



24.10.2012

NOTICE TO MEMBERS

Subject: Petition 0332/2012 by Ulrich Neef (German), on the guarantee directive in Germany

1. Summary of petition

The petitioner proposes that the Guarantee Directive (Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees) has not been correctly transposed into German legislation. He thinks that a clause has been inserted into German guarantee legislation which reverses the burden of proof. This means that a buyer who discovers a fault in a product six months after purchasing this product must prove that this fault was already present when the product was purchased. Specifically, this means that faults discovered after six months are not covered by the warranty. Moreover, it is specified that the purchaser cannot exchange a faulty product before two unsuccessful attempts have been made to repair it. The petitioner thinks that the full guarantee period of 24 months should also apply in Germany and is requesting the introduction of an infringement procedure if Germany does not change its legislation. Furthermore, he is requesting longer guarantee periods for certain products with a long life, such as furniture, electrical equipment, etc., as he believes is already the case in the United Kingdom.

2. Admissibility

Declared admissible on 4 July 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 October 2012

Article 5 (3) of Directive 1999/44/EC provides that "*[u]nless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be*

presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity". Consequently, for defects appearing after six months from delivery, the Directive puts the burden of proof that they existed at the time of delivery on the buyer. The German transposition law provides for a similar rule and is therefore in compliance with the Directive on this point.

Since Directive 1999/44/EC is based on minimum harmonisation, Member States may provide for longer guarantee periods in their national legislation. For example, in the Netherlands and Finland the guarantee applies throughout the life span of the goods.

Conclusion

As the German national law complies with the Directive on the point raised by the petitioner, there are no grounds for initiating infringement proceedings.