

## Overview Implementation Sales of Goods Directive

On 20 May 2019, the [Sales of Goods Directive](#) was published in the official journal of the European Union. By 1 July 2021 Member States had to adopt and publish the measures necessary to comply with this Directive and they will apply those measures from 1 January 2022.

Several provisions of the Directive allow Member States to deviate from the Directive when transposing it in national legislation. **Members of both Ecommerce Europe and EuroCommerce have provided information about the national transposition of the file. Please find the overview below.**

### Implementation status Member States

Country	Art. 3.5	Art. 10	Art. 10	Art. 11.2	Art. 13.6	Art. 3.7	Art. 12	Art. 17.4	Art. 18
	<i>Exclusion from the scope of second-hand goods and living animals</i>	<i>Length of legal guarantee</i>	<i>Length of legal guarantee for second-hand goods</i>	<i>Burden of proof</i>	<i>Conditions on withdrawal of payment in case of remedies</i>	<i>Specific remedies (short time right to reject and hidden defects)</i>	<i>Notification of the seller about the lack of conformity</i>	<i>Certain conditions for commercial guarantees</i>	<i>Redress in seller – supplier relations</i>
<b>Austria</b>	<ul style="list-style-type: none"> <li>- Living animals are excluded from the scope (other provisions of civil law apply for these case).</li> <li>- Second-hand goods sold at a public auction are not excluded.</li> </ul>	The Austrian implementation law regulates the legal guarantee period in the same way as Art 10 (1) and (2) of the Sales of Goods Directive, both for conventional goods as well as for goods with digital elements. AT has introduced a specific limitation period. The claims for remedies are subsequently prescribed 3 months after the expiry of the legal guarantee period,	<p>For used goods, the legal guarantee period can be shortened to 1 year if this is "negotiated individually with the consumer" (not allowed in general terms and conditions).</p> <p>A specific provision applies to cars: Here, such a reduction is only permitted if more than 1 year has passed since the initial registration of the motor vehicle.</p>	Austria has 1 year time limit with regard to the burden of proof.	No provisions regarding the right to withhold the payment, but a right to withhold payments already exists under general civil law.	No	No	No	<p>If an entrepreneur has given a warranty to a consumer, he may claim the warranty from his predecessor, (given that this is also an entrepreneur even after expiry of the legal guarantee period (2 years) applying to the contract concluded between them).</p> <p>The same applies to earlier traders in the chain. If the trader has fulfilled his legal guarantee</p>

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		which is generally 2 years.							<p>obligations towards the consumer by repair or replacement, he can claim the expenses incurred by him as a result of the improvement or replacement. This requires that he has requested his foreman in the chain to remedy the defect without undue delay after notification of the lack of conformity by the consumer and his foreman has not complied with this request within a reasonable period.</p> <p>The claim is limited to the disadvantages suffered by the transferor as a result of his warranty obligation.</p> <p>Claims shall become time-barred 3 months</p>

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									after the fulfilment of his own warranty obligation, but no later than 5 years after the party liable to recourse has rendered his performance.  Deviating agreements in this redress regime are possible if they are negotiated in detail and do not unfairly disadvantage the trader.
<b>Belgium<sup>1</sup></b>	- N/A	- N/A	- N/A	- N/A	- N/A	- N/A	- N/A	- N/A	- N/A
<b>Cyprus</b>	Exclusion from the scope does not apply to second-hand goods and living animals.	The length of legal guarantee is 2 years.	The liability of the seller is less than 2 years, but it cannot be less than 1 year.	The burden of proof lasts 1 year.	Adopted as it is in the Directive.	Adopted as it is in the Directive.	The seller must notify the lack of conformity within a period of at least 2 months.	The commercial guarantee is mandatory in Greek and optionally in another official language of the EU.	Adopted as it is in the Directive.
<b>Denmark</b>	Horses have been excluded from the scope.	The length of legal guarantee is 2 years.	The length of legal guarantee for second-hand goods is 2 years.	The burden of proof lasts 12 months.	Already implemented in Danish Law prior	Specific remedies shall not apply.	Within reasonable time (2 months always)	The commercial guarantee must be in Danish if	Already possible according to Danish law.

<sup>1</sup> Belgium is running slow on transposition, there is no draft text available yet.

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					to the Sale of Goods Directive.		within reasonable time).	the marketing is in Danish.	
<b>Finland</b>	Second-hand goods sold in a public auction are partially excluded.  Living animals are not excluded.	The length of legal guarantee will remain unchanged in Finland. It will be bound to the expected lifespan of the (class) of product, but at minimum 2 years. (i.e., the system is similar as in the Netherlands).	No specific rules on the length of legal guarantee, but second-hand goods may have shorter expected lifetime than new products in practice (cf. the length of legal guarantee).	12 months' reversed burden of proof. After 12 months it takes very little effort on the consumer's side to shift the burden to the seller's side.  The Member State option is not used.	Withdrawal of payment is possible if the goods are delayed or in lack of conformity, but in the latter case only proportional to the significance of the lack of conformity.  There are no specific conditions laid down in national law.	Hidden defects are covered.  No possibility for short time right to reject apart from the 14 days' period in distance sales. If the consumer decides not to pay, the seller can't enforce the sales but only claim for damages (which is not usually done.)	Notification must be made within a reasonable period, in due time and at least within 2 months' time from the moment the consumer became aware of the non-conformity.	Commercial guarantee is/must be free for the consumer. If they have to pay extra, it's not called guarantee but i.e., an insurance.  The consumer has a right to invoke the guarantee also if its terms don't comply with the law	The seller can make claims towards the persons in previous links of the chain of transaction, but this is limited to situations where the goods are not yet taken into use before they are sold to the consumer, i.e., second-hand goods are not covered.
<b>France<sup>2</sup></b>	The Executive order excludes contracts for:  - The sale of domestic animals, which remain covered by the specific provisions of the rural code, referring under certain conditions to the guarantee	The duration of the legal guarantee of conformity of the goods remains fixed at 2 years with a presumption of anteriority of the defect of 2 years.  See:	See:  - <a href="#">Article L 217-7</a>	Burden of proof in favour of the consumer.  See:  - <a href="#">Article L 217-7</a>  - <a href="#">Articles L 224-25-10</a>  - <a href="#">Article L 224-25-16</a>	See:  - <a href="#">Article L 217-17</a>  - <a href="#">Article L. 224-25-23</a>	The remedies available to the consumer in the event of a lack of conformity of the goods are unchanged: the consumer has the right, as a first remedy, to bring the goods into conformity, either in the form of repair or of	See:  - <a href="#">Articles L 217-8</a> et seq  - <a href="#">Articles L. 224-25-17</a> et seq.	See:  - <a href="#">Article L 216-4</a>  - <a href="#">Articles L 217-21 to L 217-23</a>  - <a href="#">Article L. 224-25-27</a> which refers to articles L. 217- 21 to L. 217-23 of the Code of Criminal Procedure	See:  - <a href="#">Article L. 217-31</a> (recourse action by the professional upstream)  - <a href="#">Article L. 224-25-30</a> (recourse action by the upstream professional)

<sup>2</sup> On September 30, the JORF, [published](#), by executive order, the transposition of the Digital Content Directive (EU) 2019/770 and the Sales of Goods Directive (EU) 2019/771. Text has just been published: Ordonnance n° 2021-1247 du 29 septembre 2021 relative à la garantie légale de conformité pour les biens, les contenus numériques et les services numériques

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	against hidden defects of the <a href="#">civil code</a> .  - Certain second-hand goods (auctions): <a href="#">Article L 217-2</a> and Article L. 321- 11 of the French Commercial Code  - Live animals: <a href="#">Article L 217-2</a> Consumer Code (c.cons) and Article L. 213- 1 of the Rural and Maritime Fishing Code	- <a href="#">Article L 217-3</a> - <a href="#">Article L 224-25-12</a>				replacement of the good and this free of charge, without major inconvenience and within a reasonable period not opening to exceed 30 days. Failing that, he may obtain a reduction in the price or the termination of the contract.  See: - <a href="#">Articles 1641 to 1649 of the Civil Code</a> - <a href="#">Article L 111-1 5°</a> - Articles L 212-1 and 2 of the Code of Criminal Procedure - <a href="#">Article L 217-22</a> - <a href="#">Article L 224-25-29</a>			
<b>Germany</b>	- Living animals are included the scope (but reversal of the burden of proof	According to the new legal situation, the consumer's claims due to a defect become	The limitation period for used goods is reduceable to 1 year if the consumer was	Reversal of the burden of proof is 1 year. But for product with digital elements is 2 years and for	- N/A	No use was made of the opening clause.	No obligation of the consumer to notify the trader of defects.	A guarantee declaration <sup>3</sup> (§ 443) must be written in a simple and	Right of redress to supplier if defect already existed at the

<sup>3</sup> In Germany, lawyers are discussing whether online retailers always have to provide information about the details of the guarantee. the question was submitted to the ECJ

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	<p>for 6 months only)</p> <p>-Second-hand products in the B2C sector can be traded independently of guarantee claims if the customer is sufficiently informed about the end of the guarantee period</p>	<p>time-barred after 2 years from the handover of the goods to the consumer. In this respect, nothing changes in comparison to the previous legal situation. New, however, are 2 suspensions of expiry:</p> <ol style="list-style-type: none"> <li>1. The guarantee period ends at the earliest 4 months after the defect has become apparent (within the 2-year guarantee period).</li> <li>2. After a repair, the guarantee ends at the earliest 2 months after the consumer has received the replaced or repaired goods back.</li> </ol>	<p>made aware of the reduction and explicitly and separately agreed. However, the formal requirements for shortening the guarantee period to 1 year are considerably increased. The agreement of a shortened limitation period for used goods is only effective under the same high requirements as an agreement of a deviating quality of the purchased goods to the detriment of the consumer.</p>	<p>living animals remains 6 months.</p>				<p>understandable manner.</p> <p>It must contain:</p> <ol style="list-style-type: none"> <li>1. the reference to the consumer's statutory rights in the event of defects, that the use of these rights is free of charge, and that these rights are not restricted by the guarantee,</li> <li>2. the name and address of the guarantor,</li> <li>3. the procedure to be followed by the consumer for asserting the guarantee,</li> <li>4. the naming of the item to which the guarantee relates, and</li> <li>5. the provisions of the guarantee, in particular the duration and spatial scope of the guarantee protection.</li> </ol>	<p>time of delivery by the supplier to the seller. The time limit of 5 years after delivery of the item to the trader does not apply anymore.</p>

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								The guarantee declaration must be made available to the consumer on a durable data carrier at the latest at the time the item is delivered.	
<b>Greece<sup>4</sup></b>	- N/A	According to the draft version, the legal guarantee of goods has been raised to 3 years (currently it is 2 years).	- N/A	- N/A	- N/A	- N/A	- N/A	- N/A	- N/A
<b>Italy</b>	Living animals and second-hand goods are included in the scope.	The length of legal guarantee is 2 years.	The length of legal guarantee for second-hand goods is 2 years but parties may agree to reduce it to non-less than 1 year.	The burden of proof lasts 1 year.	Yes, there are conditions on withdrawal of payment in case of remedies.	- N/A	Yes	Yes, there are certain conditions for commercial guarantees. These must be written in Italian language with a font size of at least the same size used for other languages.	The seller has the right of redress.
<b>Lithuania</b>	Second-hand goods and living	The length of legal guarantee is	The length of legal guarantee	The burden of proof lasts 1 year.	The consumer shall have the	Specific remedies shall not apply.	The consumer has to inform the	There are not certain conditions	- N/A

<sup>4</sup> The Government has drafted a law transposing both Directives 2019/771 and 2019/770, which has been approved but it has not been officially published yet. According to the draft version (which was submitted to public consultation), the law creates liability regime for marketplaces when they are “business partners of the sellers” (concept that can be difficult to verify in practice). The Secretariat General for Legal and Parliamentary Affairs is responsible to transpose the EU Directives in national legislation.

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	animals are excluded from the scope.	2 years since the delivery of the good.	for second-hand goods is no less than 1 year if the parties agreed.		right to withhold payment of any outstanding part of the price or a part thereof until the seller has fulfilled the seller's remedy obligations.		seller of a lack of conformity within a period of at least 2 months.	for commercial guarantees.	
<b>Netherlands</b>	Yes, living animals and second-hand goods are excluded from the scope.	There is no specific period for the length of legal guarantee	- N/A	The burden of proof is on the seller.	- N/A	- N/A	- N/A	- N/A	- N/A
<b>Slovenia</b>	Second-hand goods and living animals' exclusion are not included in draft proposal of Consumers Protection Act.	The length of legal guarantee is minimum 1 year for faultless operation of technical goods.	There is minimum 1 month guarantee for faultless operation of second-hand technical goods.	With the seller in the period of 12 months from the date of receipt of goods.	Consumers shall have the right to withdraw payment of any outstanding part of the price until conformity is established. Consumers will have to notify the seller of their intention to do so.	Short time right to reject – 30 days from receipt of goods. 2 years for product defects. Shorter period permitted via agreement between seller and buyer, with minimum 1 year seller's liability for product defects.	Notification of the seller is mandatory, but there are no time limits.	Warranty shall be issued on permanent medium and in Slovenian language.	The seller shall be entitled to a refund of incurred expenses relating to the fulfilment of consumer's claim against the person or persons liable in the chain of transactions.
<b>Spain</b>	- Living animals are excluded from the scope.  - Second-hand goods are included.	The length of legal guarantee is 3 years.	The length of legal guarantee for second-hand goods is no less than 1 year.	There is the presumption of lack of conformity at origin. The burden of proof lasts 2 years.	a) In relation to goods and digital content or services, when the corrective measure consisting of bringing them into	- N/A	- N/A	No obligation of notifying the seller a lack of conformity.	- N/A



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					<p>conformity is impossible or disproportionate in the sense of section 3 of article 118.</p> <p>b) The businessmen have not carried out the repair or replacement of the goods or has not carried out it in accordance with the provisions of paragraphs 5 and 6 of article 118 or has not done so within a reasonable time provided that the consumer or user had requested the reduction of the price or the termination of the contract.</p> <p>c) The businessmen has not put the digital content or services in accordance with the rules set forth</p>				

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					<p>in section 4 of article 118.</p> <p>d) Any lack of conformity appears after the businessmen's attempt to bring the goods or digital content or services into conformity.</p> <p>e) The lack of conformity is so serious that the immediate reduction of the price or the termination of the contract is justified.</p> <p>f) The businessmen have declared, or it is clear from the circumstances, that he will not bring the goods or digital content or services into conformity within a reasonable period of time or without major inconvenience to the consumer or user.</p>				

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Sweden	Contains rules on second-hand goods and living animals.	The length of legal guarantee is 3 years. In the case of the digital elements in a good, special provisions should apply, in certain cases, to the point in time for the assessment of a lack of conformity, the maximum period to give notice of a lack of conformity and the reverse burden of proof.	The length of legal guarantee for second-hand goods is 3 years.	Revised burden of proof for the seller is now proposed to be extended to 1 year (before it was 6 months).	Yes, there are conditions on withdrawal of payment in case of remedies.	There are no specific remedies applicable.	The seller must notify the consumer about the lack of conformity within 2 months.	The new act provides that a buyer can turn to a third party that has provided a guarantee in accordance with what follows from that guarantee. If the producer of the good is the guarantor and they have undertaken to be responsible for the durability of the good for a certain period, the producer shall be liable for repair or replacement of the good.	The seller has the right of redress.

b. Ecommerce Europe and EuroCommerce members were also requested to report on how their country has implemented the provision on updates of goods with embedded digital content.

Country	Status	Potential difficulties
Austria	The provisions have been implemented in the same way as provided for in the Directive. Almost identical in wording to Article 8	<p>In general: Retailers usually do not have the know-how or technical documentation to create updates themselves, therefore retailers are entirely dependent on the actions of the manufacturing company.</p> <p>It is unclear which period for the provision of such updates appears to be “reasonable” and from which point in time the consumer has a right to conversion.</p>

		<p>It is also questionable that Section 7(2)(1) VGG does not specify "reasonably expect". Reasonableness will probably have to be judged very differently per product type and per product price, and may probably also lead to a time limit that exceeds the absolute limitation periods of the trader recourse (for example: smart air conditioner has a life expectancy of more than 10 years).</p> <p>Legal uncertainty with regard to the length of the obligation in case of a single act of supply (consumer expectations); Problems in assessing when there is a single act of supply and when there is a continuous supply.</p>
<b>Belgium</b>	The provisions have not been transposed yet.	
<b>Cyprus</b>	<p>The Law has not been published in the Official Gazette of the Republic yet despite the fact that the Bill has been approved by the House of Parliament. According to the Competent Authority the major amendments are the following:</p> <ol style="list-style-type: none"> <li>1. Period of time regarding the repair and replacement of goods. Repairs or replacements shall be carried out within 25 days instead of 30.</li> <li>2. Burden of proof. For the time being, the time period for the burden of proof is set at one year. After three years, it will be set in two years.</li> </ol>	The provisions of Cyprus Law do not apply to the contracts for the provision of digital services and distribution/delivery of digital content.
<b>Denmark</b>	Updates must be delivered according to the agreement.	Biggest difficulty is the fact that the seller must make sure that the consumer is informed of and supplied with updates (art. 7.3.) It is not the seller that provides the updates, that is the manufacturer of the digital elements and the seller may not even know the identity of the consumer making it impossible for the seller to act according to the article. Will be interesting to see how this is handles in disputes.
<b>Finland</b>	<p>The retailer is liable for the lack of conformity (including missing security and other updates):</p> <ol style="list-style-type: none"> <li>1) for a reasonable period of time, taking into account the type and purpose of the goods and digital elements and the circumstances and nature of the contract, in the case of a one-off supply of digital content or service; or</li> <li>2) for the period during which the seller is liable for the defect in the goods and in any case at least for the period during which the digital content or service is to be delivered</li> </ol>	<p>Many. The most prominent is the length of legal guarantee bound to the expected lifetime of the product. The retailers could be liable for the lack of conformity years after the product has been sold simply because the manufacturer ceases providing security and other updates, unless the retailer has explicit consent from the consumer that they will not provide (information on) updates.</p> <p>On the specific remedies, in Finland the practice was that the retailer could choose between repair and replacement, but this will no longer be the case unless specific conditions exist, cf. art 13(2). It's unclear to us if Finland has been the only MS doing so.</p>

	<p>according to the contract, in the case of a continuous supply of the digital content or service.</p> <p>Draft proposal can be found <a href="#">here</a> (in Finnish)</p>	
<b>France</b>	<p>The EU Directives have been transposed.</p> <p>Subsection 3: Updates</p> <p>“Art. L. 217-18.-Updates of a good comprising digital elements are governed by this subsection.</p> <p>“For the purposes of this subsection, updates are understood to mean updates or modifications intended to maintain, adapt or develop the functionalities of the good, including security updates, that these updates may or may not be necessary to maintain the conformity of the good.</p> <p>“Art. L. 217-19.-I.-The seller ensures that the consumer is informed and receives the updates necessary to maintain the conformity of the goods:</p> <p>“1 ° During a period which the consumer can legitimately expect , having regard to the type and purpose of the digital goods and elements and taking into account the circumstances and the nature of the contract, in the case of a single supply operation of the digital content or digital service;</p> <p>“2 ° During a period of two years from the moment when the goods comprising digital elements have been delivered, when the sales contract provides for the continuous supply of the digital content or the digital service for a certain period;</p> <p>“3 ° During the period during which the digital content or digital service is supplied under the contract when the latter provides for continuous supply for a period exceeding two years.</p> <p>"II.-When the consumer does not install, within a reasonable time, the updates mentioned in I, the seller is not responsible for any lack of conformity resulting solely from the non-installation of the updates concerned, to provided that:</p>	<p>Updates and defects or refusal to install updates by the consumer. Info updates at the expense of the seller and not the manufacturer, burden of proof borne by the seller, very long obligation in the long term, distinction between necessary/critical updates and unnecessary updates, See articles L 217-18 c. cons for goods including those with digital elements, and articles L 224-25-25 et seq. for digital content and services</p>

“1 ° The seller has informed the consumer of the availability of updates and the consequences of their non-installation by the consumer; and

“2 ° The non-installation or incorrect installation by the consumer of the updates is not due to deficiencies in the installation instructions provided to the consumer.

“Art. L. 217-20.-With regard to updates which are not necessary to maintain the conformity of the goods, the seller complies with the following conditions:

“1 ° The contract authorizes the principle of such updates and provides them with a valid reason;

“2 ° The seller informs the consumer, in a clear and understandable manner, reasonably in advance and on a durable medium, of the planned update, specifying the date on which it occurs;

“3 ° The update is carried out at no additional cost to the consumer;

“4 ° The seller informs the consumer that he is entitled to refuse the update or, where applicable, to uninstall it, if the update has a negative impact on his access to digital content or to the digital service. or his use of them.

“In the latter case, the contract is terminated by right and at no cost to the consumer, within a maximum period of thirty days, unless the update has only a minor impact on him. However, the consumer cannot terminate the contract if the seller has offered to keep the digital content or digital service without modification, including by uninstalling the update, and if the latter remains in compliance with the conditions. provided for in this section.

“When the consumer exercises his right to terminate the contract, the provisions of Articles L. 217-16 and L. 217-17 apply.

“This article is not applicable in the event of a bundled offer within the meaning of article L. 224-42-2.

<b>Germany</b>	<p>The provisions have been implemented by the <a href="#">Act on the Regulation of the Sale of Goods with Digital Content and Other Aspects of the Contract of Sale</a> (BGBl. I 2021, S 2132 et seq. of 30.06.2021). The German legislator has largely transposed the EU Directive "one-to-one" into German law and, in particular, has refrained from extending the guarantee period.</p>	<p>The updates must be provided for as long as agreed, but at least as long as the consumer can expect, taking into account the circumstances and the nature of the contract. What matters here is not the individual expectations of the individual consumer, but the objective expectations of an average consumer. The length of the updating period is thus extremely indeterminate. The time period must be specified individually for each product.</p> <p>The trader does not have to install the updates himself, but merely provide them. The updates also do not necessarily have to be provided by the seller himself, but can also be provided by a third party, i.e., the manufacturer. Nevertheless, the trader must directly assist a consumer who contacts him for an update, because the trader is legally obliged to provide the update to the consumer. In the HDE's opinion, it is sufficient to provide a link on the manufacturer's website. However, a blanket reference to the manufacturer is not sufficient. In the case of devices that are typically not connected to the internet but still require an update, it may also be necessary to make the update available on a suitable data carrier.</p> <p>In practice, the obligation to inform the consumer about updates is also a challenge, because in many cases the consumer's data is not available at the time of purchase in offline retail.</p>
<b>Greece</b>	The provision has not been transposed yet.	N/A
<b>Italy</b>	<p>The Council of Ministers approved the final text on 29 October 2021. <a href="#">Link</a> to the final text (publication in OJ pending).</p> <p>The outcome is almost a "one-to-one" transposition.</p>	<p>The seller must:</p> <ul style="list-style-type: none"> <li>- keep the consumer informed of available updates, including safety-related updates, necessary to maintain the conformity of such goods, and</li> <li>- <b>provide updates within a period of time:</b></li> </ul> <p><b>(a) that the consumer could reasonably expect</b>, given the type and purpose of the digital goods and elements, and taking into account the circumstances and nature of the contract, if the sales contract provides for a <b>single act of supply</b> of the digital content or digital service; <u>or</u></p> <p><b>(b) set out in Article 133 (2) or (3)</b>, as the case may be, if the sales contract provides for a <b>continuous supply</b> of the digital content or digital service over a period of time.</p>
<b>Lithuania</b>	All provisions have been transposed as in the Directive. They shall be effective as of 01/01/2022.	N/A

<b>Netherlands</b>		There is a lack of information from suppliers
<b>Portugal</b>	The Portuguese state is late in presenting a transposition proposal to its stakeholders. More information to follow in the coming weeks.	N/A
<b>Slovenia</b>	Draft proposal of Consumers Protection Act has not been adopted yet.	We have not recorded any comments on this subject matter to date.
<b>Spain</b>	<p>The bill is still in <a href="#">Congress</a> so there might be further changes. Initially it was approved as Royal Decree (Real Decreto-ley 7/2021), transposing several European directives.</p> <p>In contracts for the sale of goods with digital elements, the seller must:</p> <ul style="list-style-type: none"> <li>• Supply the good with updates as established in the contract.</li> <li>• Communicate and provide the consumer with updates, including those related to security, that are necessary to maintain compliance.</li> <li>• Inform the consumer or user about the availability of the update and the consequences of not installing it.</li> <li>• Duration of the seller's obligation: <ul style="list-style-type: none"> <li>○ v When the contract establishes a single act of supply: the time that the consumer can reasonably wait depending on the type and purpose of the good.</li> <li>○ v In the case of a contract with a continuous supply term: 3 years</li> </ul> </li> </ul>	N/A
<b>Sweden</b>	<p>The inquiry's proposal for a legal text was presented September 2020.</p> <p>The Inquiry proposes implementing the Directives through provisions entered in a new act, the act on consumer protection in sales and certain other contracts. The scope covers both the same scope as the Consumer Sales Act and certain contracts in which a trader will supply or develop digital content or a digital service for a consumer. With certain exceptions, the latter contracts should be covered by the act if the consumer will pay with money or a digital representation</p>	<p>A number of provisions are only applicable to contracts for the supply of digital content or digital services. There will maybe be problems of interpretation regarding the rules below.</p> <p>Delay by the trader is regulated separately, provisions regarding lack of conformity in the digital content or digital service due to incorrect integration; the assessment of whether there is a lack of conformity; the period for the trader's liability for lack of conformity; and certain remedies for lack of conformity. There are basically great similarities in cases where there are corresponding provisions regarding</p>



	<p>of value or will supply their personal data instead of paying. However, the act does not reach cases where the personal data supplied are only processed by the trader to comply with legal requirements or to be able to perform the contract.</p>	<p>goods, but the regulations differ on certain points. For instance, the trader has the right to choose between repair and replacement.</p> <p>Separate provisions on the effects of termination, for example on the trader's obligation to reimburse the consumer: on the trader's use of content other than personal data supplied or created by the consumer; and on the consumer's future use of the digital content or digital service.</p> <p>A special article on the conditions under which the trader may modify features of the digital content or digital service and under which the consumer may then terminate the contract in certain cases. The means of reimbursement by the trader to the consumer and remedies for delay by the consumer are also regulated separately.</p>
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## Background information

### 1. Issue of transposition of the Directive and level of harmonisation

In general, the Directive is meant to be a full harmonisation instrument. However, this rule is subject to a number of exceptions, in particular in the key areas such as the length of the legal guarantee and the period of the reversal of burden of proof.

Full harmonisation (Member States must not diverge)	Minimum harmonisation (Member States free to regulate differently)	Not covered (Member States fully competent to regulate)
<ul style="list-style-type: none"> <li>● Conformity criteria</li> <li>● Hierarchy and exercise of remedies.</li> </ul>	<ul style="list-style-type: none"> <li>● Art. 3.5: Exclusion from the scope of second hand goods and living animals</li> <li>● Art. 10: Length of legal guarantee</li> <li>● Art. 10: Length of legal guarantee for second-hand goods</li> <li>● Art. 11.2: Burden of proof</li> <li>● Art. 13.6: Conditions on withdrawal of payment in case of remedies</li> <li>● Rec. 18-19 – art. 3.7: Specific remedies (short time right to reject and hidden defects)</li> <li>● Art. 12: Notification of the seller about the lack of conformity</li> <li>● Art. 17.4: Certain conditions for commercial guarantees</li> <li>● Art. 18: Redress in seller – supplier relations</li> </ul>	<ul style="list-style-type: none"> <li>● Legality of goods</li> <li>● General contract law</li> <li>● Certain consequences of the termination of the contract and repair or replacement, for example suspension or renewal of legal guarantee.</li> <li>● Rules on availability of spare parts</li> <li>● Consumer's right to compensation for damage</li> <li>● Extending the Directive to B2B relations, for example to legal or natural persons who are not consumers, such as NGOs, start-ups or SMEs.</li> <li>● Consumer's direct action against producer of the good</li> </ul>

## 2. Issue of updates of goods with embedded digital content

Conformity criteria are any physical and legal requirements (conditions) required for any good in order to satisfy the objective expectations of the consumer, as well as those agreed in the contract. In other words, a good that is conform is a good free from defects and as promised by the seller.

There are **specific, additional conformity criteria for goods with embedded digital content** and new obligations for sellers introduced by this Directive, which may be challenging for companies to apply (see table below for a summary).

### Summary of the new provision

<b>Information and supply of updates</b>	<p>A seller must ensure that the consumer is:</p> <ul style="list-style-type: none"> <li>● <b>informed of updates</b> (and of the consequences of the failure to install them)</li> <li>● <b>supplied with updates</b></li> </ul> <p>How this information is given is left to sellers to decide.</p>
<b>Which updates are covered</b>	<ul style="list-style-type: none"> <li>● Any updates, including security updates that are necessary to keep the goods with digital elements in conformity.</li> <li>● <b>Excluded:</b> Unless contractually agreed, upgraded versions of the digital content or digital service, which neither improve nor extend the functionalities of goods beyond the conformity.</li> </ul>
<b>Duration of the seller's obligation</b>	<ul style="list-style-type: none"> <li>● <b>In case of single act of supply of digital content</b> – as long as the consumer may reasonably expect given the type and purpose of the goods and the digital elements and taking into account the circumstances and nature of the contract. In practice this means at least as long as the seller's liability (for example two years) but could be longer.</li> <li>● <b>In case of continuous supply of digital content</b> – throughout two years or longer (depending on the Member State)</li> </ul>
<b>Failure to install updates by the consumer</b>	<p>The consumer is free to install the updates. However, in case he decides not to install them he should not expect the goods to remain in conformity.</p> <p>The seller is not liable for any lack of conformity resulting solely from the lack of the relevant update, provided that:</p> <ul style="list-style-type: none"> <li>● the seller informed the consumer about the availability of the update and the consequences of the failure to install it; and</li> <li>● the failure of installation or the incorrect installation of the update by the consumer was not due to shortcomings in the installation instructions provided to the consumer.</li> </ul>