consumer's rights stemming from the seller's legal liability for the lack of conformity of the goods with the contract;
2) the name and address of the guarantor;
3) the name and address of the seller if the seller is not a guarantor;
4) the date of the delivery of the goods to the consumer;
5) information identifying the goods (model, type, serial number, etc.);
6) the content of the guarantee, conditions, and procedure for exercising the rights from the guarantee;
7) the duration of the guarantee period and the validity area of the guarantee.[1212]

In addition to including it in the obligatory content of the guarantee card, the Serbian legislator, in a separate provision, reiterates that the guarantee does not exclude or affect the consumer's rights concerning the conformity of the goods with the contract.[1213] It is

[1209] SrCPA, Art. 5, Sec. 1 (44).
[1210] Directive 1999/44/EC, Art. 6, Sec. 3.
[1211] Stijns, 2005, 171.
[1212] SrCPA, Art. 53, Sec. 2.
[1213] SrCPA, Art. 53, Sec. 8.

worth underlining that in Serbian law, the guarantee is voluntary, contingent upon the free will of the guarantor to grant it.[1214] Directive 1999/44/EC neither established the mandatory nature of the guarantee.[1215]

The liability arising from the lack of conformity of the goods with the contract pertains solely to the seller as a party in the consumer sales contract. Despite the existence of a guarantee, the consumer retains the right to demand the rectification of the lack of conformity from the seller, adhering to the rules governing the seller's legal liability. Therefore, the consumer has the freedom to opt for the legal recourse through which to assert the available rights.[1216] It is crucial to note that the consumer's decision to initially pursue the available remedies against the guarantor in concordance with the terms contained in the guarantee cannot be interpreted as his/her waiver of the rights deriving from the seller's legal liability for the lack of conformity.[1217]

Finally, the SrCPA, transposing Art. 6, Sec. 5 of Directive 1999/44/EC, clarifies that a breach of the guarantor's obligations outlined in Art. 53, Sec. 2 does not affect the validity of the guarantee and entitles the consumer to request that the guarantee be honoured in accordance with the given statement.[1218] This rule reflects the ancient civil law principle "*Nemo auditur propriam turpitudinem allegans*".[1219] Furthermore, the Serbian legislator introduced a provision prohibiting the misuse of the word guarantee, not included in Directive 1999/44/EC. Namely, the trader should refrain from using that word and any other expression with the same meaning while concluding a sales contract and presenting related sales advertising if the consumer, based on the sales contract, does not obtain additional rights beyond those arising from the trader's legal liability for the lack of conformity of the goods with the contract or other rights granted by the same law.[1220] It may be stated that this provision is unnecessary[1221] since the SrCPA enumerates

[1214] Jovičić 2018, 718.
[1215] Oughton and Willett, 2002, 323.
[1216] Jovičić, 2018, 719; Stijns, 2005, 170.
[1217] Ninane, 2015,110.
[1218] SrCPA, Art. 53, Sec. 7.
[1219] Karanikić, 2011, 183.
[1220] SrCPA, Art. 54.
[1221] Nikolić, 2018, 62-63.

presenting rights guaranteed to the consumer by the law as a distinctive advantage that the trader offers the consumer in the cases of deceptive trade practice.[1222]

9. CONCLUSION

9.1. Legal Sources

Among the examined countries, the Serbian legal framework is the only one still based on Directive 1999/44/EC, while all the other national legal systems transposed Directive (EU) 2019/771. Regarding the manner of transposition of the mentioned Directives, the analysed national laws may be divided into two groups, considering the legal act in which the relevant legal provisions are (principally) contained. In this sense, it is fundamental to differentiate between the legal acts constituting *sedes materiae* in the civil law domain such as civil codes or obligation acts, and acts particularly devoted to consumer protection or consumer sales. Another differentiation point may be the existence of an potential limitation of the scope of application of the relevant provisions to the consumer context, i.e., to the sales contract concluded between a consumer and a seller.

The transposition of Directive 1999/44/EC occurred within the legal act representing *sedes materiae* in the field of civil law in Croatia (CroOA), Hungary (Hungarian Civil Code), the Czech Republic (CzeCC), Slovakia (SlovCC), and Poland (PoCC). The case of Poland requires an additional specification because the mentioned Directive had been initially transposed into the Act on Special Conditions of Consumer Sale, which was repealed in 2014 by amendments brought to the PoCC. On the other hand, Directive 1999/44/EC was transposed into a special act dedicated to consumer protection in Slovenia (1998/2002 SloCPA) and Serbia (for the first time in the 2010 SrCPA). However, these legal acts had a *lex specialis* role, signifying that the obligations acts (SloOA and SrOA) served as *lex generalis* and were applicable when a specific issue was not governed by the special act.

Concerning the transposition of Directive (EU) 2019/771, the relevant rules stayed within the general civil law act in Croatia (CroOA), the Czech Republic (CzeCC), and Slovakia (SlovCC). The modification expressed by the transposition of the mentioned Directive within a special act occurred in Hungary (Government Decree 373/2021) and Poland

[1222] SrCPA, Art. 20, Sec. 1 (10).

(PoCRA), bringing these two countries into the same group as Slovenia (2022 SloCPA). While the Government Decree and the 2022 SloCPA apply in conjunction with the general civil law act (HuCC and SloOA), the PoCRA expressly states that the provisions of Book Three of Title XI, Section II of the PoCC shall not apply to agreements involving the transfer of ownership of goods to the consumer, including, in particular, sales contracts.

The direct consequence of such separate and special regulation of the issue of non-conformity of the goods has been the limitation of its application exclusively to the sales contracts concluded in the consumer context. In this regard, the Hungarian and Polish legislators made an important conceptual change since, before the transposition of Directive (EU) 2019/771, the provisions on the defective performance of the HuCC and the PoCC applied to each sales contract, with the special indication when a specific provision applied exclusively to consumer sales contracts. This method of regulation has been maintained within Croatian law (CroOA). Conversely, the CzeCC and the SlovCC contain specific subsections or subdivisions on the sale of consumer goods, which apply in conjunction with other, general parts of these legal acts.

9.2. Definitions

In all examined legal frameworks, notwithstanding the circumstance that Serbia did not transpose Directive (EU) 2019/771, the fundamental notions of consumer sales law, *id est* the concepts of consumer, seller/trader, and goods, are defined in the same or similar manner. The consumer is a natural person concluding a sales contract outside his/her business or professional activity. In this regard, the PoCC represents an exception allowing entrepreneurs to be subsumed by such a concept when the link between the legal transaction and their professional activity is only indirect. In addition, the PoCRA explicitly stipulates that, *inter alia*, the provisions dealing with the lack of conformity are applicable in the case of a natural person that concludes a (sales) contract directly connected to his/her business activity, provided that the content of the contract indicates that it is not professional in nature for him/her. The seller/trader as the other contractual party acts within his/her commercial or professional activity. This notion also comprises intermediaries, acting in the name or on behalf of the seller/trader.

The object of the consumer sales contract is tangible movable goods, including water, gas, and electricity where they are put up for sale in a limited volume or a set quantity. The

CzeCC does not explicitly mention when water, gas, and electricity are to be considered goods. Among the analysed countries, the Slovak legislator is the only one who explicitly excludes the application of the provisions dealing with defective performance when the object of the consumer sales contract is living animals or second-hand goods sold at public auction.

Except for the SrCPA, other examined legal frameworks contain the definition of the notions of compatibility, functionality, interoperability, and durability, based on Directive (EU) 2019/771. However, the CzeCC does not expressly define functionality and durability, although using these terms.

9.3. Lack of Conformity

The minimum harmonisation clause of Directive 1999/44/EC rendered possible an important discrepancy between the analysed national legal systems concerning the determination of what constitutes a lack of conformity/defect. In that regard, the CroOA introduced a positive definition of the material defect, establishing each possible instance of its existence (*numerus clausus* approach), which could be applied alternatively. In addition, it allowed the seller to be exonerated from liability for the public statements made by the manufacturer and his/her representative, upon which the consumer relied for the qualities of the goods.

The seller's general obligation to deliver goods that conform to the contract was contained in the 1998/2002 SloCPA, while it still exists in the SrCPA. However, while the Slovenian legislator distinguished particular cases in which the defect was to be deemed material, its Serbian counterpart establishes a (rebuttable) presumption of conformity of goods with the contract. Additionally, the 1998/2002 SloCPA, unlike the SrCPA, did not introduce the possibility for the seller to be released from liability for public statements made by the manufacturer. Similarly, the PoCC defined the defect as non-compliance of the sold goods with the contract, articulating specific instances when the goods were particularly non-conformant with the contract ("a negative catalogue"). The seller could also be exempt from liability for the public statements made by the manufacturer or his/her representative. Moreover, the HuCC defined the lack of conformity as a situation when the seller's performance at the time of delivery did not comply with the quality requirements outlined in the (sales) contract or established by law. The chapter of the HuCC containing the

general rules on the performance of the contract allowed the obligor (seller) to be released from liability for the public statements given by the producer or his/her representative.

Finally, the CzeCC articulated the seller's liability for the defective performance taking into account the specific sales contract or an eventually applicable legal act. It also specified for which features the seller was particularly liable to the consumer, without providing for the possibility of exoneration for the public statements of the manufacturer. The SlovCC also considered the requirements demanded by legal regulations and the specific agreement concluded by the parties.

The amendments brought by the transposition of Directive (EU) 2019/771 introduced significant novelties in all the examined legal frameworks, except for in Serbia. The direct consequence of the maximum harmonization character of the mentioned directive is the introduction of identical legal solutions by national legislators. These modifications can be considered twofold from the point of view of the consumer. First, the definition of the same concept of the lack of conformity/defect became more precise and more exhaustive, delineating, distinguishing, and demanding simultaneous fulfilment of both subjective and objective conformity (explicitly including, among other features, durability) requirements. In that sense, the consumer's position has been strengthened compared to the previous regulations due to the established clarity and the explicitly and undoubtedly required need for the goods to comply with both requirements – those directly connected to the consumer sales contract and those deriving from the consumer's reasonable expectations. Moreover, the expressly and clearly formulated provisions on incorrect installation of the goods (the so-called "IKEA" clause) further benefit the consumer.

However, on the other hand, the introduction of the possibility of exempting the seller from liability for the public statements made by the manufacturer or his/her representative, especially in the national laws where it was not allowed before the transposition of Directive (EU) 2019/771 (Slovenia, the Czech Republic, and Slovakia), is detrimental to the consumer's position. Essentially, the consumer in that case, notwithstanding the circumstance that he/she received defective goods, loses the recourse towards the seller, the only subject towards which the consumer remedies stemming from the lack of conformity can be directed.

9.4. The Moment of the Emergence of the Seller's Liability

Prior to the amendments transposing Directive (EU) 2019/771, the seller's liability was conditioned by the existence of the lack of conformity at the moment of the transfer of risk (Croatia, Slovenia, Poland, and Serbia), take over (the Czech Republic, Slovenia), or delivery (Hungary). It is worth noting that the time of the transfer of risk corresponded also to the moment of the delivery of the goods directly to the consumer.

The consumer's awareness of the defect at the time of the conclusion of the contract exonerated the seller from liability. In this regard, the only exception was the Slovakian regulation where such explicit provision was lacking. Instead, the SlovCC introduced specific rules establishing the seller's exemption from liability in the event of defects deriving from ordinary wear and tear of second-hand goods and defects that did not prevent the intended use of the goods sold at a lower price, provided that the seller informed the consumer about the existence and nature of the deficiency unless it was self-evident from the nature of the sale. The seller was neither liable for the defects for which a lower price was agreed upon.

The seller's knowledge of the lack of conformity was not an exculpatory ground when the seller explicitly stated that the goods were flawless or possessed specific characteristics in Croatian and Slovenian law, while in Serbian law such provision should be interpreted in that manner. On the other hand, the Czech legislator established that the consumer could not use the remedies when he/she caused the defect, while the PoCC did not permit the possibility of excluding the seller's liability if he/she deceitfully concealed the defect from the consumer. Interestingly, the 1998/2002 SloCPA excluded the seller's liability for a minor lack of conformity. It should be emphasized that only the SerCPA transposed the provision exonerating the seller from liability when the defect arises from materials provided by the consumer.

The transposition of Directive (EU) 2019/771, although without introducing radical changes in this regard, improved the consumer's legal position. The favourable impact on the consumer is noticeable in all the examined legal frameworks that transposed the mentioned Directive. The seller's liability is still connected to the existence of the defect at the moment of the transfer of risk (Croatia), delivery (Slovenia, Hungary, Slovakia, Poland), or takeover (the Czech Republic). In Slovenian law, the seller became liable also

for the minor lack of conformity, favouring the consumer. The provisions on the consumer's awareness of the defect exempting the seller from liability, and the seller's explicit statements are retained in Croatian and Slovenian law.

Furthermore, the CzeCC still explicitly states that the consumer cannot use the remedies when he/she causes the defect. As a novelty, the Czech legislator, safeguarding the seller, underlines that the wear and tear of the goods owed to their usual use or, in the case of second-hand goods, corresponding to the extent of their previous use cannot constitute a lack of conformity.

The legal solution that offers sufficient reassurance to the consumer, introduced by the amendments, concerns the possibility of exonerating the seller from liability for the objective conformity criteria. Namely, it requires an active approach from both contractual parties. The consumer's knowledge about a particular deviation of the goods from the objective criteria at the moment of the conclusion of the sales contract must derive from the seller's notification, meaning that the consumer's mere awareness of the defect is no longer sufficient. In addition, the consumer must expressly and separately accept these notified divergences. This manner of exempting the seller from liability is more demanding compared to the previous legal solutions in the analysed countries and offers a higher level of protection for the consumer's interests.

9.5. Deadlines and Burden of Proof

Before the recent amendments, for the seller to be liable, the lack of conformity had to emerge within two years or 24 months (as stated in Czech and Slovak law) of delivery (Croatia, Slovenia, Hungary, and Poland), take over (the Czech Republic and Slovakia), or transfer of the risk (Serbia). The Croatian legislator allowed the contractual parties to agree upon extending the duration of this timeframe. A legal solution particularly advantageous to the consumer was applicable in Czech law where the manifestation of the defect within 24 months was posed as an alternative ground for establishing the seller's liability, independently of whether it existed at the time of takeover.

Moreover, the Slovak law also proved to be more favourable to the consumer by allowing the time limit for the seller's liability to be longer than 24 months when the expiration date was indicated on the goods, their packaging, or the accompanying instructions.

Similarly, in Polish law, the timeframe for the seller's liability followed the designated shelf life of the goods exceeding two years.

Concerning second-hand goods, all the examined legal frameworks, except the Slovenian one, enabled the contractual parties to agree upon reducing the general time limit to one year. In Slovenian law, the one-year-long timeframe was always applicable when the second-hand goods represented the object of the consumer sales contract, independently of the will of the parties. Such a legal solution could be considered less favourable to the consumer's position than in other analysed countries.

All the examined national laws introduced the presumption that the lack of conformity existed at the moment of the transfer of risk, delivery, or takeover when it emerged within a specified time limit. In this regard, the legal solution which was the most beneficial to the consumer was enshrined within Polish law where this presumption found its application if the defect appeared within one year of the delivery of the goods, while in other analysed legal systems it was required that the defect emerged within six months. Based on the case law of the CJEU (Faber case), the consumer was only required to demonstrate that a defect existed and that it emerged within the specified period (six months, or a year in the Polish case).

The transposition of Directive (EU) 2019/771, albeit without introducing significant conceptual changes, had both positive and negative impacts on the consumer, taking into account the specific national law. The time limit during which the defect has to appear conditioning the seller's liability remains two years in all the analysed countries (which transposed this Directive), with the possibility of extension in Croatian law. However, due to the maximum harmonisation character of the mentioned Directive, in Czech law, the existence of the defect at the moment of the takeover became an indispensable element for establishing the seller's liability, which can be interpreted as a reduction of the level of consumer protection compared to the previous regulation. The exclusion of the provision allowing for a longer time limit in the case of indicating the expiration date on the goods, their packaging, or the associated instructions should be interpreted in the same way in Slovak law.

The possibility given to the contractual parties to reduce the time limit to one year in the case of second-hand goods has been retained in all the analysed countries, except in

Poland. In Slovenian law, the reduction became subject to the free will of the parties, which could be considered an improvement of the consumer's position.

Finally, the prolongation of the period of validity of the presumption that the defect existed at the moment of delivery or takeover of the goods certainly benefits the consumer. This period is extended to one year (Croatia, Slovenia, Hungary, the Czech Republic) and two years (Slovakia, Poland). Thus, in Slovak and Polish law the presumption essentially covers the entire period of the seller's liability, notably strengthening the consumer. Taking into account the two-year validity of this presumption, together with abolishing the possibility of reducing the timeframe in the event of second-hand goods and retaining the provision on the designated shelf-life of the goods exceeding two years, it may be inferred that Polish law offers the highest and the most significant level of consumer protection in this regard, among the examined national laws, with a noticeable improvement compared to the previous regulation.

9.6. Goods with digital elements

The amendments of national legislation caused by the transposition of Directive (EU) 2019/771 introduced substantial modifications compared to the previous legislation regarding the goods with digital elements in all the examined countries, excluding Serbia which is still influenced only by Directive 1999/44/EC. In essence, the national legislators introduced specific legal solutions, whose scope of application is restricted exclusively to the sale of goods with digital elements (digital content or digital service). Before the amendments, this type of goods did not have a particular and distinct position compared to other movable and tangible goods regarding the seller's liability for the defect.

It may be inferred that the examined national legal frameworks faithfully transposed the provisions of Directive (EU) 2019/771 concerning the specific legal solutions differentiating between the single (one-off) and continuous supply of digital content and digital service. In that sense, the provisions on the lack of conformity find their application when the goods incorporate or are inter-connected with digital content or digital service in the way that their absence would hinder these goods from performing their functions correctly and the digital content or digital service are to be supplied with the goods under the same sales contract.

It should be emphasized that the consumer's position became more favourable in certain aspects compared to the sales of ordinary movable goods in the case of the continuous supply of digital content or digital service. Namely, the temporal scope of the seller's liability can be longer than two years when the duration of the continuous supply exceeds that period, with the presumption of the existence of the non-conformity covering the entire timeframe.

The seller is additionally required to ensure that the consumer is notified of updates, including security updates, necessary for the goods to maintain compliance with the sales contract and that the consumer receives them. The duration of this obligation is determined by the consumer's reasonable expectation in the case of the one-off supply, while it follows the period of the seller's liability for the continuous supply of digital content or digital service.

9.7. Consumer Remedies

Before the amendments required to transpose Directive (EU) 2019/771, the interrelation between the remedies at the consumer's disposal differed from the one specified in Directive 1999/44/EC in all the examined national laws. The hierarchy of the remedies, differentiating between primary and secondary claims, was not uniform, while the existence of some additional claims in specific countries further deepened the divergence in this regard. However, repair, replacement, price reduction, and termination of the contract, supplemented by compensation for damage, were present in all the analysed countries.

The hierarchy consisting of repair and replacement as primary, and the appropriate price reduction and the termination of the contract as secondary remedies characterized the Czech, Slovak (which differentiated between removable and irremovable defects), Polish, and Serbian law. It is worth noting that there is no unanimity in the Czech legal literature concerning the position of the appropriate price reduction since it was also considered as a distinct primary remedy. In Slovak law, the appropriate price reduction became the primary remedy, substituting replacement, when the goods were sold at a reduced price or the defect affecting second-hand goods was attributable to the seller's fault. Moreover, concerning Serbian law, the termination of the contract and the appropriate price reduction become immediately available to the consumer if the same or a different defect appears

after the first repair (attempt) or if the defect emerges within six months of the delivery of the goods to the consumer. Such a legal solution significantly benefits the consumer at the detriment of the seller.

The Hungarian legislator, before the 2021 amendments to the HuCC, differentiated two additional remedies, enhancing the consumer's position. Namely, the consumer was allowed to repair the defect himself/herself or to have it repaired at the seller's expense, as the subsidiary remedies. The consumer-friendly character of the Hungarian legislation has been amplified by the existence of the concomitant producer's direct liability, in which case the repair was a primary and the replacement a secondary remedy.

Regarding Croatian law, the requirement to grant the seller an additional adequate time limit to perform his/her contractual obligation presupposed the subsidiary character of the termination of the contract. Thus, repair, replacement, and the appropriate price reduction were considered the primary recourses, while the termination of the contract was the sole subsidiary remedy. The subsidiary application of the SloOA implied the existence of the same type of hierarchy within Slovenian law. However, such an affirmation contradicts the case law of the Higher Court in Celje which allowed the consumer to terminate the contract in each case, without being obliged to fulfil the special additional requirement for the exercise of this right, specified by Art. 470, Sec. 1 of the SloOA. Consequently, if this interpretation is accepted, there was no hierarchy of remedies within Slovenian law. In addition, the Supreme Court of Slovenia placed at the consumer's disposal the right to repair the lack of conformity himself/herself at the seller's expense when the seller did not eliminate it within a reasonable additional period.

The consumer's obligation to notify the seller within two months of the discovery of the defect was introduced in Croatian, Slovenian, and Hungarian law. It may be stated that this obligation constituted a counter-balance aiming at inducing discipline in the consumer's behaviour in these national legal systems where the hierarchy of remedies and/or the very number of available claims favoured the consumer, differing from the model introduced by Directive 1999/44/EC.

The transposition of Directive (EU) 2019/771 rendered the correlation between the remedies and their hierarchical order evidently clearer and more precise. Thus, the modifications can be considered substantial in all the examined countries. However, the

reduction in the number of available remedies expressed by abolishing self-repair and the establishment of the perspicuous hierarchical order between them affect in a preponderantly negative manner the consumer's position, benefiting the seller.

In all the analysed legal frameworks repair and replacement are considered primary, while the appropriate price reduction and the termination of the contract are secondary remedies at the consumer's disposal. Only the Slovenian legislator took advantage of the opportunity provided by Art. 3, Sec. 7 of Directive (EU) 2019/771 and allowed the consumer to immediately terminate the contract if the defect appeared in less than 30 days after the delivery of the goods, signifying that the hierarchy of remedies is circumvented in that case. This legal solution, although the time limit for the emergence of the lack of conformity is considerably shorter, can be compared to the one contained within Serbian law.

Albeit in Hungarian law, the consumer is not allowed anymore to repair the defect himself/herself or to have it repaired at the seller's expense, a considerably better level of consumer protection has been preserved by retaining the validity of the provisions governing the direct liability of the producer, with repair as primary and replacement as secondary remedy.

Finally, the obligation imposed on the consumer to inform the seller about the defect within two months of its detection has been retained in Croatian, Slovenian, and Hungarian law. On the other hand, it has been introduced in Slovak law, while the Czech and Polish legislators decided not to implement it.

9.8. Consumer Guarantees

Although the modifications brought by the transposition of Directive (EU) 2019/771, which mainly concern some formal requirements of the commercial guarantee and the introduction of the producer's commercial guarantee of durability, may be considered important, the uniformity in the field of consumer guarantees, unlike in the other analysed areas, has not been achieved. Consequently, its impact on the consumer's position varies, being contingent upon the specific national law. The most significant divergences notably affecting the consumer concern the existence of the mandatory guarantee, the scope of subjects included as guarantors, the explicit mention of the available consumer remedies, and their (potentially hierarchical) interrelation.

The mandatory guarantee has been retained in Slovenian for the so-called "technical goods" and in Hungarian law for certain durable goods. While the guarantor is exclusively the producer in Slovenian law, this obligation is imposed on the seller in Hungarian law. In both legal systems, the hierarchical order between the available remedies consists of three levels, with repair as the primary and replacement as the secondary remedy. The tertiary remedies are the reimbursement of the entire purchase price (in both legal systems) and the appropriate price reduction (only in Slovenian law). Undoubtedly, the mandatory guarantee offers the consumer a much higher reassurance that his/her rights will be realized. Considering the producer's direct (legal) liability for the lack of conformity in Hungarian law, it may be stated that the Hungarian legislator proved to be the most consumer-friendly concerning the probability of fulfilment of his/her demands.

When it comes to the commercial or contractual guarantee, the scope of subjects who could become guarantors explicitly comprises both seller and producer in Croatian, Slovenian, Czech (since the 2022 amendments), Slovak (since the 2024 amendments), and Serbian law. The producer can issue commercial guarantee for durability in Croatian, Slovenian, Hungarian, and Slovakian law, while in Czech law this institute corresponds to the guarantee that the goods will retain their functions and performance during normal use for a certain period. The Polish law specifically mentions the guarantee that concerns the quality of the goods.

The remedies at the consumer's disposal are explicitly mentioned in Croatian, Slovenian, Czech (since the 2022 amendments), Slovak (since the 2024 amendments), and Polish law. However, the obligatory hierarchical order between the consumer remedies regarding the commercial guarantee has been established solely within Croatian law, where repair is a primary, replacement a secondary remedy, while the appropriate price reduction and the termination of the contract are the tertiary claims which can be directed only toward the seller.

9.9. Overall Conclusion

Although the level of significance of the amendments constituting the transposition of Directive (EU) 2019/771 concerning the consumer's position is not identical in all areas covered in this thesis, with the principal definition of the consumer sales law and the existence of a lack of conformity in a certain point in time conditioning the seller's liability

being the least affected by the modifications, it is possible to provide a general conclusion that the new regulation in all the examined legal frameworks (except Serbia) demonstrates a substantial and notable change compared to the regulation based on Directive 1999/44/EC. This kind of change is preponderantly due to the maximum harmonization character of Directive (EU) 2019/771, as opposed to the minimum harmonization character of Directive 1999/44/EC, allowing the national legislators to depart from its provisions, which option was widely used (although not in an identical manner) by the analysed national systems, and provide a higher level of consumer protection. The areas mostly affected by different, novel, or even considerably more precise legal solutions concern the determination of the lack of conformity/defect, the duration of the presumption of non-conformity, and the interrelation and hierarchical order between the remedies available to the consumer. Moreover, the distinct regulation of the goods with digital elements represents a complete novelty, since this type of goods was not covered by special legal provisions prior to the transposition of Directive (EU) 2019/771.

The options provided by the same Directive to introduce different, country-specific legal solutions have been utilised by the examined national legislator, although not consistently and not in the same way. In essence, the national legal system taking advantage of such opportunities in one field (for example, the Slovak and Polish legislators regarding the longer duration of the presumption of non-conformity) refrained from doing so in another field (*exempli causa*, in circumventing the hierarchy of remedies, as done by the Slovenian legislator). Consequently, there is no complete uniformity between the analysed national laws, which influences the position of the consumer in the specific country. The existence of the mandatory guarantee in Hungarian and Slovenian law, as well as the legal producer's liability for the defect in Hungarian law, as a reassurance that the consumer's claim will be fulfilled, additionally undermines the level of similarity between the examined national legal systems. However, although these distinct legal solutions represent an additional burden imposed on the seller or/and producer, they raise the level of consumer protection as the realisation of consumer remedies may be directed toward two different subjects.

The determination of the influence of the recent amendments on the consumer's position at the level of national law varies, being dependent upon the specific area, and without

affecting each examined national framework in the same manner. In that regard, providing more preciseness to the concept of lack of conformity and to the formal requirements connected to the commercial guarantee, prolonging the duration of the presumption of non-conformity, introducing the specific provisions governing goods with digital elements, as well as establishing clearer and proactive requisites for the seller's exemptions from liability regarding the objective requirements for conformity in all the analysed national laws improve the consumer's position compared to the previous regulation. On the other hand, reducing the number of remedies at the consumer's disposal, establishing a clearer, more solid hierarchy between these remedies based on the ancient principle *"Pacta sunt servanda"*, as well as retaining or introducing (as occurred in Slovak law) the consumer's obligation to notify the seller of the defect within two months of its detection as a means of inducing discipline and imposing a higher level of attention to the consumer, constitute novelties which are more favourable to the seller's position. Therefore, the raising and improvement of the level of consumer protection has not been achieved equally in all the examined fields, since the modifications brought to the area of consumer remedies prove to be more beneficial to the seller, as the other party to the consumer sales contract, toward whom these remedies are directed. However, taking into account that the modifications that are more beneficial to the consumer prevail, the overall, general conclusion is that the recent amendments, although not without exceptions, have a positive impact on the consumer's position in the examined national laws. In that regard, they may serve as a point of reference or model to the Serbian legislator while transposing Directive (EU) 2019/771.

BIBLIOGRAPHY

1. Afferni, G. (2022) *La responsabilità del venditore per i difetti materiali del bene*, Napoli: Edizioni Scientifiche Italiane.
2. Baretić, M. (2022) "Novine u Zakonu o obveznim odnosima – odgovornost za materijalne nedostatke stvari" in Miladin, P., Giunio, M. (eds.) *Zbornik susreta pravnika Opatija '22*, Zagreb: Hrvatski savez udruga pravnika u gospodarstvu, pp. 187-206.
3. Beale, H. (2016) "The future of European contract law in the light of the European Commission's proposals for Directives on digital content and online sales", *Revista de Internet, Derecho y Política*, 23/2016, pp. 3-20.
4. Berdnik, M., Žefran, T. (2017) "Uveljavljanje zahtevkov v primeru napake na blagu pri čezmejnem spletnem poslovanju" in Vlahek, A., Damijan, M. (eds.) *Varstvo potrošnikov pri spletnem poslovanju*, Ljubljana: GV Založba, pp. 33-58.
5. Brus, M. (2020) "Zahtevek za odpravo stvarne napake pri potrošniški prodajni pogodbi", *Pravosodni bilten*, 1/2020, pp. 9-25.
6. Canavan, R. (2016) "Contracts of Sale" in Twigg-Flesner, C. (ed.) *Research Handbook on EU Consumer and Contract Law*, Cheltenham (UK), Northampton (USA): Edward Elgar Publishing, pp. 266-286.
7. Cárcamo, R. B. (2022) "Garantías en las ventas de consumo y economía circular: ¿El inicio de un nuevo paradigma?", *Revista de Derecho Civil*, 2022/2, pp. 141-186.
8. Carvalho, J. M. (2020) "Introducción a las Nuevas Directivas sobre Contratos de Compraventa de Bienes y Contenidos o Servicios Digitales" in Amayuelas, E. A., Lapuente, S. C. (eds.) *El derecho privado en el nuevo paradigma digital*, Madrid: Colegio Notarial de Cataluña, pp. 31-48.
9. Ćesić, Z. (2021) *Komentar Zakona o obveznim odnosima – Posebni dio, Glava VIII. Ugovorni obvezni odnosi, knjiga druga*, Rijeka: Libertin naklada.
10. Chvátalová, D. (2015) *Kupní smlouva v soukromém právu*, PhD thesis, Prague: Faculty of Law, Charles University.

11. Compte, R. B. (2024) “From Conformity to Sustainability: Understanding the Implications of Digital Content Modifications under Directives 2019/770 and 771”, *Global Jurist*, 24(1), pp. 25–54.
12. Csitei, B. (2023) “Legal Issues Concerning Defective Performance of Consumer Contracts for the Sale of Goods”, *PRO PUBLICO BONO – Magyar Közigazgatás*, 2023/4, pp. 83-101.
13. De Franceschi, A., Schulze, R. (2023) *“Harmonizing Digital Contract Law – an Introduction”* in De Franceschi, A., Schulze, R. (eds.) *Harmonizing digital contract law: the impact of EU directives 2019/770 and 2019/771 and the regulation of online platforms: a handbook,* Baden-Baden: Nomos; München: C. H. Beck; Oxford: Hart, pp. 1-29.
14. De Franceschi, A. (2019) *La vendita di beni con elementi digitali*, Napoli: Edizioni Scientifiche Italiane.
15. Dębski, B. (2016) “Powrót sprzedaży konsumenckiej do Kodeksu cywilnego – praktyczne implikacje i teoretyczne problemy", *Palestra*, 5/2016, pp. 76-81.
16. Dudás, A. (2014) “O (konačno) novom Građanskom zakoniku Mađarske iz 2013. godine“, *Zbornik Matice srpske za društvene nauke*, 2/2014, pp. 337-346.
17. Dudás, A. (2020) “Osvrt na regulativu saobraznosti i garancije u mađarskom pravu – primer transpozicije Direktive 1999/44/EZ u opšta pravila ugovornog prava”, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 3/2020, pp. 1043–1064.
18. Dudás, A. (2021) “Neposredna odgovornost proizvođača za nesaobraznost proizvoda u srpskom i evropskom pravu”, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 3/2021, pp. 931-956;
19. Dudás, A., Hulmák, M., Zimnioková, M., Menyhárd, A., Stec, P., Veress, E., Hlušák, M. (2022) “Illegal and Immoral Contracts. Usury. Good Faith in Contract Law” in Veress, E. (ed.) *Contract Law in East Central Europe*, Miskolc-Budapest: Central European Academic Publishing, pp. 175-218.
20. Dudás, A., Jokanović, I. (2023) “The Hierarchy of Consumer Rights in the Event of a Lack of Conformity of the Goods in Slovenian, Croatian and Serbian Law“, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 1/2023, p. 209-234.

21. Ebers, M., Janssen, A., Meyer, O. (2009) “Comparative Report“ in Ebers, M., Janssen, A., Meyer, O. (eds.) *European Perspectives on Producers’ Liability: Direct Producers’ Liability for Non-conformity and the Sellers’ Right of Redress,* Munich: Sellier. European Law Publishers. pp. 3-73.
22. Fazekas, J. (2022) “A fogyasztóvédelmi jog digitális transzformációjának újabb eredményei - avagy az áruk, a digitális tartalmak és a digitális szolgáltatások hibás teljesítéséről szóló irányelvek és transzpozíciójuk“, *Jog-Állam-Politika,* Special Issue, pp. 121-130.
23. Fazekas, J., Sós, G. (2009) “The Implementation of the Directive 99/44 into Hungarian Law and the Legal Institution of the Direct Producers’ Liability” in Ebers, M., Janssen, A., Meyer, O. (eds.) *European Perspectives on Producers’ Liability: Direct Producers’ Liability for Non-conformity and the Sellers’ Right of Redress*, Munich: Sellier. European Law Publishers. pp. 353-370.
24. Fézer, T., Hajnal, Zs. (2020) “Regulation and Jurisdiction Regarding Issues of Consumer Sales in Hungary” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices*: *Czechia, Hungary, Poland, Romania, Slovakia,* Debrecen: University of Debrecen, Faculty of Law and Political Studies, pp. 24-41.
25. Fiala, J., Selucká, M. (2008) “Delimitation of Consumer Protection in Czech Law in the Context of the European Consumer Acquis”, *Legal Studies and Practice Journal Research Revue*, 3/2008, pp. 241-246.
26. Fuglinszky, Á, (2023) “Hungary“ in De Franceschi, A., Schulze, R. (eds.) *Harmonizing Digital Contract Law: the Impact of EU Directives 2019/770 and 2019/771 and the Regulation of Online Platforms : a Handbook,* Baden-Baden: Nomos; München: C. H. Beck; Oxford: Hart, pp. 319-356.
27. Fuglinszky, Á. (2019) “Applied Comparative Law in Central Europe”, *Journal of International and Comparative Law,* 6 (2), 2019, pp. 245-272.
28. Garnowski, K. (2024) “Impact of the implementation of Directive 2019/771 (SDG) on the consistency of civil law regulations regarding seller’s liability towards consumers and other buyers for the defectiveness of goods”, *Studia prawnicze kul,* 1 (97), pp. 53-69.

29. Gorenc, V., Pešutić, A., Belanić, L., Momčinović, H., Perkušić, A., Slakoper, Z., Vukelić, M., Vukmir, B. (2021) *Komentar Zakona o obveznim odnosima*, Zagreb: Narodne novine.
30. Gsell, B. (2020) "Time limits of remedies under Directives (EU) 2019/770 and (EU) 2019/771 with particular regard to hidden defects" in Amayuelas, E. A., Lapuente, S. C. (eds.) *El derecho privado en el nuevo paradigma digital*, Madrid: Colegio Notarial de Cataluña, pp. 101-118.
31. Hajnal, Zs. (2022) "The Emergence of Member States' Characteristics in European and National Consumer Law" in Osztovits, A., Bóka, J. (eds.) *The Policies of the European Union from a Central European Perspective*. Miskolc–Budapest: Central European Academic Publishing. pp. 173–195.
32. Hejbudzski, M. (2018) "The Importance of the Directive 2011/83/EU for the Transposition of the Directive 1999/44/EC into the Polish Law in the Field of the Seller's Liability for Physical Defects of Goods", *International and Comparative Law Review*, 18/1, pp. 217-230.
33. Howells, G. Twigg-Flessner, C., Wilhelmsson, T. (2019) *Rethinking EU Consumer Law*, London and New York: Routledge, Taylor & Francis Group.
34. Hrádek, J. (2020) "Regulation and Jurisdiction Regarding Issues of Consumer Sales Law in Czechia" in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, pp. 9-23.
35. Hrádek, J. (2023) "the Czech Republic" in De Franceschi, A., Schulze, R. (eds.) *Harmonizing Digital Contract Law: the Impact of EU Directives 2019/770 and 2019/771 and the Regulation of Online Platforms : a Handbook*, Baden-Baden: Nomos; München: C. H. Beck; Oxford: Hart, pp. 167-190.
36. Jagielska, M. (2020) "Regulation and Jurisdiction Regarding Issues of Consumer Sales Law in Poland" in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, pp. 42-52.

37. Jansen, S. (2014) “Price Reduction as a Consumer Sales Remedy and the Powers of National Courts: Duarte Hueros (case note)”, *Common Market Law Review*, 3/2014, pp. 975–991.
38. Jokanović, I., Dudás, A. (2022) “Legal Position of the Consumer in the Event of a Lack of Conformity of the Goods in Croatian and Serbian Law”, *Acta Universitatis Sapientiae Legal Studies*, 1/2022, pp. 23-45.
39. Jovičić, K. (2018) „Garancija prodavca u Zakonu o obligacionim odnosima i Zakonu o zaštiti potrošača“, *Pravo i privreda*, 4-6/2018, pp. 711-721.
40. Jurczyński, P. (2013) “Comments on the Implementation of the Sale of Goods Directive into the Polish Legal Order“, *Studia Iuridica Lublinensia*, 32(5), pp. 181-194.
41. Kalamees, P. (2021) “Goods with Digital Elements and the Seller’s Updating Obligation“, JIPITEC, 2/2021, pp. 131-142.
42. Kanceljak, I. (2023) “Transposition of Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods in Croatian private law” in Santaolalla Montoya, C. (ed.) *Consumer Protection in European Union: Challenges and Opportunities*, Luxembourg: Publications Office of the European Union, pp. 92-104.
43. Karanikić Mirić, M. (2010) „Šta je novo u srpskom (ugovornom) potrošačkom pravu“ in Lilić, S. (ed.) *Pravni kapacitet Srbije za evropske integracije*, Book V, Belgrade: Pravni fakultet Univerziteta u Beogradu, pp. 127-146.
44. Karanikić Mirić, M. (2011) „Usklađenost srpskog potrošačkog prava sa Direktivom 99/44/EZ o prodaju robe široke potrošnje i pratećim garancijama“ in Mitrović, D. M. (ed.) *Perspektive implementacije evropskih standarda u pravni sistem Srbije*, Beograd: Pravni fakultet Univerziteta u Beogradu, pp. 173-191.
45. Kovač, M. (2012) „Garancija za brehibno delovanje: obvezna in/ali prostovoljna”, *Pravni letopis*, 1/2012, pp. 105-118.
46. Križan, M., Löwy, A., Budjač, M. (2019) “ABA Kúpna a zámenná zmluva § 588-627” in Števček, M., a kol. *Občiansky zákonník 2: komentár*, Prague: C.H. Beck, pp. 2226-2329.

47. Lilleholt, K. (2019) “A Half-built House? The New Consumer Sales Directive Assessed as Contract Law”, *Juridica International*, 28/2019, pp. 3–8.
48. Loos, M. (2016) “European Harmonisation of Online and Distance Selling of Goods and the Supply of Digital Content “, Amsterdam Law School Research Paper No. 2016-27, *Centre for the Study of European Contract Law Working Paper Series No. 2016-08*.
49. Mariconda, V. (2002) “Conformità al contratto dei beni di consumo e onere della prova”, *Corriere Giuridico*, 8/2002, pp. 1095-1111.
50. Marín López, M. J. (2019) “La Directiva 2019/771/UE, de 20 de mayo, sobre contratos de compraventa de bienes con consumidores”, *Centro de Estudios de Consumo*, pp. 1-19.
51. Meškić, Z., Zdraveva, N., Dabović-Anastasovska, J., Gavrilović, N. (2010) “Consumer Sales Directive (99/44)” in *Civil Law Forum for South East Europe – Volume III – VII EU Consumer Contract Law*, Beograd, Zagreb: Jugoslovenski pregled, Denona d.o.o., pp. 518-550.
52. Mészáros, P. (2020) “Regulation and Jurisdiction Regarding Unfair Commercial Practices in Slovakia” in Hajnal, Zs. (ed.) *Comparative Analysis of National Jurisdictions and Regulations Regarding Consumer Sales and Unfair Commercial Practices - Czechia, Hungary, Poland, Romania, Slovakia*, Budapest: Editura C.H. Beck, pp. 75-84.
53. Michel, A. (2016) “La directive 1999/44/CE sur la garantie des biens de consommation: un remède efficace contre l'obsolescence programmée?“, *Revue Européenne de Droit de la Consommation*; 2016/2, pp. 207–236.
54. Micklitz, H.-W., Kas, B. (2014) “Overview of Cases before the CJEU on European Consumer Contract Law (2008–2013) – Part I”, *European Review of Contract Law*, 1/2014, pp. 1–63.
55. Micklitz, H.-W., Reich, N. (2014) “Sale of Consumer Goods” in Reich, N., Micklitz, H.-W., Rott, P., Tonner, K. (eds.) *European Consumer Law*, Cambridge, Antwerp, Portland: Intersentia, 2nd Edition, pp. 165-195.

56. Mišćenić, E. (2014) "Consumer Protection Law" in Josipović, T. (ed.) *Introduction to the Law of Croatia*, Alphen aan den Rijn: Kluwer Law International, pp. 279-290.
57. Mišćenić, E. (2023) "Croatia" in De Franceschi, A., Schulze, R. (eds.) *Harmonizing Digital Contract Law: the Impact of EU Directives 2019/770 and 2019/771 and the Regulation of Online Platforms: a Handbook,* Baden-Baden: Nomos; München: C. H. Beck; Oxford: Hart, pp. 117-138.
58. Mišćenić, E., Kunda, I., Petrić, S., Butorac Malnar, V., Vrbljanac, D., Winkler, S. (2021) *Europsko privatno pravo–posebni dio*, Zagreb: Školska knjiga.
59. Mišković, M. (2016) "Ostvarivanje prava potrošača po osnovu nesaobraznosti robe", *Pravo i privreda*, 7-9/2016, pp. 751–772.
60. Možina, D. (2008) "Harmonisation of Private Law in Europe and the Development of Private Law in Slovenia", *Juridica International,* XIV/2008, pp. 173–180.
61. Možina, D. (2009) "Garancija za brezhibno delovanje in odgovornost za stvarne napake", *Zbornik znanstvenih razprav*, 69/2009, pp. 143-169.
62. Možina, D. (2011) "Obvezna garancija za brezhibno delovanje in varstvo kupca v evropskem pravu", *Podjetje i delo,* 1/2011, pp. 38-48.
63. Možina, D. (2012) "Pravice kupca na podlagi stvarne napake pri prodajni pogodbi", *Pravni letopis,* 1/2012, pp. 85-104.
64. Možina, D. (2023) „Potrošniška prodajna pogodba in pogodba o dobavi digitalne vsebine in digitalnih storitev: prenos direktiv 2019/771 in 2019/770 v slovensko pravo", *Pravni letopis,* 2023-2, pp. 9-37.
65. Možina, D., Renko, J. (2023) "Slovenia" in De Franceschi, A., Schulze, R. (eds.). *Harmonizing digital contract law: the impact of EU directives 2019/770 and 2019/771 and the regulation of online platforms: a handbook*, Baden-Baden: Nomos; München: C. H. Beck; Oxford: Hart, pp. 605-624.
66. Muñoz Rodrigo, G, (2022) "Algunas cuestiones sobre la transposición de la Directiva 2019/771. 20 mayo 2019, relativa a determinados aspectos de los contratos de compraventa de bienes", *Actualidad Juridica Iberoamericana*, 16/2022, pp. 1288–1313.

67. Namysłowska, M., Jabłonowska, A., Wiaderek, F. (2021) “Implementation of Digital Content Directive in Poland: A fast ride on a tandem bike against the traffic”, *JIPITEC*, 12/2021, pp. 241-248.
68. Nikolić, Đ. (2018) „Garancija i neke kontroverze u vezi sa uređenjem garancije u aktuelnom srpskom pravu“, *Zbornik radova Pravnog fakulteta u Nišu*, 81/2019, pp. 51-68.
69. Nikšić, S. (2022) „Odgovornost za nedostatke kod ugovora o kupoprodaji stvari s digitalnimelementima“ , *Anali Pravnog fakulteta u Beogradu*, 70/2022, Poseban broj u čast profesora Mihaila Konstantinovića, pp. 505–533.
70. Ninane, Y. (2015) “Le défaut de la chose vendue selon le régime de la garantie des biens de consommation” in Delforge, C., van Zuylen, J. (eds.) *Les défauts de la chose. Responsabilités contractuelle et extracontractuelle,* Limal: Anthemis, pp. 33-115.
71. Ocepek, M. (2022) “Stvarne napake v luči ciljev krožnega gospodarstva“ in Weingerl, P. (ed.) *Pravna ureditev varstva potrošnikov: učinkovito uveljavljanje pravic v luči ciljev krožnega gospodarstva*, Maribor: Pravna fakulta, Univerza v Mariboru, pp. 137-188.
72. Ostrowski, H. “New regulations on the sale and supply of digital services and digital content in consumer turnover (I)”, *International Law Quarterly*, 3/2023, pp. 86-110.
73. Oughton, D., Willett, C. (2002) “Quality Regulation in European Private Law”, *Journal of Consumer Policy*, 25/2002, pp. 299-328;
74. Patti, F. P. (2016) “Tutela effettiva del consumatore nella vendita: il caso “Faber”“, *La nuova giurisprudenza civile commentata*, 1/2016, pp. 10–23.
75. Petrić, S. (2007) „Odgovornost za materijalne nedostatke stvari prema novom Zakonu o obveznim odnosima“, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 1/2007, pp. 187-128.
76. Petrov, J., Výtisk, M., Beran, V. (2017) *Občanský zákoník: komentář,*1. Vydání, Prague: Beck.
77. Pipková, P. J. (2014) “Risk of Loss and Its Passing to the Buyer under the New Civil Code in Comparison with CISG”, *ELTE Law Journal*, 2/2014, pp. 131-141.

78. Południak-Gierz, K. (2022) *The impact of the provisions of Directives 2019/770 and 2019/771 on warranty on the level of consumer protection provided for in the Polish Civil Code. Implementation of consumer directives into the Polish legal system on the example of directives 2019/770 and 2019/771,* Warszawa: Instytut Wymiaru Sprawiedliwości.
79. Povlakić, M. (2012) „Odgovornost za materijalne nedostatke/nesaobraznost robe u kupo-prodajnim ugovorima u zemljama jugoistočne Evrope u poređenju sa rješenjima evropskog prava“ in Nuni, A. et al. (eds.) *Forum za građansko pravo za jugo-istočnu Evropu, Book II*, Skoplje: Centar CEELS-a, pp. 57-72.
80. Romanò, S. (2020) "La riduzione del prezzo e la risoluzione del contratto nella Direttiva 2019/771/UE", in dalla Massara, T. (ed.) *La vendita di beni mobili*, Pisa: Pacini Editore, pp. 355-359.
81. Sagasti Aurrekoetxea, J. (2006) "El régimen de garantías en la venta de bienes de consumo", *Revista Crítica de Derecho Inmobiliario*, 695/2006, pp. 987-1048.
82. Sartoris, C. (2020) "La risoluzione della vendita di beni di consumo nella dir. n. 771/2019 UE", *La nuova giurisprudenza civile commentata*, 3/2020, pp. 702–713.
83. Schwencer, I. (2014) "Regional and Global Unification of Contract Law" in Keyes, M., Wilson, T. (eds.) *Codifying Contract Law – International and Consumer Law Perspectives*, Farnham: Ashgate, 2014, pp. 39-55.
84. Slakoper, Z., Nikšić, S. (2022) „Novo uređenje odgovornosti za materijalne nedostatke u hrvatskom obveznom pravu“, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 2/2022, pp. 531-558.
85. Słotwiński, S. (2022) "Ochrona konsumencka osób fizycznych prowadzących działalność gospodarczą lub zawodową : uwagi na tle wyroku Sądu Najwyższego z dnia 10 maja 2017 r., sygn. I CSK 477/161", *Przegląd Ustawodawstwa Gospodarczego*, 5/2018, pp. 19-23.
86. Staudenmayer, D. (2000) "The Directive on the Sale of Consumer Goods and Associated Guarantees – a Milestone in the European Consumer and Private Law", *European Review of Private Law*, 4/2000, pp. 547-564.

87. Števček, M., Dulak, A., Bajánková, J., Fečík, M., Sedlačko, F., Tomašovič, M., a kol. (2019*) Občiansky zákonník I a II. zväzok. Komentár*, 2. Vydanie, Bratislava: C.H. Beck SK.
88. Stijns, S. (2005) "Les garanties commerciales et l'action récursoire du vendeur final dans la vente au consommateur" in Biquet-Mathieu, C., Wéry, P. (eds.) *La nouvelle garantie des biens de consommation et son environnement legal,* Brugge: La Charte, pp. 161-183.
89. Strojan, L. (2023) "Vrste i značilnosti garancij v ZvPot-1", *Pravni letopis*, 2/2023, pp. 71-94.
90. Szilágyi, F. (2021) "The Implementation of Directives 2019/770 and 2019/771 in Hungary", *Journal of European Consumer and Market Law*, 6/2021, pp. 267-272.
91. Tichý, L. (2014) "Kupní smlouva a spotřebitelská kupní smlouva, včetně odpovědnosti za vady", Bulletin Advokacie (Online: http://www.bulletin-advokacie.cz/kupni-smlouva-a-spotrebitelska-kupni-smlouva-vcetne-odpovednosti-za-vady) (Accessed on 19 April 2025).
92. Tot, I. (2022) „Poredbenopravni utjecaji na Zakon o obveznim odnosima" in Tot, I., Slakoper, Z. (eds.) *Hrvatsko obvezno pravo u poredbenopravnom kontekstu: Petnaest godina Zakona o obveznim odnosima,* Zagreb: Ekonomski fakultet Sveučilišta u Zagrebu, pp. 3-99.
93. Twigg Flesner, C. (2020) "Conformity of Goods and Digital Content/Digital Services" in Amayuelas, E. A., Lapuente, S. C. (eds.) *El derecho privado en el nuevo paradigma digital*, Madrid: Colegio Notarial de Cataluña, pp. 49-78.
94. Twigg-Flesner, C. (2005) "Information Disclosure about the Quality of Goods – Duty or Encouragement?*"* in Howells, G., Janssen, A., Schulze, R. (eds.) *Information Rights and Obligations – A Challenge for Party Autonomy and Transactional Fairness,* London and New York: Routledge Taylor &. Francis Group, pp. 135-153.
95. Twigg-Flesner, C. (2008) "Consumer Sales Directive" in Schulte-Nölke, H., Twigg-Flesner, C., Ebers, M. (eds.) *EC Consumer Law Compendium – The Consumer Acquis and its Transposition in the Member States*, Munich: Sellier, European Law Publishers, pp. 407-451.

96. Twigg-Flesner, C. (2008) *The Europeanisation of Contract Law,* London and New York: Routledge-Cavendish.
97. Van Gool, E., Michel, A. (2021) "The New Consumer Sales Directive 2019/771 and Sustainable Consumption: A Critical Analysis", *Journal of European Consumer and Market Law,* 4/2021, pp. 136-148.
98. Vanherpe, J. (2020) "White smoke, but smoke nonetheless: some (burning) questions regarding the directives on sale of goods and supply of digital content", *European Review of Private Law*. 2/2020, pp. 251-274.
99. Vékás, L. (2006) "Az új Polgári Törvénykönyv tervezetének néhány elméleti és rendszertani előkérdéséről", *Magyar Jog,* 2006/7, pp. 385-399.
100. Vékás, L. (2021) "Az uniós fogyasztói szerződési jog megújítása és az új irányelvek átültetése", *Magyar Jog,* 2021/2, pp. 65-80.
101. Veress, E., Hulmák, M., Zimnioková, M., Stępkowski, Ł., Dudás, A., Hlušák, M. (2022) "Unilateral Termination of Contracts and Rights of Withdrawal" in Veress, E. (ed.) *Contract Law in East Central Europe*, Miskolc-Budapest: Central European Academic Publishing, pp. 461-503.
102. Vítová, B. (2024) "The Sustainability Concept in the Consumer Purchase Contract – Is the R2R Directive Sustainable Enough?", *International and Comparative Law Review,* 24(2)/2024, pp. 84–105.
103. Vojčík, P., a kolektiv (2009) *Občiansky zákonník - Stručný komentár*, Druhé, doplnené a prepracované vydanie, Bratislava: Iura Edition s.r.o.
104. Vujičić, J. (2023) "Remedies for Lack of Conformity of the Goods in the Consumer Law of the European Union", *Review of European Law*, 25/2023, pp. 73-89.
105. Vujičić, J. (2024) "Od subjektivnih ka objektivnim zahtevima u pogledu saobraznosti robe u potrošačkom pravu EU", *Zbornik radova Pravnog fakulteta u Novom Sadu,* 1/2024, pp. 223-247.
106. Vujisić, D. (2016) „Potrošački ugovori i garancija za ispravno funkcionisanje stvari", *Pravo i privreda,* 7-9/2016, pp. 695-712.
107. Weatherill, S. (2005) *EU Consumer Law and Policy*, Cheltenham: Edward Elgan Publishing Limited.

108. Weingerl, P. (2024) "Consumer Contract Law and the Sustainability Goals in Slovenia: Any Room for Improvement?", *Zbornik Pravnog fakulteta u Zagrebu*, 5-6/2024, pp. 943-964.

109. Wiewiórowska-Domagalska, A. (2012) *Consumer Sales Guarantees in the European Union*, Dissertation Thesis: Universiteit Utrecht.

110. Zoll, F. A., Południak-Gierz, K. M., Bańczyk, W. K. (2020) "Sustainable consumption and circular economy in the Directive 2019/771", *Правоведение*, 64(4), pp. 526-550. doi: 10.21638/spbu25.2020.406

111. Zoll, F.A. (2023) *"Poland"* in De Franceschi, A., Schulze, R. (eds.) *Harmonizing digital contract law: the impact of EU directives 2019/770 and 2019/771 and the regulation of online platforms: a handbook*, Baden-Baden: Nomos; München: C. H. Beck; Oxford: Hart, pp. 513-526.

Sources of Law and Case Law

European Union

Amended Proposal for a European Parliament and Council Directive on the Sale of Consumer Goods and Associated Guarantees;

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees;

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council;

Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC;

Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services;

Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828;

Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information;

CJEU Judgment in Case C-497/13;

CJEU Judgment in Case C-149/14;

CJEU Judgment in Case C-404/06;

CJEU Judgment in Joined Cases C-65/09 and C-87/09;

CJEU Judgment in Case C-32/12.

Croatia

Zakon o potvrđivanju Sporazuma o stabilizaciji i pridruživanju između Republike Hrvatske i Europskih zajednica i njihovih država članica [Law on Ratification of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States], Narodne novine [Official Gazette], No. 14/2001;

Zakon o zaštiti potrošača [Consumer Protection Act], Narodne novine [Official Gazette], No. 96/2003;

Zakon o zaštiti potrošača [Consumer Protection Act], Narodne novine [Official Gazette], No. 41/2014;

Zakon o zaštiti potrošača [Consumer Protection Act], Narodne novine [Official Gazette], No. 19/2022, 59/23;

Zakon o obveznim odnosima [Law on Obligations], Narodne novine [Official Gazette], No. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23;

Zakon o određenim aspektima ugovora o isporuci digitalnog sadržaja i digitalnih usluga [Law on Certain Aspects of the Contract on the Delivery of Digital Content and Digital Services], *Narodne novine* [Official Gazette], No. 110/2021.

Slovenia

Zakon o varstvu potrošnikov [Consumer Protection Act], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 20/98, 25/98, 110/02, 14/13 (official consolidated version), 51/04, 98/04 (official consolidated version), 126/07, 86/09, 78/11, 38/14, 19/15 and 31/18;

Zakon o varstvu potrošnikov [Consumer Protection Act], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 130/2022;

Obligacijski zakonik [Obligation Act], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 83/01, 28/06, 40/07, 97/07 (official consolidated version), 64/16, 20/18;

Pravilnik o blagu, za katero se izda garancija za brezhibno delovanje [Regulation on Goods for which a Guarantee for Faultless Operation is Issued], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 142/22;

Pravilnik o blagu, za katero se izda garancija za brezhibno delovanje [Regulation on Goods for which a Guarantee for Faultless Operation is Issued], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 14/12;

The Explanatory Memoranda for the Consumer Protection Act of 2022;

Higher Court in Celje Judgment in Case Cp 74/2015;

Higher Court in Celje Judgment in Case Cp. 133/2015;

Supreme Court of Slovenia Judgment in Case No. II Ips 12/2019;

Supreme Court of Slovenia Judgment in Case No. II Ips 968/93;

Supreme Court of Slovenia Judgment in Case II Ips 1001/2008;

Administrative Court of Slovenia Judgment in Case No. U 978/2005;

Supreme Court of Slovenia Judgment in Case II Ips 1001/2008.

Hungary

2002. évi XXXVI. Törvény a Magyar Köztársaság Polgári Törvénykönyvéről szóló 1959. évi IV. törvény, valamint egyes törvények fogyasztóvédelemmel összefüggő jogharmonizációs célú módosításáról [Act XXXVI of 2002 Amending Act IV of 1959 on the Civil Code of the Republic of Hungary and Certain Acts for the Purpose of Harmonising Legislation in Relation to Consumer Protection];

A Kormány 373/2021. (VI. 30.) Korm. rendelete a fogyasztó és vállalkozás közötti, az áruk adásvételére, valamint a digitális tartalom szolgáltatására és digitális szolgáltatások nyújtására irányuló szerződések részletes szabályairól [Government Decree No. 373/2021 on the Sale of Goods and the Supply of Digital Content Between Consumers and Businesses and on Detailed Rules for Contracts for the Provision of Digital Services];

A Kormány 365/2022. (IX. 23.) Korm. rendelete a fogyasztó és vállalkozás közötti, az áruk adásvételére, valamint a digitális tartalom szolgáltatására és digitális szolgáltatások

nyújtására irányuló szerződések részletes szabályairól szóló 373/2021. (VI. 30.) Korm. rendelet módosításáról [Government Decree No. 365/2022 on Detailed Rules for Contracts Between Consumers and Businesses for the Sale of Goods and the Supply of Digital Content and Digital Services, Amending Government Decree No. 373/2021];
2013. évi CLXXVII. Törvény a Polgári Törvénykönyvről szóló 2013. évi V. törvény hatálybalépésével összefüggő átmeneti és felhatalmazó rendelkezésekről [Act CLXXVII on Transitional and Enabling Provisions Related to the Entry into Force of Act V of 2013 on the Civil Code];
Végső előterjesztői indokolás a fogyasztó és vállalkozás közötti, az áruk adásvételére, valamint a digitális tartalom szolgáltatására és digitális szolgáltatások nyújtására irányuló szerződések részletes szabályairól szóló 373/2021. (VI. 30.) Korm. rendelethez [Final Explanatory Statement to the Government Decree No 373/2021 (June 30) on the Detailed Rules for Contracts Between Consumer and Business for the Sale of Goods, Respectively for the Supply of Digital Content and for the Provision of Digital Services];
2010 évi CXXX törvény a jogalkotásról [Act CXXX of 2010 on Law-Making];
2021. évi LI. Törvény egyes törvényeknek a kézbesítéssel és az igazságügyi ágazati szabályozással összefüggő módosításáról [Act LI of 2021 Amending Certain Laws Relating to Service and Sectoral Judicial Legislation];
1997. évi CLV. törvény a fogyasztóvédelemről [Act CLV of 1997 on Consumer Protection];
45/2014. (II. 26.) Korm. rendelet a fogyasztó és a vállalkozás közötti szerződések részletes szabályairól [Government Decree No. 45/2014 on the Detailed Rules on Contracts Between Consumer and Business];
19/2014. (IV. 29.) NGM rendelet a fogyasztó és vállalkozás közötti szerződés keretében eladott dolgokra vonatkozó szavatossági és jótállási igények intézésének eljárási szabályairól [Government Decree no. 19/2014 on the Procedural Rules for Handling of Warranty and Guarantee Claims for Goods Sold under a Contract between a Consumer and a Business];
151/2003. (IX. 22.) Korm. Rendelet az egyes tartós fogyasztási cikkekre vonatkozó kötelező jótállásró (Government Decree no. 151/2003 (IX. 22.) on the mandatory guarantee for certain durable consumer goods);

93/2024. (IV. 23.) Korm. Rendelet a fogyasztóvédelemmel összefüggő kormányrendeletek módosításáról (Government Decree no. 94/2024 amending government decrees on consumer protection);

181/2003. (XI. 5.) Korm. rendelet a lakásépítéssel kapcsolatos kötelező jótállásról (Government Decree no. 181/2003 (XI. 5.) on a mandatory guarantee associated with the construction of dwellings);

249/2004. (VIII. 27.) Korm. rendelet az egyes javító-karbantartó szolgáltatásokra vonatkozó kötelező jótállásról (Government Decree no. 249/2004 on the mandatory guarantee for certain repair and maintenance services);

10/2024. (VI. 28.) IM rendelet a kötelező jótállás alá tartozó tartós fogyasztási cikkek körének meghatározásáról (Ministerial Decree 10/2024 determining the durable goods covered by a mandatory guarantee);

Decision of the Supreme Court Pfv. 21.825/2012/9;

Opinion of the Civil Division of the Hungarian Supreme Court no. 1/2004.

The Czech Republic

Zákon, kterým se mění zákon č. 40/1964 Sb., občanský zákoník, ve znění pozdějších předpisů, a zákon č. 65/1965 Sb., zákoník práce, ve znění pozdějších předpisů [Act amending Act No. 40/1964 Coll., the Civil Code, as amended, and Act No. 65/1965 Coll., the Labour Code, as amended], Sbírka zákonů [Collection of Laws], No. 57/2002;

Občanský zákoník [Civil Code], Sbírka zákonů [Collection of Laws], No. 19/1964;

Občanský zákoník [Civil Code], Sbírka zákonů [Collection of Laws], No. 89/2012;

Zákon o ochraně spotřebitele [Consumer Protection Act], Sbírka zákonů [Collection of Laws], No. 634/1992;

Zákon, kterým se mění zákon č. 634/1992 Sb., o ochraně spotřebitele, ve znění pozdějších předpisů, a zákon č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů [Act amending Act No. 634/1992 Coll., on consumer protection, as amended, and Act No. 89/2012 Coll., Civil Code, as amended], Sbírka zákonů [Collection of Laws], No. 374/2022;

Explanatory Memoranda to the 2022 Amendments;

Supreme Court of the Czech Republic Judgment in Case 33 Cdo 3744/2015;

Decision of the Supreme Court of the Czech Republic, File No. 33 Cdo 1323/2013;

Decision of the Supreme Court of the Czech Republic, File No. 30 Cdo 68/2007;
Decision of the Supreme Court of the Czech Republic, File No. 25 Cdo 1612/2004.

Slovakia

Zákon z 2. marca 2004,ktorým sa mení a dopĺňa zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov [Act of March 2, 2004 amending Act No. 40/1964 Coll. Civil Code as amended], Zbierka zákonov [Collection of Laws], No. 150/2004 Coll.;
Občiansky zákonník [Civil Code], Zbierka zákonov [Collection of Laws], No. 40/1964;
Zákon o ochrane spotrebiteľa a o zmene zákona Slovenskej národnej rady č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov [Act on Consumer Protection and Amendment to Act of the Slovak National Council No. 372/1990 Coll. on offenses as amended], Zbierka zákonov [Collection of Laws], No. 250/2007;
Zákon o ochrane spotrebiteľa pri predaji tovaru alebo poskytovaní služieb na základe zmluvy uzavretej na diaľku alebo zmluvy uzavretej mimo prevádzkových priestorov predávajúceho a o zmene a doplnení niektorých zákonov [Act on Consumer Protection in the Sale of Goods or Provision of Services Based on a Distance Contract or a Contract Concluded Outside the Seller's Business Premises and on Amendments to Certain Acts], Zbierka zákonov [Collection of Laws], No. 102/2014;
Zákon o ochrane spotrebiteľa a o zmene a doplnení niektorých zákonov [Act on Consumer Protection and Amending Certain Laws], Zbierka zákonov [Collection of Laws], No. 108/2024;
The Explanatory Memoranda for the 2024 Amendments;
Supreme Court of the Slovak Republic Judgment in Case 3MCdo/14/2014;
Supreme Court of the Slovak Republic Judgment in Case 4 Cdo 10/2009.

Poland

Kodeks cywilny [Civil Code], Dziennik Ustaw [Journal of Laws], 1964/16/93;
Ustawa z dnia 27 lipca 2002 r. o szczególnych warunkach sprzedaży konsumenckiej oraz o zmianie Kodeksu cywilnego [Act of July 27, 2002 on Special Conditions of Consumer Sales and Amending the Civil Code], Dziennik Ustaw [Journal of Laws], 2002/141/1176;
Ustawa z dnia 30 maja 2014 r. o prawach konsumenta [Act of May 30, 2014 on Consumer Rights], Dziennik Ustaw [Journal of Laws], 2014/827;

Ustawa z dnia 4 listopada 2022 r. o zmianie ustawy o prawach konsumenta, ustawy - Kodeks cywilny oraz ustawy - Prawo prywatne międzynarodowe [Act of 4 November 2022 amending the Act on Consumer Rights, the Civil Code and the Private International Law Act], *Dziennik Ustaw* [Journal of Laws], 2022/2337;
Reasoning to the 2022 Amendments;
Supreme Court of the Republic of Poland Judgment, Ref. no. I CSK 477/16.

Serbia

Ustav Republike Srbije [Constitution of the Republic of Serbia], Službeni glasnik RS [Official Gazette of the Republic of Serbia] 83/06, 115/2021;
Zakon o potvrđivanju Sporazuma o stabilizaciji i pridruživanju između evropskih zajednica i njihovih država članica, s jedne strane, i Republike Srbije, s druge strane [Act on Ratification of the Stabilisation and Association Agreement between the European Communities and Their Members on One Side and the Republic of Serbia on the Other Side], Službeni glasnik RS [Official Gazette of the Republic of Serbia] 83/08;
Zakon o zaštiti potrošača [Consumer Protection Act], Službeni glasnik RS [Official Gazette of the Republic of Serbia] 73/2010;
Zakon o zaštiti potrošača [Consumer Protection Act]. Službeni glasnik RS [Official Gazette of the Republic of Serbia] 62/2014, 6/2016 – special laws and special law 44/2018;
Zakon o zaštiti potrošača [Consumer Protection Act]. Službeni glasnik RS [Official Gazette of the Republic of Serbia] 88/2021;
The Explanatory Memoranda for the 2014SrCPA.

Related Publications of the Author

Jokanović, I., Dudás, A. (2022) "Legal Position of the Consumer in the Event of a Lack of Conformity of the Goods in Croatian and Serbian Law", *Acta Universitatis Sapientiae Legal Studies*, 1/2022, pp. 23-45.
Jokanović, I., Dudás, A. (2023) "The hierarchy of consumer rights in the event of a lack of conformity of the goods in Slovenian, Croatian, and Serbian law", *Zbornik radova Pravnog fakulteta u Novom Sadu*, 57(1)/2023, pp. 209-234.

Jokanović, I. (2023) “Lack of conformity of the goods with the contract and sustainability issue - Directive (EU) 2019/771”, Central European Academy Law Review, 1(1)/2023, pp. 83-102.
Jokanović, I. (2024) “The Lack of Conformity and Consumer Rights in Hungarian Law”, *Acta Universitatis Sapientiae Legal Studies,* 2/2024 (under publication).
Jokanović, I., Dudás, A. (2024) “Consumer Rights in the Event of Lack of Conformity of the Goods in Czech, Slovak, and Polish Law”, *Central European Journal of Comparative Law,* 2/2024 (under publication).
Jokanović, I. (2025) “Consumer Sales Guarantees in Serbian, Croatian, and Slovenian Law”, *Arhiv za pravne i društvene nauke,* 2/2025 (under publication).