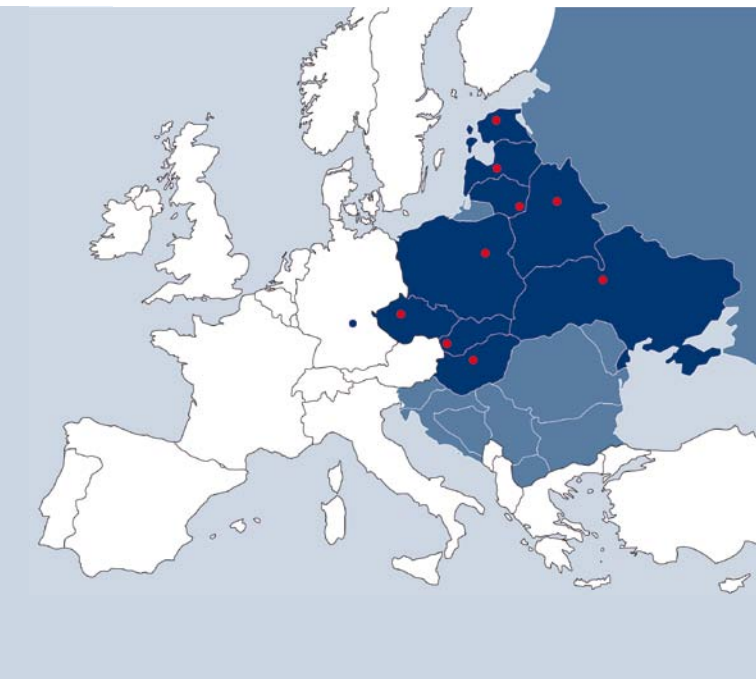


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Product Guarantees and Product Liability Survey 2011: The Baltics And Poland

Latvia
Lithuania
Estonia
Poland

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bnt Product Guarantees and Product Liability Survey 2011

bnt Baltic and Polish Law Surveys offer the reader a practical insight into areas of law which are most valuable for conducting business in the Baltic States and Poland. The Surveys are written by leading legal experts in their fields and cover relevant issues from the perspective of all four countries. The straightforward language chosen for bnt Law Surveys ensures a better understanding of complicated and intricate aspects of the relevant laws of these countries.

Product guarantees and product liability issues continue to be one of the most controversial and debated topics for businesses around the world, including the Baltics and Poland. Who may be liable for supplying a defective or dangerous product? What rights are particular to consumers, on the one hand and sellers, on the other hand? And what are the time-limits for claiming against

sellers or manufacturers? – These are questions worth special consideration in times of growing business and economy.

Although product guarantees and product liability issues are to some extent harmonised at the EU level, still much space is left to EU Member States to regulate certain important aspects at their discretion. As a result, the rules on product guarantees and product liability in the Baltics and Poland may differ from each other and deserve individual examination. Companies operating in more than one country are therefore well advised to draw comparisons and choose the regulatory framework most favourable for their business. The bnt attorneys-at-law Baltic and Polish Product Guarantees and Product Liability Survey 2011 will assist in this task. For this purpose, the Survey begins with a general overview of existing common rules concerning product guarantees and product liability in the EU (Chapter I) and then turns to particular features of these issues in Latvia, Lithuania, Estonia and Poland (Chapter II).

Overview

	Latvia	Lithuania	Estonia	Poland
Quality claims				
Standard scope (movables for private use): - extended to	Immovables	Not extended	Not extended	Not extended
Consumer's right to rescind contract in minor cases	No	No	Yes	No
Consumer's choices - up to 6 months (from purchase) - 6 months – 2 years	Any Repair or replacement first	Any Any	Repair or replacement first Repair or replacement first	Repair or replacement first Repair or replacement first
Limited period to bring claim (from the day consumer became aware), during 2 years	No	No	2 months	2 months
Period to answer claim, maximum	10 days	10 days	15 days	14 days
Product Liability				
Standard scope (all movables and electricity) extended to	- centrally provided gas	- centrally provided gas, drinking water, heating	- IT software	Not extended
Deduction of EUR 500 from damages awarded	No	No	No	No
Sanctions, among others: - financial, up to	EUR 28 500	EUR 23 000	EUR 2 600	EUR 25 000

Chapter I.

EU Common Rules

Product guarantees and product liability issues are subject to relevant framework regulations in the EU. The main principles operating in this field concern issues of consumer claims and guarantees (regulated by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (from here on: Directive on Consumer Claims and Guarantees)) as well as issues of product safety liability (regulated by Directive 85/374/EEC and its amending Directive 1999/34/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (from here on: Directives on Product Safety Liability)). Given the importance of these documents, this Survey reviews the basic principles and rules which they provide.

1. Consumer Claims and Guarantees

1.1. Scope and Main Principles

Issues concerning consumer claims that arise from non-conformity of goods with a contract, as well as guarantees given by sellers to consumers, constitute important aspects of EU consumer protection policy. So, proper regulation of these issues at EU level and further implementation of these regulations in each EU Member State deserve high consideration.

The main regulatory framework in the field of consumer claims and guarantees is the Directive on Consumer Claims and Guarantees. This establishes minimum protection for consumers against sellers and obliges all EU Member States to provide rules on levels of consumer protection in their national laws. Minimum protection

means that EU Member States may introduce more stringent regimes. However, the principle that different levels of protection may exist, which means possible differences for sellers, has been considerably criticised. Accordingly, reform by proposing to delete options on deviations was initiated in 2007 albeit still not in place.

The Directive on Consumer Claims and Guarantees covers contracts for any movable item, except unpacked water, gas and electricity, and also for the supply of goods to be manufactured. The main principle involved here is that the consumer is entitled to claim against a seller who supplies goods that fail to comply with their contract. In case of non-conformity the consumer has the right to ask the seller to bring the goods into conformity, or allow a corresponding reduction in price. Alternatively, the consumer may avoid the contract for those goods. The Directive on Consumer Claims and Guarantees specifically provides time-limits within which consumers may claim against sellers.

Another important principle under the Directive on Consumer Claims and Guarantees is that the seller is bound by any guarantee given to the consumer. Last but not least, EU Member States may also rely on the Directive on Consumer Claims and Guarantees even where the contract is governed by the law of a non EU Member State but has a close connection to the territory of an EU Member State.

1.2. Goods in Conformity

The Directive on Consumer Claims and Guarantees provides detailed information as to what will be regarded as goods that conform with the contract. That is, goods are presumed to conform with the contract if they:

- 1) comply with the description given by the seller or if they have the same characteristics and quality as the sample of goods that the seller has shown to the consumer;
- 2) are fit for the particular purpose for which the

consumer needs them provided that the consumer informed the seller about this purpose and that the latter accepted it;

- 3) possess characteristics which the consumer can reasonably expect from the goods taking into account their nature and statements made by the seller with respect to the goods;
- 4) are fit for the purposes for which goods of the same type are normally used.

However, a consumer who by the time of concluding the contract knew or should have known about a lack of conformity of the goods is then barred from protesting against non-conformity of the goods.

1.3. Rights of the Consumer

According to the Directive on Consumer Claims and Guarantees the seller is liable for lack of conformity of goods during two years from the day the goods are delivered to the consumer. This liability on the part of the seller serves as the basis for subsequent consumer rights. So consumers are entitled to certain remedies against lack of conformity of goods. Three types of remedy are available:

- 1) The consumer can ask the seller to bring the defective goods into conformity. This may involve repair or replacement of particular goods. Notably, the seller may not claim any additional charges for bringing defective goods into conformity.
- 2) The consumer may ask for a reduction in the price of non-conforming goods. This may be done if no possibility exists for repair or replacement or if the seller cannot do the work without delay or without causing inconvenience to the consumer.
- 3) The consumer can rescind the contract. The prerequisites for doing so are the same as for the previous remedy, namely, if repair and replacement are not possible or if they cause inconvenience and delay for the consumer.

1.4. Rights of the Seller

Along with providing rights for the consumer, the Directive on Consumer Claims and Guarantees also specifies certain rights from which the seller can benefit. These are the following:

- 1) The seller may refuse to repair or replace defective goods if this proves to be impossible or disproportionate. Disproportionality in this case depends on the significance of the lack of conformity as well as on comparison of the costs of repair or replacement with the costs of alternative remedies available to the consumer, such as the possibility of reducing the price of the goods.
- 2) The consumer cannot rescind the contract if lack of conformity of the goods is trivial.
- 3) If the seller becomes responsible for non-conformity which in fact is attributable not to the seller but to the producer of the goods or to a previous seller in the chain, then the seller may claim against those actually responsible for lack of conformity.

1.5. Time Limits

The period within which the consumer can protest against lack of conformity is not unrestricted. The Directive on Consumer Claims and Guarantees clearly states that the right of the consumer to claim for non-conformity exists only if the lack of conformity becomes apparent within two years from delivery of the goods.

However, EU Member States are allowed to set a more limited regime. That is, their national legislation may provide that the consumer must inform the seller of lack of conformity within two months from the date when the consumer noticed the lack.

EU Member States may also provide more flexible rules if the contract concerns second-hand goods. Namely, here the seller and the consumer may agree on a shorter

period for liability of the seller. However, this period may not be less than one year.

1.6. Guarantees

Issues concerning guarantees given by the seller to the consumer are specifically regulated by the Directive on Consumer Claims and Guarantees. The main principle is that any guarantee statement given to the consumer in the process of selling goods to the consumer is legally binding on the seller.

Moreover, special requirements exist as to the content of the guarantee. Guarantees must be written in simple and understandable language and must provide detailed information as to how, within what period and within which territory the consumer can claim under the guarantee. In addition, the guarantee must indicate the name and address of the guarantor, i.e. the seller.

A further important principle with respect to guarantees is that even if the form or content of the guarantee does not comply with the above requirements, this in no way affects the validity of the guarantee itself, so that the consumer is still entitled to claim against the seller based on that guarantee.

Notably, guarantees by sellers to consumers amount only to additional goodwill on the part of the seller. They in no way affect the rights of consumers envisaged above in 1.2.–1.5. These rights remain the same regardless of whether a guarantee was given to the consumer or not.

2. Liability for Product Safety

2.1. Principle and Products Covered

The core of the liability rules on product safety is harmonised in EU Member States under the Directives on Product Safety Liability. They establish the principle that the safety of products offered in EU countries must be guaranteed. As a result, damage caused to a private physical person or their property must be compensated regardless of whether negligence or fault on the part of the producer exists or not. In addition, no contractual clause may allow the producer to limit their liability for product safety.

Products covered by this rule are any movables, i.e. almost anything one consumes or uses daily, for example, clothes, electrical appliances, vehicles, pharmaceuticals, toys, machinery, and raw agricultural and fisheries products. Besides, electricity is also regarded as a product by the Directive.

2.2. Person Liable

The Directives on Product Safety Liability list the persons regarded as a person liable under the Directives. These are:

- 1) any manufacturer or producer (including a producer of components and of materials) or a person putting their name, trade mark or other distinguishing feature on the product to present itself as the producer as concerns products produced in the EU;
- 2) an importer of the product, if produced outside the EU;
- 3) a person supplying a product whose producer cannot be identified.

If more than one person is liable for the same damage, joint liability applies.

2.3. Damages

Once a person is found liable for a defective product, they become duty bound to compensate financially at least material damage caused by death or personal injury. In addition, the person liable will also be obliged to compensate damage caused to an item of property intended for private use or consumption other than the defective product, with a lower threshold of EUR 500. However, interpretation of this rule varies from country to country. Thus, for example, in Finland, Germany, Austria, Denmark and Italy an amount of EUR 500 is deducted from the compensation finally awarded. In contrast, in some other countries special product liability rules are inapplicable to material damage less than EUR 500.

2.4. Burden of Proof and Amounts

The burden of proof lies on the injured person. In particular, the person who suffered must prove the existence of the damage, the defect in the product or service and the causal link between these two. Besides, circumstances which could influence damage will be weighted. These circumstances involve the purpose for which the product was presented (marketed) as well as the use to which it could reasonably be expected that the product would be put. Another criterion that will be evaluated is the time when the product was put into circulation. Liability occurs only after the product is released on the market.

A product cannot be considered defective only because a better product is subsequently put on the market.

In addition, the Directives on Product Safety Liability authorise any EU Member State to fix a financial ceiling of not less than EUR 70 million for damage resulting from death or personal injury and caused by identical items with the same defect. However, this rule must be introduced explicitly into national law as well as notified to the European Commission.

2.5. Exemptions from Liability

A white list of circumstances exempting the producer from liability exists. In particular, the producer cannot be held liable if they prove that:

- 1) they did not put the product into circulation;
- 2) the defect causing the damage occurred only after the product was put into circulation;
- 3) the product was neither manufactured for profit-making sale nor manufactured or distributed in the course of business. Nevertheless, according to the case-law of the EU Court this exemption cannot be applied to excuse a defective service, for example, medical treatment in a publicly funded hospital. In particular, a service provided by a publicly funded body is still covered even though its aim is not profit-making;
- 4) the defect is due to compliance of the product with mandatory requirements issued by a local or other public authority;
- 5) the defect is attributable to the design of the product (applicable to producers of components as well);
- 6) the manufacturer of a component followed the instructions given by the principal product manufacturer (liability must then be directed towards the latter);
- 7) the state of scientific and technological knowledge at the time when the product was put into circulation was not such as to enable the defect to be discovered (“development risks defence”). However, any EU Member State can derogate from availability of this defence. For example, this particular defence is not valid in Finland and Luxembourg.

2.6. Limitation Period

With regard to the limitation period for product liability the general local rules on limitation periods in contractual relationships are inapplicable. Instead the common rule under the Directives on Product Safety Liability is that the injured person has three years within which to

seek compensation. This period starts from the date when they became aware of the damage, the defect and the identity of the producer.

Besides, the maximum period for invoking product liability is ten years from the day when the product is put into circulation. Thus if damage occurs later or a person becomes aware of it later than ten years after that day a person who would normally be liable would be released from liability because of expiry of the limitation period.

Chapter II.

Regulation at National Level

Given the nature of EU Directives, which, in fact, provide only framework regulation rather than specially drafted laws, some discretion is allowed to EU Member States to decide upon particular rules on issues of consumer claims and product liability. Thus, slightly differently regulation exists in Latvia, Lithuania, Estonia and Poland.

1. Consumer Claims and Product Liability in Latvia

1.1. Quality Claims and Guarantees

1.1.1. Implementation of Directive 1999/44/EC

The relevant law transposing EU Directive 1999/44/EC into Latvian legislation is the Consumer Rights Protection Law. In addition, this law bases a number of relevant Government Regulations on specific related subjects. Latvian legislation accurately complies with EU legislation on consumer claims and guarantees. But there are certain deviations from Directive 1999/44/EC in Latvia taking into account that the EU provides only minimum standards.

First, as mentioned above in Chapter I EU law on quality claims and guarantees covers contracts for any movables except unpacked water and gas as well as electricity. Apart from that, Latvian law extends the same rights to immovable property, for example, a building.

Second, the definition of a movable may be of importance for purposes such as exchanging goods. As a principle, a good is any separate thing. Nevertheless, an aggregate of things may be regarded as one single

good as well, if they are bought together. For example, a mobile device, its battery and earphones sold in a package, or, another example, a vehicle with a navigator or other extras included in the particular order. As a result, if the exchange is appropriate, normally the whole device with its accessories and belongings must be replaced. However, according to jurisprudence if a component of a product is damaged and must be replaced, and it can be separated, then substitution of that particular component (for example, an accumulator) and not the whole product (vehicle) can be allowed as a reasonable solution on the basis of proportionality.

Third, if there is a legitimate reason to accept return of the good, a request for return of packaging is not covered by the law. In other words the consumer may not be asked to keep the packaging for two years if a ground for a consumer claim arises. The seller may inform consumers that packaging is relevant for certain reasons, for example, a request from a producer, but lack of packaging when a purchase is returned may not excuse refusal to accept a return.

Fourth, Latvian law introduces a hierarchy of remedies available for the consumer if non-conformity is discovered later than six months after purchase. In particular, repair or replacement of the product must be tried first of all. Reduction of price or termination of contract by repayment is available only if the item is impossible to replace or impossible to repair within a reasonable period without any significant inconvenience to the consumer. Besides, reduction of price or repayment after the six months period can be affected by taking into account depreciation of a purchase, which is assessed by expert inspection.

Fifth, with regard to consumer rights it must be noted that Latvian law does not oblige the consumer to raise a claim within two months from the day they became aware about a defect, as is optionally stipulated in Directive 1999/44/EC. Moreover, if repair is required the law does not insist on providing a substitute whilst a repair on the purchased item is carried out. However, it urges sellers to

avoid related inconvenience to the consumer by taking into account the character and the purpose of an item. Thus if a consumer argues that a purchase is necessary for daily use or for a certain period then a claim for a substitute item which can perform the required needs may be legitimate. Besides, a reasonable period for repair can be expected. In practice, a period up to thirty days would be regarded as reasonable, although according to jurisprudence this may vary from case to case.

1.1.2. Dispute Resolution

Not surprisingly, as a rule first of all a consumer and a seller must try to settle their dispute amicably. Inspection of a purchase under dispute may be necessary. If a seller refuses to order an inspection, the consumer can order it themselves.

If mutual dispute resolution is unsuccessful, the consumer has two options. First they are entitled to turn to the Consumer Rights Protection Centre (the Centre) to seek protection of their rights.

The Centre has discretion to decide whether the issue affects the collective rights of consumers, i.e. a case is purely individual or a set of similar cases may exist. In the latter circumstances the Centre may reach a decision by ordering immediate termination of violation of consumer rights or to state a deadline for stopping a particular practice. Besides, the Centre may order interim relief during its investigation if it sees this as appropriate. The final decision can be challenged before the Administrative court.

Second, if the Centre has not been involved or has decided not to enter the dispute a consumer can turn to the civil court by claiming annulment of the sales agreement and damages.

1.2. Product Liability Claims

1.2.1. Implementation of Product Liability Directives

The Directives on Product Safety Liability are implemented in Latvia through the law On Liability for Defects in Product or Service (Product Liability Law). The general rules on product liability in Latvia comply with these Directives. However, the following deviations from the standard rules of the Directives on Product Safety Liability exist.

First, according to the Directives on Product Safety Liability and their interpretation in the EU Court of Justice, several ways are available to amend the scope of product liability rules in EU Member States. For example, the Directives cover any movables and electricity. However, Latvian law extends the same rules to gas supplies to private consumers.

In contrast, the jurisprudence of the EU Court allows national laws on product liability to be extended to products for professional use. This has not been introduced in Latvia, where specific product liability requirements apply only to products used for personal needs.

Second, the minimum threshold (EUR 500) rule is implemented in Latvia in that it is treated as a minimum amount, so that, provided the claim exceeds that minimum, the full amount of damages is recoverable. In addition, public liability rules in Latvia do not introduce any financial ceiling on the maximum amount of possible compensation.

1.2.2. Damages and Limitation Periods

Latvian Civil Law and its rules on torts covered the product liability area before the EU Directives were implemented by Product Liability Law and Latvian law still complements the legal regime in the field. For example, the Civil Law confers on the individual the right to claim relief irrespective of the type of product or service which caused damage, for any type and any amount of dam-

age and harm. Thus in addition to death, personal injury and material damage, moral harm is also compensated in Latvia with regard to product liability. Notably, the principal difference between claims which can be based on product liability rules and torts is that in the latter case the fault of the respondent must be proved. As a result the obligation to prove lies on the claimant and not on the person liable according to the product liability rules.

Besides, the running of a limitation period becomes an issue if a claim is brought but the defendant is of the opinion that the claim has been raised too late or against the wrong person. According to the Product Liability Law, which accurately transposes the Directives on Product Safety Liability, an action for compensation of loss may be brought within three years from the day when the injured person became aware or should have become aware of the loss and the person to compensate the loss but not later than ten years from the day when the manufacturer put the goods into circulation. The beginning of the limitation period and interruption of the limitation period are governed by the general provisions of Latvian Civil Law. Thus, in case of a dispute only evidence gathered according to civil procedure will allow the claimant to establish exactly when a product was put into circulation (available for an individual).

Moreover, the Civil Law states that use of a right by bringing an action in court may interrupt the limitation period. Doctrine asserts that the period of limitation serves as a tool to safeguard the legal certainty of a person liable. Albeit neither national law nor doctrine provides an explicit answer on the consequences of the limitation period running if a claim has been brought against the wrong defendant, the EU Court of Justice judgment in case C-358/08 serves as a basis for interpretation here. Accordingly if the claimant has claimed only against the wrong defendant during the limitation period of ten years the liability of the right defendant would be expired. However, the EU Court adds that the above may not be true if the wrong defendant has ties close enough with a company which would be the right defendant, for example, these are mother and daughter companies.

1.2.3. Sanctions

The relevant EU Directives do not impose criminal liability for violating product liability rules. Nevertheless, related criminal sanctions appear in Latvian Criminal law.

In particular, a person who fails to comply with safety requirements on goods and this results in substantial harm to the health of consumers, their property or the environment can be punished by imprisonment for up to six years, or ordered to perform community service, or pay a fine up to one hundred minimum monthly wages with or without loss of the right to engage in specific forms of entrepreneurial activity from two up to five years.

2. Consumer Claims and Product Liability in Lithuania

2.1. Quality Claims and Guarantees

2.1.1. Implementation of Directive 1999/44/EC

The law transposing EU Directive 1999/44/EC into Lithuanian legislation is the Civil Code of Lithuania in a special chapter on consumer contracts of purchase-sale as well as the Law on Consumer Protection. The Law on Consumer Protection contains mainly some definitions and very few separate rules especially on guarantees, whereas the Civil Code contains almost all material rights and obligations.

Consumer rights in the Civil Code in case of non-conformity of products with the contract include, as in the Directive, the right to ask for repair, the right to replacement, the right to reduce the price as well as the right to withdraw from the contract. In general, the consumer has the right to any of these remedies during a reasonable period, limited to two years from delivery of the product. As in the Directive any non-conformity of the product that becomes apparent within six months after delivery is

presumed to have existed at the time of delivery.

Under the Law on Consumer Protection, any quality guarantees provided by the seller do not affect consumer rights contained in legal acts. Besides, the text of a guarantee must be in Lithuanian.

However, Lithuanian laws are silent with regard to the requirement stemming from the Directive that repair or replacement must be completed within a reasonable time and without any significant inconvenience to the consumer. Thus at least in that regard the Directive is not totally implemented in Lithuania.

2.1.2. Dispute Resolution

Under the Law on Consumer Protection the consumer must first complain to the seller. The seller has to reply to the complaint within 10 days. If the consumer's request is not satisfied by the seller the consumer may complain to the Consumer Rights Protection Authority (the inspectorate).

Instead of complaining to the seller the consumer may turn directly to the inspectorate to defend their rights. If appropriate, the authority sends the complaint to the seller with a request for an explanation. If the seller does not agree to settle the dispute amicably the authority adopts a written motivated decision. The decision states a deadline for implementing the decision. If the seller fails to do so, this fact is publicly announced on the webpage of the inspectorate.

Besides, the consumer may at any time choose to file a claim before a competent civil court. This procedure can be initiated in parallel with a request to the inspectorate. Notably, in cases where the court adopts a decision after a decision of the Consumer Rights Protection Authority, the court's decision is not considered as an appeal against the decision of the Authority.

2.2. Product Liability Claims

2.2.1. Implementation of Product Liability Directives

The Directives on Product Safety Liability are implemented in Lithuania by the Law on Product Safety as well as the Civil Code. Whereas the Lithuanian Civil Code contains provisions on liability for damage caused by a defective product, the Law on Product Safety deals with the seller's obligation to assure product safety, plus liability, exemptions from liability and possible action to be taken by public authorities.

As in Latvia, the general rules on product liability in Lithuania comply with European Union legislation but with several deviations. First, compared with the Directives, Lithuanian law extends the application of product liability rules to centrally provided gas, drinking water, and heating.

Second, similarly to Latvia, Lithuania does not extend application of rules on product liability to professional use.

Third, the minimum threshold (EUR 500) rule applies in the Lithuanian Civil Code so that damage not exceeding this threshold does not fall under the definition of "damage".

2.2.2. Damages and Limitation Periods

The Lithuanian Civil Code contains special provisions on compensation of damage due to defective products besides its general provisions on civil liability. Since special rules take priority they should be applied first of all. However, according to the practice of the Supreme Court of Lithuania in 2010, in cases where the conditions for compensation of damage under the special rules are not satisfied, the seller can nevertheless be made liable under the general rules of civil liability.

Under the special rules the consumer must prove the occurrence of damage, the existence of defects in the product and the causal link between the defects and the

damage. No possibility exists for the seller to agree with the consumer on any waiver of the right to compensation by way of damages.

Actions for compensation by way of damages caused by defective products must be filed within three years from the day on which the consumer became aware or should have become aware of the damage, the defect, and the identity of the producer. The period may, however, not extend to more than ten years from the day when the product was placed in the market.

2.2.3. Sanctions

Fines for placing dangerous products on the market are contained in the Law on Product Safety. In particular, fines range according to the seriousness of the infringement of product safety provisions from 500 to 80 000 LTL (ca EUR 23 000) in the case of death of a consumer.

3. Consumer Claims and Product Liability in Estonia

3.1. Quality Claims and Guarantees

3.1.1. Implementation of Directive 1999/44/EC

The law transposing EU Directive 1999/44/EC into Estonian legislation is the Law of Obligations Act, where consumer rights appear among the regulation of contracts of sale. This chapter mainly deals with the relevant contractual rights and remedies.

Under the Law of Obligations Act, the consumer has basically the same legal remedies as those laid down in the Directive. If the product has defects the consumer can demand repair or substitution of the product; however the consumer can also reduce the price or withdraw from the contract. The Law of Obligations Act provides the same legal remedies among others.

Generally, if a product does not comply with the contract or lacks in quality, within two years of the date of purchase the seller is liable for any lack of conformity of a product which becomes apparent during that time. Also, it is presumed that any lack of conformity which becomes apparent within six months of the date of purchase already existed before delivery. The consumer must notify the seller of any lack of conformity within two months of becoming aware of the defect.

In addition to the Law of Obligations Act, the Consumer Protection Act also regulates consumer rights. This act mainly deals with informing consumers, safety and quality of goods or services, business-to-consumer commercial practices, settlement of consumer complaints, and liability.

3.1.2. Dispute Resolution

Under the Consumer Protection Act, if a complaint arises the consumer may complain directly to the seller. If possible, the dispute should be settled by agreement between consumer and seller. The complaint does not have an obligatory form, but the consumer should send it in writing or in a format which can be reproduced in writing if dispute settlement on the basis of an oral complaint is impossible. In general, within 15 days from receiving the complaint, the seller is required to review the complaint. If this means of dispute resolution fails, the consumer has two options – to issue a complaint to the Consumer Complaints Committee or go to court.

The Consumer Complaints Committee settles disputes where the value of the disputed goods or services is at least 20 €. The Committee is not competent to settle disputes if the claim arises from death, physical injury or damage to health, or disputes relating to transfer of immovables or buildings.

A complaint to the Committee must be filed through the Consumer Protection Board. The Committee must hear a complaint within one month from receiving the complaint. If necessary and if the parties so wish, the com-

mittee can order an expert assessment of the disputed product. The committee must make a decision within five working days of the date of hearing a complaint. The committee decides whether to satisfy, partially satisfy or dismiss a complaint. A decision of the Committee generally has to be complied with within one month from receipt of the decision.

If the consumer decides not to settle the dispute in the Committee, also if a party does not consent to the decision of the committee or fails to comply with the decision, either party can file an action with the civil court. However, if the seller fails to comply with the decision of the committee, the Consumer Protection Board may, with the consent of the consumer, file an action with the court if the dispute is relevant for interpretation of the law or involves the general interests of consumers.

3.2. Product Liability Claims

3.2.1. Implementation of Product Liability Directives

The Product Safety Liability Directives were introduced to Estonian law by the Law of Obligations Act. The notion of “product” comprises any movables, regardless of whether the movable constitutes a part of another movable or if the movable has become a part of an immovable. Computer software is also considered to be movable, so that the same regulation applies.

If a defective product causes death, bodily injury or health damage to a person, the producer is either way liable. However, if a defective product causes destruction of or damage to a thing, additional criteria exist for the producer to be liable:

- the product has to be used outside economic or professional activities;
- the extent of the damage caused by the defective product must exceed 500 €.

The maximum compensation is not fixed by regulation.

3.2.2. Damages and Limitation Periods

If a defective product causes death bodily injury or health damage to a person, or causes destruction of or damage to a thing, the victim's burden of proof involves proving the defect in the product, the existence of damage as a result, and a causal relationship between these two aspects.

The limitation period for these claims is three years, beginning on the date when the victim becomes aware (or should reasonably have become aware) of both the damage, the defect in the product and the identity of the producer. Regardless of that, these claims terminate after ten years from the date when the product that caused damage was placed on the market.

3.2.3. Sanctions

Sanctions have been laid down in the Consumer Protection Act. If a person violates the requirements for goods, sale of goods or provision of services the amount of the fine depends on whether the act was committed by a physical person, in which case the fine can be up to 200 fine units (1 unit – 4 €), or by a legal person, which can be fined up to 2600 €.

4. Consumer Claims and Product Liability in Poland

4.1. Quality Claims and Guarantees

4.1.1. Implementation of Directive 1999/44/EC

The law transposing EU Directive 1999/44/EC into Polish legislation is the Act on Special Conditions of Consumer Sale. Polish legislation complies with EU legislation on consumer claims and guarantees, with some minor deviations from Directive 1999/44/EC in Poland, taking into account that EU regulations provide only

minimum standards. Notably, however, there are fewer departures from EU regulations in Polish law than in e.g. Latvian law.

Polish law covers contracts for any movables except unpacked water and gas as well as electricity, as provided in Chapter I of the EU law on quality claims and guarantees.

As far as composite objects are concerned, according to general principles of Polish law these consist of separate movables and if only some of them are defective the consumer may exercise rights only as to the defective ones. It should, however, be assessed on a case-by case basis whether the item sold is a composite of objects (vehicle sold together with navigator that is not installed) or a single movable consisting of different component parts (vehicle with navigator installed that cannot be easily dismantled). In the second case a request to exchange the whole item because of a defect in only one of its components could be assessed on the basis of disproportionality of cost to the seller.

Likewise in Latvia, if there is a legitimate reason to accept the return of a good, a seller's request for return of packaging is not endorsed by law. Although the seller may impose such obligations on consumers, it should be examined case-by-case whether there are solid grounds for such a requirement. In particular, the given requirement (of providing the original packaging in good condition) may be considered a so called abusive contractual clause, infringing consumer rights and as such invalid. On top of it all, the general rule applies that a given contract between seller and consumer may not decrease the level of protection below that granted by the Act on Special Conditions of Consumer Sale.

It should be noted that Polish law does oblige the consumer to raise a claim within two months from the day of becoming aware about a defect, as this is only optionally stipulated in Directive 1999/44/EC. Additionally the law obliges the seller to answer a consumer claim within 14 days, otherwise the claim is considered accepted. No

limitations apply to claims by the consumer if the seller knew about non-conformity at the moment of sale and concealed it.

Moreover, if a repair is required the law does not require the seller to provide a substitute for the repair period. This issue must also be examined case by case, since it may occur that the inconvenience caused by lack of possibility of daily use amounts to a level which makes the repair option unfeasible, thus opening the possibility of price reduction or withdrawal. In Polish jurisprudence it is accepted that reasonable time means “immediate”, whereas immediate means a short period set by the circumstances of the given case. Hence there is no general rule.

4.1.2. Dispute Resolution

There are no specific binding rules for dispute resolution in consumer cases in Poland. Obviously, an amicable solution is the most welcome option. Various consumer organizations are also present in Poland, though the court remains the ultimate solution.

One of the provisions supporting amicable resolution of claims states that the limitation period is suspended for up to 3 months during negotiations between the parties in search of an amicable solution. Eventually a consumer can always turn to a civil court for an order that the seller should repair/replace the item or, if applicable, reduce or return the price (the latter in case of consumer withdrawal from the contract).

4.2. Product Liability Claims

4.2.1. Implementation of Product Liability Directives

The Directives on Product Safety Liability are implemented in Poland through an amendment and supplement to the Polish Civil Code (Product Liability Rules). The general rules on product liability in Poland comply with these Directives. However, the following deviations from

the standard rules of the Directives on Product Safety Liability exist.

Firstly, Liability for products for professional use has not been expressly introduced in Poland. However the literal wording of the Product Liability Rules does not answer the question whether specific product liability requirements also apply to products being used by legal entities not conducting business activity. Legal persons which do conduct business activity are excluded from the protection granted by the Product Safety Rules.

Secondly, the minimum threshold (EUR 500) rule is implemented in Poland in the same way as in Latvia, i.e. it is treated as a minimum amount, so that provided the claim exceeds that minimum the full amount of damages is recoverable. In addition, the public liability rules in Poland are also the same as in Latvia, i.e. do not introduce any financial ceiling on the maximum amount of possible compensation. In contrast, the EU law allows introducing such a cap by the national law.

Thirdly, Poland has not used the opportunity to disregard the so called developments risks defence (as described in Chapter I point 2.5 above). This remains a valid defence for a manufacturer who at the time of a product's development was unable, given the state of scientific and technological knowledge, to discover the defect (dangerous features).

4.2.2. Damages and Limitation Periods

The Polish Civil Code and its rules on torts covered the product liability area before the EU Directives were implemented by the Product Liability Rules and the Code still complements the legal regime in the field. For example, as in Latvia, the Polish Civil Code confers on the individual the right to claim relief irrespective of the type of product or service which caused personal damage (injury or death). Thus in addition to death, personal injury and material damage as well as moral harm are compensated in Poland with regard to product liability. Note that the principal difference between claims which

can be based on product liability rules and torts is that in the latter case generally the fault of the respondent must be proved. As a result the burden of proof usually lies with the claimant to a greater extent in the case of tort liability.

Besides, the running of a limitation period becomes an issue if a claim is brought but the defendant is of the opinion that it has been raised too late or against the wrong person. According to the Product Liability Rules, which accurately transpose the Directives on Product Safety Liability, an action for compensation for loss may be brought within three years from the day when the injured person became aware or should have become aware of the loss and the person to compensate the loss, but not later than ten years from the day when the manufacturer put the goods into circulation. The beginning of the limitation period and interruption of the limitation period are subject to the general provisions of the Polish Civil Code. Further in the case of dispute evidence gathered according to civil procedure will allow proof of exactly when the product was put into circulation (available for sale) and when the injured person became aware or should have become aware of the damage and the responsible person.

Moreover, the Polish Civil Code states that use of a right by e.g. bringing an action in court interrupts the limitation period. Doctrine asserts that the limitation period serves as a tool to safeguard the legal certainty of the person liable. National doctrine construes that only an action against the correct defendant interrupts the limitation period.

4.2.3. Sanctions

The relevant EU Directives do not require criminal liability for violating product liability rules. Polish law also remains silent in this respect. However, an administrative fine is introduced in the amount of up to Zloty 100 000 (ca EUR 25 000).

No guarantee is given for the completeness of the data in this publication. The information quoted does not represent a legal consultation.

bnt offices

Belarus

bnt legal & tax Minsk

Svobody Square 23-85, BY-220030 Minsk

Phone: +375 17 203 94 55

Fax: +375 17 203 92 73

info.by@bnt.eu

Czech Republic

bnt – pravda & partner, s.r.o.

Vodičkova 707/37, CZ-110 00 Prague 1

Phone: +420 222 929 301

Fax: +420 222 929 341

info.cz@bnt.eu

Estonia

bnt Klauberg Krauklis Attorneys-at-law Advokaadibüroo OÜ

Roosikrantsi 11, EE-10119 Tallinn

Phone: +372 667 90 32

Fax: +372 667 05 92

info.ee@bnt.eu

Germany

bnt Rechtsanwälte GbR

Leipziger Platz 21, D-90491 Nuremberg

Phone: +49 911 569 61 0

Fax: +49 911 569 61 12

info.de@bnt.eu

Hungary

bnt Szabó Tom Burmeister Ügyvédi Iroda

Stefánia út 101-103., H-1143 Budapest

Phone: +36 1 413 3400

Fax: +36 1 413 3413

info.hu@bnt.eu

Latvia

bnt Klauberg Krauklis ZAB

Alberta iela 13, LV-1010 Riga

Phone: +371 6777 05 04

Fax: +371 6777 05 27

info.lv@bnt.eu

Lithuania

bnt Heemann Klauberg Krauklis APB
Embassy House
Kalinausko 24, 4th floor, LT-03107 Vilnius
Phone: +370 5 212 16 27
Fax: +370 5 212 16 30
info.lt@bnt.eu

Poland

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Krakowskie Przedmieście 47/51
PL-00 071 Warsaw
Phone: +48 22 551 25 60
Fax: +48 22 551 25 65
info.pl@bnt.eu

Slovakia

bnt - Sovova Chudáčková & Partner, s.r.o.
Cintorínska 7, SK-811 08 Bratislava 1
Phone: +421 2 57 88 00 88
Fax: +421 2 57 88 00 89
info.sk@bnt.eu

Ukraine

bnt & Partners
vul. Yakira 13 Of. 302, UA-04119 Kyiv
Phone: +380 4 423 506 56
Fax: +380 4 423 520 76
info.ua@bnt.eu

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