



28 September

Impact assessment of proposed substantial
amendments from IMCO and JURI Committees
introducing a commercial guarantee for lifespan

Commission's Fitness Check (2017):

The differences in consumer rights if the good purchased turns out to be defective is the second most important decision-making factor when consumers consider buying durable goods in a shop in another EU country

European Parliament's Study on Lifespan (2017):

Vast majority of interviewed consumer associations and industry associations consider that a lifespan approach would substantially change product design

Four sections

Problem definition

What are the existing gaps?

Methodology

Consultation and desk research

Policy options

Five main policy options and six sub-options

Assessment of the policy options

Strengths and weaknesses of each policy option



Section 1

Problem definition

Some elements on the problem definition

Problem

Is a fully harmonised two-year period of the legal guarantee for non-conformity adapted to market evolution?

Objective 1

Removing specific barriers to the cross-border sales of durable products

Objective 2

Enhancing the demand for and supply of sustainable products

Action

Using new contractual rules to achieve these two objectives



Section 2

Methodology

Multidimensional approach

1. Reinforced single market

2. Reinforced consumer protection

3. Benefits above costs for suppliers

4. Positive contribution to environment and sustainable economy

5. Coherence of the regulatory framework

Some elements on the methodology

Starting point

Amendments 384, 385, 386, 387 and 388 - IMCO (OSD);
Amendments 198 and 199 - JURI (OSD); and Amendment 635 -
IMCO & JURI (DCD)

Consultation: 33 organisations interviewed

7 consumer associations; 10 manufacturer associations; 6
repairer/retail associations; 4 environment associations and 6
legal experts

Countries covered by the consultation

Finland, France, Germany, Ireland, Italy, Netherlands and Poland

Desk research

Publications from European/national regulators, the industry,
consumer/environment associations and academic literature



Section 3

Policy options

Types of policy options

Non legislative options

- No implementation of any of the amendments
- Zero option and Option 1: Soft law approach

Main legislative options

- Implementation of part of the amendments and beyond
- Introduction of a mandatory / optional commercial guarantee
- Option 2: Subjective duration for lifespan
- Option 3: Normal duration for lifespan
- Option 4: Binding technical standards for lifespan

Sub-options

For each main legislative option, there are two sub-options:

- Manufacturers are solely liable or;
- Joint liability with the seller (Amendment 387)

Non-legislative options

Zero option

-Basic assumption: implementation of the OSD and DCD as such, and extension of online rules to offline rules

Option 1: soft law approach

Two types of initiatives:

- Supply initiatives: labels, tax incentives, etc
- Demand initiatives: awareness campaigns

Option 2: Subjective duration for lifespan

Principle 1

The guarantor is free to provide a commercial guarantee for lifespan

Principle 2

If he opts for such a guarantee, he is free to set forth the duration of the guaranteed lifespan in his own discretion (Amendments 198 and 384)

Principle 3

In case he decides not to provide a guarantee for lifespan, this information has to be explicitly disclosed (Amendments 384, 387, 388, 198)

Option 3: Normal duration for lifespan

Principle 1

All manufacturers or final sellers in the covered markets have to provide a commercial guarantee for lifespan (there is no option to explicitly refuse a guarantee)

Principle 2

The lifespan has to be the actual normal lifespan of the product as a product belonging to a particular category of products, or the lifespan that can be reasonably expected (Amendments 198, 385, 386 and 635)

Option 4: Binding technical standards for the duration of lifespan

Principle 1

All manufacturers or final sellers in the covered markets have to provide a commercial guarantee for lifespan (there is no option to explicitly refuse a guarantee)

Principle 2

The determination of the lifespan has to be based as a minimum on binding product-specific standards (can be defined in a regulation such as the Ecodesign Directive)



Section 4

Assessment of the policy options

Non legislative options

SVC17

Main strengths

- Option 1: increased awareness of consumers

Main weaknesses

- Zero option: increasing complexity of some products (especially “smart goods”) requires guarantee for continuity and not a static non-conformity assessment at delivery
- Option 1: non constraining, so uncertain impact

SVC17

First say that the 3 options based on commercial guarantee of good functioning: more continuous support than conformity at time of delivery (especially for smart goods) : evolution in market; a problem is that modalities can be set by guarantor (e.g. registration, transfer to second-hand buyers, remedies...) + effective sanctioning?

Stefan Van Camp; 27/09/2017

Legislative options (overall)

SB1

Main overall strengths

- The three legislative options based on commercial guarantee of good functioning should ensure a more continuous support than with a regime of conformity at time of delivery (especially for smart goods)

Main overall weaknesses

- Modalities can be set by guarantor (e.g. registration, transfer to second-hand buyers, remedies...)
- Will the sanctioning be effective?

Slide 17

SB1

First say that the 3 options based on commercial guarantee of good functioning: more continuous support than conformity at time of delivery (especially for smart goods) : evolution in market; a problem is that modalities can be set by guarantor (e.g. registration, transfer to second-hand buyers, remedies...) + effective sanctioning?

Sylvain Bouyon; 27/09/2017

Option 2: Subjective duration for lifespan

Main strengths

- Legal certainty regarding duration
- Development of pan-European products
- Low direct costs
- Low costs related to compliance/enforcement
- Increased awareness

Main weaknesses

- Limited impact on healthy competition
- Limited impact on the benefits of consumers

Option 3: Normal duration for lifespan

Main strengths

- High benefits for consumers
- Positive impact on healthy competition (although fraud is possible and questions remain for imported goods)

Main weaknesses

- High legal uncertainty regarding exact duration
- High direct costs
- High costs related to enforcement,
- High risks of distortion of the supply chain

Option 4: Binding technical standards for the duration for lifespan

Main strengths

- High benefits on consumers
- Positive impact on healthy competition
- Positive impact on the single market
- High legal certainty
- Positive impact on the activities of resource & development

Main weaknesses

- Long time for implementation
- High direct costs
- High compliance costs
- High costs related to enforcement (but easier benchmarking than Option 3)
- High risks of distortion of the supply chain

Sub-Options: Joint liability versus liability solely on manufacturers

Main strengths of liability solely on manufacturer

- Direct claim may increase consumer confidence
- Manufacturer is responsible for design
- Direct claims can avoid trader being sandwiched

Main strengths of joint liability

- Trader: main point of contact of consumers

Main weaknesses of liability solely on manufacturer

- Many manufacturers (especially small ones) do not have interface to interact directly with consumers

Main weaknesses of joint liability

- Trader's right of redress is national law and not evident in practice

In order to maintain coherence

Principle 1

Similar rules for offline and online channels

Principle 2

Avoiding confusion between legal regime, commercial guarantees and special or mandatory commercial guarantees

Principle 3

Avoiding restrictions in the guarantees that would deny protection (registration duty, prohibition to transfer, limited remedies)

Principle 4

Avoiding information duties about minimum or normal lifespan while enabling refusal of guarantee

Principle 5

Product specific regulations must be aligned with contractual liability