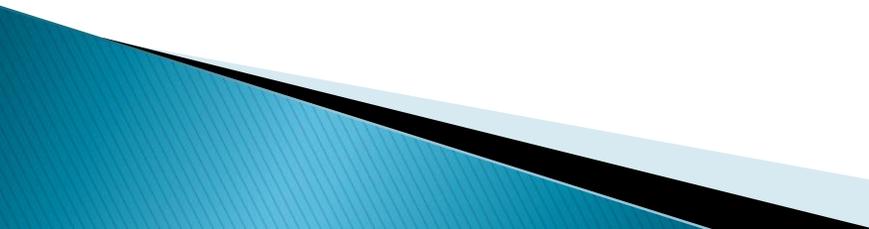


„Life Span Guarantee“ and the Revision of the Legislation on the Sale of Consumer Goods

Prof. Dr. Klaus Tonner, Rostock
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I. Existing law: Sale of Consumer Goods Directive

- ▶ The **lifespan** of technical consumer products is usually **longer than the legal guarantee period** according to the Sale of Consumer Goods Directive, which is two years.
- ▶ The problem is that the **seller is not liable** for any failure of the product, which occurs **later than two years after delivery**, but before the end of the lifespan of the product, which the consumer can reasonably expect.

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- ▶ The existing Sale of Consumer Goods Directive is a **minimum standard Directive**.
- ▶ This is to say that **member states** are entitled to adopt **longer limitation periods** than two years
- ▶ Some member states made use of this possibility.
Examples:
- ▶ **Netherlands**: limitation period is identical with the expected lifetime
- ▶ **Sweden**: three years
- ▶ **Finland**: three years after the buyer is aware of the lack of conformity.

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II. Forthcoming law: Proposal of an Online Sales Directive

- ▶ The proposal of an Online Sales Directive (COM[2015] 635) **maintains the two years period**.
- ▶ But as it proposes a **full harmonising Directive**, member states would **not be allowed** any longer to maintain or adopt **longer periods**.
- ▶ The result was a **discussion** at the level of the European Parliament, whether legal instruments should be adopted to meet the problem of **liability for the lifespan** of consumer products.

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- ▶ Within the first six months after delivery, the seller has to prove, that there was no lack of conformity at the time of delivery (**reversal of the burden of proof**).
- ▶ The proposal of an Online Sales Directive **extends this period to two years**.
- ▶ But the proposal deals with aspects of a legal guarantee only, **not** with a **binding commercial guarantee**.

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III. A model of a Commercial Guarantee

- ▶ The **producer** of a technical product shall be obliged to **inform** the consumer about the minimum life span to be expected of the good and
- ▶ give a **commercial guarantee** for the fitness of the **good** during the period he indicated in his information.
- ▶ **No minimum life span guarantee** shall be required by law; the producer shall be free to inform that he does not provide for a life span guarantee, but he has to inform if he does not.

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1. More than a liability of the seller

- ▶ **Liability of the seller is not sufficient**, even if the limitation period is extended to the life span of the product, because
 - the seller is liable that the product is fit for purpose at the **time of delivery only**.
- ▶ It is not sufficient that the seller has to prove that the good was fit for purpose at the time of delivery. This does not indicate to the consumer, how long the good has to be fit for purpose.

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2. Producer of technical goods

- ▶ A definition of *producer* may refer to the **Product Liability Directive**, which provides for a definition in Art. 3, including the importer.
- ▶ This model would be limited to **technical goods**. A definition of such goods is provided for in the **Ecodesign Directive** and its term of „energy related product“.

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3. No legally binding minimum period

- ▶ A specific life span period can be provided for **specific groups of products** only, not for all technical goods.
- ▶ This must be left to **specific legislation**, e.g. within the frame of the **Ecodesign Directive**, but not within the context of general law as the Sale of Consumer Goods Directive.

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- ▶ If no specific legislation exists the **producer** shall be **free to determine the length** of the life span.
- ▶ He shall be free to guarantee either a certain time or a certain intensity of use (e.g., number of coffees produced by a coffee machine).
- ▶ The producer shall be **“nudged”** by the market to guarantee reasonable standards with regard to the life span.

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4. Information as pre-contractual information duty

- ▶ The consumer must be informed **in the right place at the right time** – this is to say when the consumer needs it **to take an informed transactional decision** (wording of Art. 7 UCPD).
- ▶ The producer has to inform the consumer that the commercial guarantee does **not affect his legal rights against the seller**.
- ▶ Details as to **where** to place the information can be regulated by an amendment of the Labelling Directive (Dir. 2000/13/EC).

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5. Rights following from the guarantee

- ▶ According to existing rules on commercial guarantees the guarantor is obliged to **reimburse the price** paid or to **replace** or **repair** the goods if they do not meet the specifications set out in the guarantee statement. This should also apply to life span statements.

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6. Sanctions

- ▶ If the producer **fails** to inform the consumer about the life span, he should be **liable** to the consumer to the same extent **as if he was the seller**. This shall 'nudge' him to fulfill his information duties.

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7. Limitation period

- ▶ The limitation period (two years) should not affect consumer rights arising from a producer's commercial guarantee.
- ▶ The provision about the limitation period should clarify that the period is a **minimum period**. A longer limitation period could be necessary if member states want to introduce or maintain a life span liability of the seller. Such efforts should not be blocked by European law.

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- ▶ The **limitation period** and the **period for the reversal of the burden of proof** with regard to the conformity of the good at the time of delivery should be **the same**.

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- ▶ Thank you for your attention
- ▶ klaus.tonner@uni-rostock.de