DIGITALEUROPE

Views on suggestions to include the concept of "expected lifespan" in the proposed Tangible Goods Directive

Brussels, 31 July 2017

Introduction

The European Commission published in December 2015 a package of legislative proposals aimed at boosting eCommerce in Europe. Part of this package is the proposed Directive on contract rules for the online and other distance sales of goods (hereafter referred to in this paper as Tangible Goods Directive or TGD).

Members of both the IMCO and JURI Committees have suggested various amendments to the proposed TGD related to the concept of the 'expected lifespan' of goods. Here are some notable examples:

- 'Durability' to be a requirement for conformity of the good (IMCO draft report amendments 140, 14, 244, 245, 257, 258, 259 - JURI draft report amendments 84, 107, 149)
- Trader should inform consumer about a good's expected lifespan (IMCO draft report amendments 150, 192 – JURI draft report amendments 84, 107, 199)
- Legal protection period to equal expected lifespan (IMCO draft report amendments 150, 184, 360, 361, 362 – JURI draft report amendments 7, 23, 33)
- Burden of proof to stay with trader for the duration of expected lifespan (IMCO draft report amendments 280, 281)
- Manufacturers obliged to give commercial guarantee equal to expected lifespan of good (IMCO draft report amendments 192, 384, 385, 386, 387, 388, 108, 198)
- Manufacturers obliged to inform consumers about the availability of spare parts (IMCO draft report amendments 150, 151, 393, 394 – JURI draft report amendments 201)

It should be noted that the concept of expected lifespan was not included in the Commission's proposal for the Directive: in fact recital 23 explicitly stated that this Directive is not the appropriate instrument to introduce rules related to the durability of goods, and that product-specific legislation would be the right place to encourage longer durability of consumer goods and sustainable consumption – two concepts which are presumably behind the wish to see expected lifespan provisions included in the TGD.

DIGITALEUROPE
Rue de la Science, 14 - 1040 Brussels [Belgium]
T. +32 (0) 2 609 53 10 F. +32 (0) 2 431 04 89
www.digitaleurope.org | info@digitaleurope.org | @DIGITALEUROPE
Transparency register member for the Commission: 64270747023-20

DIGITALEUROPE strongly disagrees with suggestions to include any expected lifespan related amendments in the TGD. As we explain in the following sections of this paper, we believe that such provisions would have serious consequences for manufacturers, traders, innovation, competition, and – ultimately – consumers.

Difficulty to determine with accuracy a good's expected lifespan

The **expected lifespan of a good is very difficult if not impossible to calculate**. ICT and consumer electronic products are complex by virtue of their design, components and innovation. Expected lifespan could only be measured against objective criteria based on a "normal" or "average" use. However **there is no industry definition, no standard and no agreed measurement of expected lifespan.** Establishing an objective, reliable, comparable and verifiable tool to assess and determine the life expectancy of a certain product or product category would be challenging if not impossible. It is worth pointing out that, even though MEPs have proposed imposing on traders an obligation to inform consumers about a good's expected lifespan, in reality manufacturers would be the ones responsible for determining the expected lifespan.

Furthermore, we would like to stress **that the life expectancy of a product heavily depends on how the consumer uses the product and under which conditions**. A product's lifespan varies depending on many factors that are beyond the manufacturer's control: use frequency, maintenance, installation, location. For instance, it is impossible for manufacturers to set a life expectancy which takes into account variables such as the room in which the customer uses a good (e.g. a TV placed in the kitchen is exposed to higher temperatures and humidity levels compared to a TV placed in the living room).

Finally, it should be noted that **technological advancement and innovation could also have an effect on the period of time during which a product continues to function**. Even though, as we explain later in this paper, manufacturers offer software updates to ensure that customers enjoy new functions that were not available when the product was placed on the market, inevitably a product's lifespan can be affected in cases where software updates are not sufficient to support a new technology or feature which becomes popular after the product is placed on the market. We should also bear in mind that today's hardware cannot be guaranteed to sufficiently support absolutely any future software requirements in the future. For instance, today's microprocessors might not be able to support Operating Systems which may be required in the future so as to run certain services. Ultimately, obliging manufacturers to commit to a certain expected lifespan for their products could actually cause manufacturers to think twice before introducing new innovative features, effectively slowing down the pace of technological evolution.

DIGITALEUROPE
Rue de la Science, 14 - 1040 Brussels [Belgium]
T. +32 (0) 2 609 53 10 F. +32 (0) 2 431 04 89
www.digitaleurope.org | info@digitaleurope.org | @DIGITALEUROPE
Transparency register member for the Commission: 64270747023-20

Examples of misuse by consumers that would lead to overload or earlier defects

A TV designed for consumers is built differently from a high-class professional TV (based on "typical" end-user operation / lower price). In several cases, where a defect occurs, it is noted that the consumer had used his/her TV for more than 12h/day – which is over more than the one-year-average base.
This extreme usage of the device might cause higher temperature ("stress") and less or no cool down cycles, potentially resulting in electronical defects for the panel or power-related components.

BLOCKED COOLING FAN IN-/OUTLET

DVD and/or Blu-ray players are typically equipped with a cooling fan at the rear as to blow out the heat from inside the unit. In case of a very tight / sealed installation at a closable rack, the ventilation might be blocked. This might cause, after a certain period of time, an overload and therefore electronic defects at the drive unit or power related electronic components. Environmental conditions of the place where the unit is located can be another influencing element, such as smoker / non-smoker household, direct sunlight exposure, temperature and humidity conditions.

POOR MAINTENANCE AND CLEANING

In the case of LCD projectors, when the cooling fan is used in a dusty environment it might become dirty very fast, resulting in the overheating of the projector /DMD block / lamp / components.

In the case of photo cameras, defects might be caused when consumers do not properly clean the sealing (e.g. beach sand, sun lotion or customer's hair at the sealing). Also, a photo camera with a lot of dust inside (from the beach, garden, chimney, cigarettes smoke, etc.) can block the lens unit.

Impact of inserting requirements related to the expected lifespan into the TGD

The vast majority of consumer claims that the good is not in conformity with the sales contract are submitted in the first two months after the consumer acquires the good. For this reason, we firmly believe that the legal protection period should last two years and that the burden of proof should be reversed six months after the consumer acquires the good.

If the expected lifespan amendments listed in the introduction to this paper were to become part of the adopted text of the TGD, the cost of goods would become higher. Just and only an obligation to provide a legal protection period equal to a good's expected lifespan would substantially increase for manufacturers the cost of goods, as they would need to make allowances for a much higher volume of returns, requests for repair or replacement etc. If the obligation to provide a lifespan-long legal

protection period were to be combined with a rule that the period in which the trader bears the burden of proving that the defect was not present when the good was purchased is as long as the legal protection period (i.e. there is no reversal of proof), costs for manufacturers would become exorbitant. And higher costs for manufacturers could have two important consequences: First, the **retail prices of goods could increase**; and secondly, the **manufacturer's operating costs would increase.**

One of DIGITALEUROPE's members estimates that an extension of the legal protection period to 5 years would increase, on average, the cost of goods by 29,4%.

Financial impact aside, inserting expected lifespan rules into the TGD would certainly affect the way manufacturers provide after sales care to consumers. Lengthy legal protection periods and burden of proof periods would force manufacturers to find ways to address possible consumer abuse. In other words, **manufacturers would be a lot more likely to consider a fault as a result of misuse or wear and tear** (and thus not covered by the legal protection period).

It should also be noted that obliging manufacturers to inform consumers of the expected lifespan of their goods and offer equivalent legal protection periods could cause **consumer confusion and unfair competition**. Currently consumers tend to know what the legal protection period is in the Member State they reside in; if each manufacturer were to be obliged to state the lifespan for each individual model they put on the market, this would lead to a situation where in one Member State one type of product - e.g. cameras - will have varying expected lifespans depending on manufacturer and model. In relation to this, we would like to point to the potential distortion of competition if no objective criteria are defined to calculate expected lifespan.

An obligation to inform consumers about the availability of spare parts implies an obligation on producers to keep stock of spare parts for lengthy periods. We should be mindful of the environmental and retail price impact of such obligations. Producers would be obliged to keep in stock both parts which commonly fail and parts which rarely fail. Also, despite the stock of spare parts available, some consumers will always want to change their devices regularly. In short, **an obligation to inform about the availability of spare parts would lead to a significant amount of spare parts not being used and becoming waste**. At the same time, an obligation to keep spare parts in stock for every single model and for lengthy periods of time would entail considerable costs for manufacturers, which could impact retail prices.

DIGITALEUROPE
Rue de la Science, 14 - 1040 Brussels [Belgium]
T. +32 (0) 2 609 53 10 F. +32 (0) 2 431 04 89
www.digitaleurope.org | info@digitaleurope.org | @DIGITALEUROPE
Transparency register member for the Commission: 64270747023-20

Risks posed by mandatory commercial guarantees

Competition and consumer choice are key. Most consumer electronics and electrical products may be purchased with commercial guarantees, offered by traders. Also, manufacturers sometimes offer longer commercial guarantees alongside the legal protection periods offered by the seller, in an attempt to gain commercial advantage. **Making commercial guarantees mandatory and linking them to the expected lifespan of products** through the TGD – as proposed within IMCO and JURI – **would stifle both competition and consumer choice and would increase retail prices.**

We also question the rationale behind creating a second layer of protection by forcing manufacturers to offer commercial guarantees covering a product's expected lifespan, alongside the legal protection period traders are obliged to offer. We understand the need to have an EU-wide strong consumer protection regime which ensures that consumers receive remedies in case a good shows defects which were present at the time of purchase. The regime set out in the Commission's proposal for the TGD as well as the regime currently in place under the Sales and Guarantees Directive[1] relies on the system where, in the case of defects, the consumer turns to the trader and the trader turns to the manufacturer (under the redress mechanism). This is a well-established system and manufacturers typically have exhaustively detailed contractual arrangements with traders to ensure that consumer complaints are properly addressed. If EU law-makers believe that this system does not work well, the answer lies in the better enforcement of the current rules rather than in obliging manufacturers to be directly accountable not only towards traders but also towards consumers.

Finally, we find particularly worrying that proposals for mandatory commercial guarantees would hold manufacturers liable for the usage of their products. While consumer contract and marketing laws are designed to ensure the respect of consumer rights in the context of a sale of goods contract (including the legal guarantee regime), mandatory commercial guarantees are inappropriate for addressing the use phase of a product. As explained earlier in this paper, the lifetime of a device varies according to many factors that are beyond the manufacturer's control: use frequency, maintenance, installation, location.

Measures our industry already takes to ensure the durability of their products

DIGITALEUROPE members strive for safe, reliable and durable products. We value our products and the after sales services we provide. Durability and reliability are qualities that consumers expect.

1 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.

Consequently products are designed to withstand the rigors of everyday use and even abuse. Functions, aesthetics, structural characteristics are maximized accordingly.

Manufacturers design to minimize the need for repair, through the selection of high quality materials and components, as well as through durable, reliable structural design. Manufacturers also subject their devices to rigorous tests before they are placed on the market. A balance is sought between the quality of the materials, durability and costs.

Usually a component needs repair, if at all, at most once during the lifetime of a product. When manufacturers design for durability, they aim for a repair event to never occur during the lifetime of the product. Sometimes this might mean that durability is achieved at the expense of the repair being a bit more difficult. In the event a repair is necessary, manufacturers provide for convenient, reliable and cost-efficient service solutions. This approach ensures that consumption and material inefficiencies are further reduced as fewer maintenance activities, repairs and premature failures occur in the market. In some business models, this trend is further solidified by the business rationale inherent in leasing models or offering product functions rather than products (e.g. selling copies rather than printers).

In order to provide cost efficient repair and remanufacturing services, members of DIGITALEUROPE have established central facilities inside and outside the EU. This infrastructure, alongside the waste collection and treatment facilities, is the circular economy backbone of the ICT industry in Europe. It contributes to reuse and increased lifetime of IT devices on the European market. DIGITALEUROPE members treat repair, refurbishment and remanufacturing activities as part of their business practice. They perform millions of repairs annually and are hereby helping to reduce environmental impacts, create jobs and growth and deliver real benefits to consumers.

Examples of practices

SOFTWARE UPDATES

Software support ensures the use of older generation devices without compromising security or data protection. Software updates by manufacturers allow customers to make use of functions that were not available on their product at the moment of purchase. This decreases the need for upgrading to new hardware (e.g. cloud services makes upgrading to obtain more storage obsolete). 'Software led longevity' through software support increases the resale value significantly.

WATERPROOFING

Industry is designing for anticipated use and increasingly offers waterproof devices when of interest. Whether it is rain, the accidental drop into the sink, a sweaty workout or other wet activities – thanks to waterproofing, smartphones or wearables are less likely to fail or be in need of repair afterwards.

INTEGRATED DESIGN

Integrated designs of consumer devices usually bring increased structural integrity, reduced exposure to dust or humidity, fewer failure points in the device and generally increased rigidity. All these factors make the need for repair or replacement less likely – a direct contribution to longer lifespans.

Conclusion

In this paper we have demonstrated that including in the TGD provisions related to the expected lifespan of a product would have serious consequences. Not only is it difficult, if not impossible, to calculate expected lifespan taking into account the conditions under which a product is used and any future compatibility issues, but the proposed amendments related to expected lifespan – obligations to offer legal protection periods and commercial guarantees equal to a product's lifespan, removing the reversal of proof rule etc – could affect retail prices, slow down the pace of innovation and cause consumer confusion.

We have also demonstrated that DIGITALEUROPE members already take steps to ensure that our products are reliable and durable – whether through product design, repairs or software updates.

We hope that, as discussions on the TGD move forward, it becomes clear that expected lifespan rules should not be included in the text. The focus should be on developing clear and enforceable consumer protection rules which are as harmonised as possible throughout the EU, rather than on introducing vague concepts which would have detrimental effects on many fronts.

For more information please contact:
Marion Ebel, DIGITALEUROPE's Policy Manager
+32 496 73 74 15 or marion.ebel@digitaleurope.org

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total 25,000 ICT Companies in Europe represented by 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: http://www.digitaleurope.org

DIGITALEUROPE MEMBERSHIP

Corporate Members

Adobe, Airbus, Amazon, AMD, Apple, BlackBerry, Bose, Brother, CA Technologies, Canon, Cisco, Dell, Dropbox, Epson, Ericsson, Fujitsu, Google, Hewlett Packard Enterprise, Hitachi, HP Inc., Huawei, IBM, Intel, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Loewe, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, NEC, Nokia, Nvidia Ltd., Océ, Oki, Oracle, Panasonic Europe, Philips, Pioneer, Qualcomm, Ricoh Europe PLC, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Sony, Swatch Group, Tata Consultancy Services, Technicolor, Texas Instruments, Toshiba, TP Vision, VMware, Western Digital, Xerox, Zebra Technologies.

National Trade Associations

Austria: IOÖ
Belarus: INFOPARK
Belgium: AGORIA
Bulgaria: BAIT
Cyprus: CITEA
Denmark: DI Digital, IT-BRANCHEN
Estonia: ITL
Finland: TIF
France: AFNUM, Force Numérique, Tech in France
Germany: BITKOM, ZVEI
Greece: SEPE
Hungary: IVSZ
Ireland: TECHNOLOGY IRELAND
Italy: ANITEC
Lithuania: INFOBALT
Netherlands: Nederland ICT, FIAR
Poland: KIGEIT, PIIT, ZIPSEE
Portugal: AGEFE
Romania: ANIS, APDETIC
Slovakia: ITAS
Slovenia: GZS
Spain: AMETIC
Sweden: Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen
Switzerland: SWICO
Turkey: Digital Turkey Platform, ECID
Ukraine: IT UKRAINE
United Kingdom: techUK