

Digital industry's concerns with the Spanish transposition of the Sales of Goods Directive (2019/771)

June 1st 2021
Brussels

Dear Ministers, dear Parliamentarians,
CC: European Commission

We, the undersigned representatives of the European digital industry, fully support the need to ensure that contractual rules provide high levels of consumer protection whilst safeguarding industry's ability to offer innovative products and services. This was the stated objective behind the EU Sales of Goods Directive (2019/771), which was aimed at establishing a single set of rules adapted to the digital age.

We are concerned that the Spanish transposition of the legislation goes significantly beyond what is required to comply with this Directive. The proposed amendments to the Spanish Consumers and End-Users Act¹ extends the length of legal guarantees and adds additional requirements for the availability of spare parts, creating significant complications for industry.

A consistent and harmonised approach across the EU would further strengthen the Single Market, avoid confusion in cross-border purchases, support affordable prices and stimulate innovation. We strongly advocate that Member States refrain from 'gold-plating' the legislation as they transpose the Directive.

Provision of spare parts

The Spanish Royal Decree-law extends the period which the manufacturer must ensure the availability of spare parts from five years to ten years from the date on which the product ceases to be manufactured. As the EU Directive (2019/771) does not include a specific obligation in this respect, the ten-year obligation to provide spare parts is an over transposition.

Recital 33 of the Sales of Goods Directive states explicitly that the legislation does not impose an obligation on traders to ensure the availability of spare parts. This is because the EU intends to introduce separate requirements via product and environmental legislation. Introducing this obligation in advance of the broader EU initiatives risks regulatory fragmentation about spare parts, making compliance difficult for manufacturers selling across the EU. It is also contrary to the principle of free movement of goods. The requirement has also been introduced without consultation with industry and applies the same criteria to all types of goods, making no distinction based on the nature of the product, durability, price, frequency of use, etc. **We therefore recommend that the provision is removed from the Royal Decree-law until such time that a proper impact assessment and consultation with stakeholders has been conducted.**

The provision, as proposed, will create significant practical difficulties for manufacturers, excess stock scenarios and a disproportionate financial burden. It might also have a negative environmental impact as manufacturers and the repair community would need to produce, maintain and store spare parts for a longer period regardless of whether there is a demand as

¹ Introduced by the Royal Decree-law 7/2021 of April 28, 2021

it is difficult to accurately forecast how many spare parts may be needed. If the spare parts are never used, it will also cause a cost to a manufacturer to scrap excess.

Our sector rapidly innovates and places new products on the market that both meet customer expectations and eco-design opportunities. This innovation enables customers to access to products with enhanced features and improved environmental performance as they appear on the market.

Duration of legal guarantee

The proposed Spanish Royal Decree-law² extends the length of legal guarantee from two, to three years from the delivery of the goods. We strongly believe that Member States should opt for a harmonised approach with a legal guarantee period of two years.

The legal guarantee covers only defects that existed upon the time of purchase. The vast majority of received consumer claims due to product non-conformity happen in the first two months after the purchase. Indeed, according to the European Commission impact assessment, 96% of problems with defective goods are discovered during the first two years from purchase.³ As such, a two-year guarantee allows for more than sufficient time to cover these issues.

Ensuring a harmonised two-year legal guarantee approach across Europe also helps to provide legal certainty for consumers when they purchase products cross-border and provides clarity for businesses who trade across the EU.

Longer guarantees lead to higher costs for consumers

Longer protection periods increase the cost of goods substantially. To meet the conditions of longer guarantee periods, manufacturers need to make allowances for a much higher volume of returns and requests for repair or replacement. This higher cost for manufacturers will ultimately lead to an increase in the price of goods for European consumers.

Existing commercial options for additional protection

As you transpose the Directive, it is important to recognise the existing commercial options already on the market which provide consumers with additional protection, should they desire it.

Extended warranty contracts are widely available for consumers that seek additional protection. Our sector, like many others, has seen the introduction of commercial guarantees, extended service plans and plans covering accidental damage from handling, which provide consumers with the choice of extra levels of protection. These service plans are used competitively between manufacturers, both to extend the period of coverage or the scope (e.g. accidental damage, loss).

We believe that consumer choice is important. However, many customers do not put a premium on this peace of mind and would prefer not to pay for it. We would like to point out that forcing longer guarantees through legislation may stifle both competition and consumer choice while increasing prices for all consumers.

² AMENDMENT N° 3, Section 127 bis of Royal Decree-law 7/2021

³ European Commission (2017) [Impact assessment on the impacts of fully harmonised rules on contracts for the sales of goods](#)

Yours sincerely,

