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Sale of Goods and Consumer Remedies: A Slovenian Perspective

ABSTRACT: *Buying various goods is part of the average consumer's daily routine. In return for the money, the consumer expects to receive goods that will serve their purpose for a reasonable period after the conclusion of the sales contract. Legal mechanisms should safeguard the principle of equivalence. The dissatisfied position of consumers in Slovenia results from older legal solutions and the implementation of new EU directives. In Slovenia, the new Consumer Protection Act entered into force in December 2022 and became applicable from January 2023. Thus, Slovenia has now fulfilled its obligations to implement Directives 2019/770 and 2019/771. Although the two Directives are complementary, this paper focuses solely on the implementation of Directive 2019/771 into the Slovenian legal order. Under the new Consumer Protection Act, the seller remains liable for any lack of conformity existing at the time of delivery of the goods which becomes apparent within two years of that time. In addition, the new law introduces new concepts (such as subjective and objective requirements for conformity) and explicitly includes goods with digital elements. Owing to the fully harmonising nature of Directive 2019/771, the new Consumer Protection Act provides for the hierarchy of remedies. Under Slovenian law, the liability of the seller is complemented by a "guarantee for proper functioning" of "technical" goods and a voluntary (commercial) guarantee option. The provision of a mandatory one-year guarantee for proper functioning has been preserved from Yugoslavia's legal system to the present day, as the new Consumer Protection Act continues to maintain it. Thus, the Slovenian legal system continues to provide for two (legally) different but parallel mandatory frameworks for the protection of consumer interests.*

KEYWORDS: *consumer protection, sale of goods, Directive 2019/771, lack of conformity, liability of the seller, mandatory guarantee for proper functioning of technical goods, commercial guarantee.*

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1. Introduction

In return for the money spent, the consumer could expect to receive goods that would serve their purpose for a reasonable period after the sales contract was concluded.¹ Legal mechanisms to ensure the protection of consumers' interests are mostly derived from European Union (EU) law. The liability of the seller and the commercial guarantee are part of harmonised aspects concerning the sale of consumer goods at the EU level.² In Slovenia, certain categories of goods – “technical” goods – are additionally covered by a one-year mandatory “guarantee for proper functioning”. To illustrate, if a vacuum cleaner bought from a shopping centre in Ljubljana malfunctions ten months after delivery, the consumer can rely on both the liability of the seller and the mandatory guarantee for proper functioning. Certainly, the consumer must not be unjustly enriched; however, he is free to decide how to pursue his equivalent interest.³ The appeal and practicality of these options will vary based on the specific circumstances of each individual case.

This paper provides an overview of the dissatisfied position of consumers within the Slovenian legal framework, focusing solely on contracts for the sale of goods. The first part explains the Slovenian regulatory framework regarding relevant aspects of consumer sales contracts. Its solutions to the seller's liability and guarantees are strongly influenced by the European approach and Slovenia's own legal tradition. Formerly part of the Socialist Federal Republic of Yugoslavia, the Republic of Slovenia joined the EU in 2004.⁴ The second part outlines the implementation of the seller's liability system at the national level. It defines the chief concepts and provides underlying legislative solutions. The third part of the paper discusses the concept of guarantee. It is further divided according to its two types: mandatory and commercial. The conclusion compares the different options available to the consumer.

1 Možina, 2009, pp. 143–144.

2 Art. 1 (subject matter and purpose) and Art. 4 (level of harmonisation) of Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (Directive 2019/771), OJ L 136, 22. 5. 2019.

3 See Možina, 2009, p. 155 and Proposal for the Consumer Protection Act, Explanatory Memorandum to the Art. 94, p. 149. See also Order of the Supreme Court of Slovenia, Case No. II Ips 358/2005, 18. 4. 2007; Judgement and Order of the Higher Court of Ljubljana, Case No. I Cpg 1027/2010, 14. 1. 2011.

4 For more see Možina, 2008, p. 173 *et seq.*

2. Slovenian Legal Framework

In Slovenia, the Obligations Code (sl. Obligacijski zakonik),⁵ as *lex generalis*, provides rules on the conclusion of sales contracts and their consequences, including the seller's liability and associated guarantees. However, the seller's liability and associated guarantees require particular attention, as several different systems apply to different categories of contracts.⁶ The Consumer Protection Act (sl. Zakon o varstvu potrošnikov; ZVPot-1),⁷ as *lex specialis*, regulates both the seller's liability and guarantees in business-to-consumer (B2C) sales contracts.⁸

The original Consumer Protection Act (ZVPot)⁹ of 1998 was amended to implement 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 (Directive 1999/44/EC).^{10,11} Following developments in European (consumer) contract law,¹² Slovenia has now adopted a new law. The new Consumer Protection Act (ZVPot-1) entered into force in December 2022 and became applicable from January 2023.¹³ Thus, Slovenia has fulfilled its obligations under Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (Directive 2019/770)¹⁴ and Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (Directive 2019/771).¹⁵ The new law has introduced certain changes, while some solutions remain the same.

The system of consumer protection in B2C contracts for the sale of goods in Slovenia is specific, as it combines both national and European legal solutions.¹⁶ Slovenian law provides that the seller's liability is complemented by a mandatory guarantee for the proper functioning of "technical" goods and a voluntary (commercial) guarantee option. The provisions governing the seller's liability and commercial guarantee have

5 Official Gazette of the Republic of Slovenia Nos. 97/07, 64/16 – odl. US and 20/18 – OROZ631.

6 Možina, 2024, p. 587.

7 Official Gazette of the Republic of Slovenia No. 130/22.

8 Regarding wider application of rights granted under the Subsection II – Mandatory guarantee of ZVPot-1, see Section 4.2.

9 Official Gazette of the Republic of Slovenia Nos. 98/04, 114/06 – ZUE, 126/07, 86/09, 78/11, 38/14, 19/15, 55/17 – ZKot, 31/18 in 130/22 – ZVPot-1.

10 OJ L 171, 7. 7. 1999.

11 For more see Možina, 2008, pp. 176–178.

12 Morais Carvalho, 2019, p. 194.

13 Art. 249 ZVPot-1.

14 OJ L 136, 22. 5. 2019.

15 OJ L 136, 22. 5. 2019.

16 Možina, 2009, 143 *et seq.*

been amended to implement Directive 2019/771. Additionally, Slovenia continues to use the mandatory guarantee. The provision of a mandatory one-year guarantee for “technical” goods has been preserved from the Yugoslav legal system to the present day, although a different system of consumer sales contracts has been introduced at the EU level.¹⁷ Thus, the Slovenian legal system provides for two (legally) different but (partly) overlapping frameworks for the protection of consumer interests.¹⁸

3. Liability of the Seller

With the adoption of ZVPot-1, Slovenia has updated its legal solutions regarding the seller’s liability.¹⁹ Unlike its predecessor, ZVPot-1 establishes a hierarchy of remedies, as Slovenia was one of the five Member States that allowed consumers a free choice of remedies under Directive 1999/44/EC.²⁰ Another important aspect is the introduction of the new concepts of subjective and objective requirements for the conformity of products. The relevant provisions of Directive 2019/771 are transposed in Arts. 71 to 88.

Before discussing the substantial provisions, it is necessary to define the primary concepts: consumer, seller, consumer sales contract, and goods. A consumer is any natural person who acquires or uses goods, services, or digital content for purposes outside that person’s professional or gainful activity.²¹ A seller is defined as a company that enters into sales contracts.²² A consumer sales contract is any contract under which the seller undertakes to deliver goods to the consumer in a manner that ensures the consumer acquires ownership of the goods and, in return, the consumer undertakes to pay the price. Under ZVPot-1, a sales contract also includes any contract the subject of which is goods and related services, if the contract’s primary aim is to transfer ownership of the goods. Contracts between a consumer and a seller for the supply of goods to be manufactured or produced are also considered sales contracts under ZVPot-1.²³

Under ZVPot-1, the concept of goods has been modernised. Goods refer to any movable items, except goods sold by way of execution or other judicial proceeding. Water, gas, and electricity are also considered goods under ZVPot-1 if they are

17 Judgement of the Supreme Court of Slovenia, Case No. II Ips 1001/2008 of 17. 5. 2012, para. 9.

18 Strojjan, 2023, p. 71. For more see Možina, 2009, p. 164.

19 For a comprehensive overview of the buyer’s rights in the event of material defects in the sales contract under the OZ and the late ZVPot, see Možina, 2012, p. 86 *et seq.*

20 Croatia, Greece, Lithuania, Slovenia, and Portugal. See European Commission, 2018, pp. 34 and 68.

21 See Art. 4(18) ZVPot-1.

22 See Art. 4(19) ZVPot-1.

23 Art. 66 ZVPot-1.

sold in a limited volume or set quantity. Goods with digital elements are explicitly included.²⁴

3.1. Conformity of Goods and Liability Period

The seller must deliver goods to the consumer that are in conformity with the contract. This includes subjective and objective requirements for conformity and the absence of incorrect installation of the goods, where applicable.²⁵ The original ZVPot used the concept of the ‘material defect’,²⁶ while the new ZVPot-1 uses the term “non-conformity”. The new law introduces the concepts of subjective and objective requirements for the conformity of goods, in accordance with the main provisions of Directive 2019/771 on conformity assessment criteria.²⁷ The text of Directive 2019/771 has been followed by the Slovenian legislator with minor aesthetic deviations.²⁸

The seller is liable for any lack of conformity of the goods that exists at the time of delivery and becomes apparent within two years of delivery.²⁹ Slovenia has maintained a liability period of two years³⁰ and has not introduced a longer period, although the Directive allows for such an extension.³¹ This period also applies to goods with digital elements.³² In the case of goods with digital elements for which the sales contract provides for the continuous supply of digital content or digital services over a specified period, specific provisions apply.³³ If the sales contract concerns used goods, the seller and the consumer may agree on a shorter period. Nonetheless, this period may not be shorter than twelve months.³⁴

Another important time limit is set in favour of the consumer: any lack of conformity of the goods is presumed to have existed at the time of delivery if it

24 Art. 4(1) ZVPot-1.

25 Art. 5 of Directive 2019/771.

26 The Consumer Protection Act (ZVPot) used the term ‘material defect’ (sl. stvarna napaka); see, for example, Art. 37 of ZVPot, a term which was not contained in Directive 1999/44/EC. For the overlap between the concepts of non-conformity of goods and ‘material defects’ see Možina, 2011, p. 42 (particularly see footnote 10 in the cited work).

27 Morais Carvalho, 2019, p. 198.

28 See Art. 72 (subjective requirements for the conformity of goods), Art. 73 (objective requirements for the conformity of goods), Art. 74 (objective requirements for the conformity of goods with digital elements), and Art. 76 (non-conformity owing to incorrect installation) of Directive 2019/771. See Možina, 2024, pp. 600–601.

29 Art. 78(1) ZVPot-1.

30 The liability period remains unchanged from Art. 37.b(1) of ZVPot. See also Proposal for the Consumer Protection Act, Explanatory Memorandum to the Art. 78, pp. 142–143.

31 Art. 10(3) of Directive 2019/771.

32 Art. 78(2) ZVPot-1.

33 See Art. 78(3) and (4) ZVPot-1.

34 Art. 78(5).

becomes apparent within one year of delivery.³⁵ However, the seller can disprove this presumption. An exception applies if the presumption is incompatible with the nature of the goods or the nature of the lack of conformity.³⁶ In the case of goods with digital elements where the sales contract provides for the continuous supply of digital content or digital services, a specific provision applies.³⁷ Under the original ZVPot, this presumption applied for only six months after delivery.³⁸ Directive 2019/771 has enhanced consumer protection in this respect, although the Slovenian legislator has not introduced the maximum period allowed.³⁹

However, the seller is not liable for the lack of conformity of the goods resulting from non-compliance with the objective requirements for conformity (of “normal” goods or “the goods with digital elements”) if, at the time of the conclusion of the sales contract, the consumer was specifically informed that a particular characteristic of the goods deviates from the objective requirements for conformity and the consumer expressly and separately accepted this deviation when concluding the sales contract.⁴⁰

The seller’s liability for the non-conformity of the goods set by ZVPot-1 may not be limited or excluded by any contractual provision. Any contractual provision that contradicts the provisions of the law is null and void.⁴¹

3.2. Consumer’s Remedies: Hierarchy Introduced

When implementing Directive 1999/44/EC, the Slovenian legislator did not implement a hierarchy of remedies in ZVPot, leaving the consumer free to choose between different remedies.⁴² The buyer who notified the defect could claim from the seller: (1) repair or (2) replacement of the goods, (3) price reduction, or (4) termination of the contract, all in combination with (5) damages, in particular for the cost of materials, spare parts, labour, transfer and transport of the goods.⁴³ However, before termination

35 Art. 80(1) ZVPot-1.

36 *Ibid.*

37 Art. 80(2) ZVPot-1.

38 Art. 37.b(3) ZVPot.

39 See Art. 11(2) of Directive 2019/771.

40 Art. 75 ZVPot-1.

41 Art. 79 ZVPot-1.

42 Art. 37.c ZVPot. On the principle of the prohibition of the abuse of rights as a restriction of buyer’s free choice, see Možina, 2008, p. 177 and Judgement of the Supreme Court of Slovenia, Case No. II Ips 968/93, 6. 4. 1995. See also Weingerl, 2020, p. 131.

43 Art. 37.c ZVPot.

of the contract, the seller had to be given an appropriate additional period to repair or replace the goods.⁴⁴

Owing to the maximum harmonisation nature of Directive 2019/771, ZVPot-1 introduces a hierarchy of remedies.⁴⁵ In this aspect, Slovenia has lowered the level of consumer protection following the implementation of Directive 2019/771.⁴⁶ First, the consumer has the right to require the seller to bring the goods into conformity, free of charge, by repair or replacement. Regarding primary remedies, the consumer is, in principle, free to choose between repair and replacement.⁴⁷ Second, the consumer is entitled to demand a proportionate reduction in the price or to terminate the contract with a refund of the amount paid.⁴⁸ Until the seller fulfils his obligations, ZVPot-1 allows the consumer to withhold payment of any outstanding part of the price or a part thereof.⁴⁹ In addition, the consumer has the right to claim compensation from the seller for any damage, in particular the cost of materials, spare parts, labour, and transfer and transport of the goods, incurred as a result of the exercise of his rights.⁵⁰

3.2.1. Repair and Replacement

Regarding primary remedies, consumers are in principle free to decide between repair and replacement.⁵¹ The consumer's choice is restricted if the selected solution is impossible or would incur disproportionate costs for the seller compared to an alternative.⁵² All relevant circumstances must be considered, in particular the value of the goods if there were no lack of conformity, the significance of the lack of conformity, and whether the alternative remedy could be provided without causing significant inconvenience to the consumer.⁵³ However, the seller can refuse to

44 Regarding the most severe consequence of terminating the contract, Možina states that a reasonable additional period from *lex generalis* applies, since ZVPot remained silent on the matter. See Možina, 2012, pp. 96–97. See also Judgement of the Higher Court of Ljubljana, Case No. I Cp 1194/2022, 9. 5. 2023, para. 5.

45 Cf. Art. 37.c(1) ZVPot and Art. 81(1) ZVPot-1.

46 See Morais Carvalho, 2019, p. 200. See also Mak and Terry, 2020, p. 237.

47 Arts. 81(1) and 82(4) ZVPot-1.

48 Art. 81(1) ZVPot-1.

49 Art. 81(2) ZVPot-1.

50 Art. 81(3) ZVPot-1.

51 See Art. 82(4) ZVPot-1. The fact that repair is not prioritised over replacement and is treated as an equal alternative has generally been criticised in terms of more sustainable consumption and the circular economy, as have some other solutions in Directive 2019/771. See García Goldar, 2022, p. 19; Keirsbilck et al., 2020, p. 18; Maitre-Ekern and Dalhammar, 2019, pp. 419–420; Mak and Terry, 2020, p. 237; Van Gool and Michel, 2021, p. 144, etc.

52 Art. 82(4) ZVPot-1. See also Dudás and Jokanović, 2023, p. 214.

53 Art. 82(5) ZVPot-1.

bring the goods into conformity if repair and replacement are impossible or would impose disproportionate costs on the seller, considering all the aforementioned circumstances.⁵⁴

In principle, the seller is obliged to meet the consumer's request without any charge within a reasonable period from the moment the consumer informs him of the lack of conformity. Repair or replacement should not cause any significant inconvenience to the consumer, considering the nature of the goods and their intended purpose.⁵⁵ The term 'reasonable period of time' is specified in ZVPot-1 as 'no longer than 30 days',⁵⁶ in accordance with Recital 55 of Directive 2019/771.

This period may be extended by the shortest time necessary to complete the repair or replacement, up to a maximum of 15 days.⁵⁷ In determining this extended period, the nature and complexity of the goods, the nature and severity of the non-conformity, and the effort required to complete the repair or replacement must be considered.⁵⁸ Therefore, the period for repair or replacement may, therefore, extend to a maximum of 45 days. Before the expiry of the initial period, the seller must inform the customer of the length of the extension period and the reasons for it.⁵⁹

The goods must be repaired or replaced at no cost to the consumer.⁶⁰ The seller is responsible for covering all essential expenses related to bringing the goods into conformity, including costs associated with shipping, transportation, labour, and materials.⁶¹

The consumer is obliged to make the goods available to the seller.⁶² If it is necessary to replace the goods to bring them into conformity, the seller must take back the replaced goods at his own expense.⁶³ If goods that were installed in accordance with their nature and purpose prior to the non-conformity becoming apparent need to be removed for repair or replacement, the obligation to repair or replace the goods also includes removing the non-conforming goods.⁶⁴ Further, it involves installing replacement or repaired goods or paying the costs for removal and reinstallation.⁶⁵ The consumer is not obliged to pay for the normal use of the product prior to its replacement.⁶⁶

54 Art. 82(6) ZVPot-1. See also Dudás and Jokanović, 2023, p. 215.

55 Art. 82(1) ZVPot-1.

56 Art. 82(1) ZVPot-1.

57 Art. 82(2) ZVPot-1.

58 *Ibid.*

59 *Ibid.*

60 Art. 82(1).

61 Art. 82(1) and (3) ZVPot-1.

62 Art. 82(7) ZVPot-1.

63 *Ibid.*

64 Art. 82(8) ZVPot-1.

65 *Ibid.*

66 Art. 82(9) ZVPot-1.

3.2.2. Price Reduction and Termination of the Sales Contract

Regarding secondary remedies, the customer may request a reduction in price or termination of the sales contract.⁶⁷ The requirements for price reduction or termination of the contract can be summarised in four categories. These reasons comply with Art. 13(4) of Directive 2019/771:

1. The first case occurs when the seller does not repair or replace the goods in accordance with the ZVPot-1 requirements or rejects the consumer's claim for repair or replacement on the grounds that repair or replacement is either impossible or disproportionate.⁶⁸
2. If, despite the seller's attempts to bring the goods into conformity, a lack of conformity still exists, the consumer has the right to request a price reduction or terminate the sales contract.⁶⁹
3. The lack of conformity can be so severe that it justifies an immediate price reduction or termination of the sales contract.⁷⁰
4. The last case covers the seller's unwillingness to honour his obligations under primary remedies. If the seller has stated, or if it is evident from the circumstances, that he will not rectify the non-conformity within a reasonable timeframe or without causing substantial inconvenience to the consumer, the consumer has the right to request a fair reduction in price or termination of the sales contract.⁷¹

The price reduction must be proportional to the decrease in the value of the goods received by the consumer compared with the value the goods would have if they were in conformity.⁷² If a consumer requests a proportional reduction in the price of the goods, the seller must reimburse a portion of the price to the consumer within eight days of receiving the request.⁷³

The consumer may exercise the right to terminate the sales contract through a statement to the seller expressing the decision to terminate the sales contract.⁷⁴ Nonetheless, ZVPot-1 has excluded the option to terminate the contract in cases

67 Art. 81(1) ZVPot-1.

68 Art. 83(1) ZVPot-1.

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*

72 Art. 83(3) ZVPot-1.

73 Art. 86(2) ZVPot-1.

74 Art. 83(4) ZVPot-1.

where the lack of conformity is of minor significance.⁷⁵ The burden of proving whether a non-conformity is only minor lies with the seller.⁷⁶

The situation in which a lack of conformity impacts only some of the goods delivered under the sales contract is specifically regulated. If there is a ground for termination, the consumer may terminate the sales contract only in relation to those goods.⁷⁷ Moreover, the consumer can terminate the contract in relation to any other goods which the consumer acquired together with the non-conforming goods if it is not reasonable to expect the consumer to accept or keep only the conforming goods.⁷⁸

Consequently, upon termination of the contract, the consumer must return the goods at the seller's expense.⁷⁹ The seller must reimburse the consumer the price paid without delay, but no later than eight days after receiving the goods or proof that the consumer has sent them back.⁸⁰

Notwithstanding the existing hierarchy, the Slovenian legislator has included a specific provision to address situations where the lack of conformity of the goods becomes apparent shortly after delivery. If the non-conformity becomes apparent in less than 30 days after the delivery of the goods, the consumer has the right to immediately terminate the contract.⁸¹

Where the seller is liable to the consumer owing to the lack of conformity resulting from an act or omission by a person in previous links of the chain of transactions, the seller is entitled to pursue remedies against the person or persons liable in the chain of transactions. Accordingly, ZVPot-1 regulates the seller's right of recourse.⁸²

3.3. *Obligation to Notify and Inspection of Goods*

The duty to notify is an additional condition of liability for non-conformity of goods with the sales contract.⁸³ Notably, notification under Directive 2019/771 is optional.⁸⁴ Member States were allowed to ensure that consumers have a higher level of protection by not introducing such an obligation.⁸⁵ Nevertheless, the Slovenian legislator

⁷⁵ Art. 83(7) ZVPot-1.

⁷⁶ *Ibid.* See also Dudás and Jokačević, 2023, p. 218.

⁷⁷ Art. 83(5) ZVPot-1.

⁷⁸ *Ibid.*

⁷⁹ Art. 83(6) ZVPot-1.

⁸⁰ Art. 86(1) ZVPot-1.

⁸¹ Art. 83(2) ZVPot-1.

⁸² See Art. 88 ZVPot-1.

⁸³ Art. 84 ZVPot-1.

⁸⁴ See Art. 12 of Directive 2019/771. See also Recital 46 of Directive 2019/771 and Morais Carvalho, 2019, p. 200.

⁸⁵ Recital 46 of Directive 2019/771.

has decided to maintain it.⁸⁶ The draft of ZVPot-1 does not explain the reasoning for this decision.⁸⁷

To benefit from the rights ensured, the consumer must notify the seller of the non-conformity within two months from the date on which the consumer detected the lack of conformity.⁸⁸ The consumer may notify the seller of the lack of conformity in person, for which the seller must issue a confirmation.⁸⁹ The consumer may send the notification to the store where the goods were purchased or communicate it to the representative of the seller with whom he concluded the sales contract.⁹⁰ ZVPot-1 imposes further duties on the consumer. The consumer must describe the non-conformity in detail in the notification.⁹¹ The consumer shall allow the seller to inspect the goods which the consumer claims are not in conformity with the sales contract.^{92,93} If the non-conformity of the goods is disputable, the seller must inform the consumer in writing within eight days of receiving the consumer's claim.⁹⁴

3.4. Loss of Rights

ZVPot-1 prescribes a two-year liability period and an obligation to notify. However, the consumer may successfully exercise his remedies within a two-year cut-off period, beginning from the notification to the seller.⁹⁵

3.5. Seller's Liability: Renewed Legal Solutions

With the ZVPot, the Slovenian legislator opted for no hierarchy, providing the consumer (in principle) with a free choice between different remedies.⁹⁶ ZVPot-1 introduces a hierarchy of remedies. At the level of the EU, this eliminates one of the disparities that previously existed regarding an essential element of the consumer

86 Cf. Art. 37.a(1) ZVPot and Art. 84(1) ZVPot-1.

87 See Proposal for the Consumer Protection Act, Explanatory Memorandum to Art. 84, p. 147.

88 Art. 84(1) ZVPot-1.

89 Art. 84(3) ZVPot-1.

90 *Ibid.*

91 Art. 84(2) ZVPot-1.

92 Art. 84(4) ZVPot-1.

93 About Art. 84(2) and (4) in the context of overly burdensome provisions, see Dudás and Jokačević, 2023, p. 219.

94 Art. 85 ZVPot-1.

95 Art. 87 ZVPot-1.

96 Weingerl, 2020, p. 131.

sales contracts.⁹⁷ Regarding the hierarchy in place, its criticism in the context of the circular economy is noteworthy.⁹⁸

However, where the Slovenian legislator could have increased the level of protection, ZVPot-1 did not fully exploit this opportunity. For example, ZVPot-1 continues to insist on the obligation to notify. Although two months is a reasonable period of time, if the consumer fails to observe this deadline, the consumer loses his rights.⁹⁹ After ZVPot and its six-month period for the burden of proof rule, ZVPot-1 introduced a longer period of one year. Instead of the one-year period, Slovenia could have introduced a period of two years from the date of delivery of the goods. Although the Slovenian legislator did not introduce a maximum period, Directive 2019/771 has improved consumer protection in this respect. ZVPot-1 uses the terminology of Directive 2019/771 on conformity and includes an explicit separation of the conformity criteria into subjective and objective criteria. Several other changes have been brought about by the new law; however, this paper only focuses on selected developments. All changes together have a significant impact on the position of the consumer.

In summary, the number of time limits determines the position of the consumer: If the lack of conformity occurs within the seller's liability period and the consumer notifies the seller, the consumer can benefit from the consumer's rights. They can only be exercised within two years from the date of notification. However, the seller's liability is not the only mandatory system in place for the protection of the consumer's interest in ZVPot-1. Therefore, in the Slovenian context, it is interesting to compare the seller's liability with the existing parallel mandatory system, that is, the guarantee for proper functioning (see Section 4.2).

4. Guarantee

In the Slovenian context, the guarantee system is specific: a guarantee can be commercial (voluntary) or mandatory.¹⁰⁰ While the commercial guarantee is regulated by Directive 2019/771, as well as its predecessor Directive 199/44/EC, the mandatory guarantee is unknown to the European directives.¹⁰¹ ZVPot-1 defines a guarantee as

⁹⁷ See Recitals 6 and 47 of Directive 2019/771.

⁹⁸ See García Goldar, 2022, p. 19; Keirsbilck et al., 2020, p. 18; Maitre-Ekern and Dalhammar, 2019, pp. 419–420; Mak and Terryn, 2020, p. 237; Van Gool and Michel, 2021, p. 144, Weingerl, 2020, pp. 131–132, etc.

⁹⁹ See Strojjan, 2023, p. 83.

¹⁰⁰ Art. 89(2) ZVPot-1. For a broader overview of the types and characteristics of guarantees in ZVPot-1, see Strojjan, 2023, p. 77 *et seq.*

¹⁰¹ For more see Možina, 2009, p. 144 *et seq.*

any obligation undertaken by a seller or producer (guarantor) towards a consumer in addition to the liability of the seller.¹⁰² The guarantor commits to repair or replace the goods free of charge, or to reimburse (in part or in full) the price paid, if the goods do not comply with the specifications or lack the characteristics set out in the guarantee statement or in the relevant advertising.¹⁰³

Section 4 of ZVPot-1 is devoted to the guarantee provisions. The section is divided into general provisions (Arts. 89 to 93) and provisions that apply only to the mandatory guarantee for proper functioning (Arts. 94 to 98). Any guarantee, whether mandatory or commercial, shall be legally binding on the guarantor under the conditions specified in the guarantee statement and related advertising available at the time of, or before, the conclusion of the contract.¹⁰⁴ If the conditions laid out in the guarantee statement are less favourable to the consumer than those set out in the associated advertising, the guarantee shall be binding under the conditions set out in the advertising relating to the guarantee.¹⁰⁵ There is an exception to this rule if the associated advertising has been corrected prior to the conclusion of the contract in the same manner, or in a comparable manner, to that in which it was made.¹⁰⁶

At the latest, the consumer shall receive the guarantee statement at the time of delivery of the goods.¹⁰⁷ The guarantee statement shall be expressed in clear, intelligible language and provided on a durable medium.¹⁰⁸ If the goods are intended for sale in the territory of the Republic of Slovenia, the guarantee statement must be written entirely in the Slovene language.¹⁰⁹ An explicit list of information must be included in each guarantee statement.¹¹⁰ Failure to comply with the requirements of the guarantee statement does not affect the binding nature of the guarantee for the guarantor.¹¹¹ The rights that a consumer can exercise under the guarantee (statement) cease two years after the date on which the consumer exercised those rights.¹¹²

102 Art. 89(1) ZVPot-1.

103 *Ibid.*

104 Art. 90(1) ZVPot-1.

105 Art. 90(2) ZVPot-1.

106 *Ibid.*

107 Art. 91(1) ZVPot-1.

108 Art. 91(3) ZVPot-1.

109 *Ibid.*

110 Art. 91(2) ZVPot-1.

111 Art. 91(4) ZVPot-1.

112 Art. 93 ZVPot-1.

4.1. Commercial Guarantee

In addition to the seller's liability and the mandatory guarantee, the commercial guarantee represents a voluntary undertaking on the part of the guarantor. Thus, the commercial guarantee is a legitimate market tool.¹¹³ It allows market players to compete based on the guarantees they offer.¹¹⁴ From the guarantor's perspective, a commercial guarantee can be used as an important sales tactic.¹¹⁵

For the commercial guarantee, the ZVPot-1's general provisions apply. As aforementioned, they emphasise that the guarantor is bound by the guarantee statement and the associated advertising. The law imposes requirements on the content of the guarantee statement, as well as the requirement that the guarantee must be drawn up in clear, intelligible language and issued on a durable medium. Certain statements must be included, such as a clear reminder that the consumer is entitled by law to remedies from the seller free of charge in the event of lack of conformity of the goods, and that those remedies are not affected by the commercial guarantee.¹¹⁶

Following Directive 2019/771, the new ZVPot-1 introduced a "commercial guarantee of durability". As commercial guarantees can be used to signal durability,¹¹⁷ their potential in this direction has been recognised at the EU level.¹¹⁸ Thus, the concept of durability has been added to the commercial guarantee instrument.¹¹⁹ In ZVPot-1, Art. 92 is devoted to the commercial guarantee of durability. If a producer offers the consumer a commercial guarantee of durability, the producer is directly liable to the consumer for the repair or replacement of the goods for the entire duration of the commercial guarantee of durability, unless more favourable (for the consumer) conditions apply.¹²⁰ The justified criticism of the unsustainability of the replacement with a new product should be noted in this context.¹²¹

113 Malinvaud, 2002, p. 222. See Recital 21 of Directive 1999/44/EC.

114 *Ibid.*

115 Bradgate and Twigg-Flesner, 2011, p. 169.

116 See Art. 91 ZVPot-1.

117 For 'Signalling Theory', see Twigg-Flesner, 2003, p. 54 *et seq.*

118 Van Gool and Michel, 2021, p. 147.

119 'Durability' means the ability of the goods to maintain their required functions and performance through normal use. See the definition of durability in Art. 4(26) ZVPot-1.

120 Art. 92 ZVPot-1 states:

'(1) Under the conditions provided in this Section and without prejudice to the legal protection under other regulations, producers shall be directly liable to consumers throughout the period of the commercial guarantee of durability for the repair or replacement of goods in accordance with paragraphs one, two and seven to nine of Article 82 of this Act if they give to consumers a commercial guarantee of the durability of specified goods for a specified period.

(2) In certificates of a commercial guarantee of durability, producers may offer more favourable conditions to consumers.

121 See Van Gool and Michel, 2021, p. 147.

4.2. Guarantee for Proper Functioning

For the list of “technical” goods, producers must provide a guarantee for proper functioning for at least one year.¹²² The nature of the Slovenian guarantee for proper functioning is different from the commercial guarantee: it is mandatory, similar to the seller’s liability. Therefore, the producer’s liability under a guarantee for proper functioning arises under the law, irrespective of whether a guarantee statement has been made or given to the buyer.¹²³

The seller’s liability and the guarantee are separate systems.¹²⁴ Nonetheless, there is a link between the two, as they both protect the same interest of the buyer.¹²⁵ However, they constitute two separate and distinct legal bases for liability.¹²⁶ The content of the guarantee provision is not the lack of conformity within a certain period, but the faultless operation.¹²⁷ Since conformity with the contract also implies a certain durability of the goods or their performance, in practice, a lack of conformity usually also implies a guarantee case.¹²⁸

Although the guarantee for proper functioning is regulated by the consumer protection legislation, it does not only apply to B2C relationships. The provisions on mandatory guarantee also apply to business-to-business (B2B) contracts for the sale of goods.¹²⁹ Thus, ZVPot-1 establishes an extensive additional legal regime to the seller’s liability.

4.2.1. Mandatory Guarantor: the Producer

The guarantee for proper functioning is an old provision originating from the Yugoslav legal system.¹³⁰ As the Supreme Court of Slovenia has stated, this “relic from the past” has persisted in the Slovenian legal system to this day, despite a differently designed liability regime at the EU level.¹³¹ It was included in ZVPot¹³² and preserved in ZVPot-1.¹³³

122 Art. 94 ZVPot-1. Those ‘technical’ goods are listed in the Rules on goods, for which conformity guarantee shall be issued, Official Gazette of the Republic of Slovenia No. 142/22.

123 Art. 96 ZVPot-1.

124 Brus, 2020, p. 27.

125 Možina, 2009, p. 155.

126 Order of the Supreme Court of Slovenia, Case No. II Ips 358/2005, 18. 4. 2007.

127 Možina, 2009, pp. 155–156.

128 *Ibid.*

129 Art. 98 ZVPot-1 states: ‘The rights referred to in Subsection II – Mandatory guarantee shall also be granted to persons not deemed consumers under this Act.’ Cf. with Art. 21.č ZVPot.

130 See Možina, 2009, p. 146 *et seq.*

131 Judgement of the Supreme Court of Slovenia, Case No. II Ips 1001/2008 of 17. 5. 2012, para. 9.

132 See Arts. 19–21.č ZVPot.

133 See Arts. 94–98 ZVPot-1.

Under the original ZVPot guarantee for a proper functioning regime, the producer was liable alongside the seller.¹³⁴ The content of the producer's guarantee obligation differed from that of the seller, since, in principle, the producer is not in a contractual relationship with the buyer.¹³⁵ With the new ZVPot-1, the seller was removed from the list of mandatory guarantors. The ZVPot-1 proposal states that Directive 2019/771 does not allow for the retention of the mandatory seller's guarantee owing to the maximum harmonisation nature of Directive 2019/771.¹³⁶ However, the ZVPot-1 retains the mandatory producer's guarantee for additional consumer protection.¹³⁷

The law broadly defines the concept of the "producer". The producer refers to the undertaking that manufactures the finished goods or components, or obtains the basic raw materials, or any other person who presents himself as the producer of the goods by placing his name, trade mark, or other distinctive sign on the goods.¹³⁸ A producer is also an importer or distributor of goods not produced in the Republic of Slovenia, a representative office of the producer in the Republic of Slovenia, or any other person who presents himself as the producer by marking the goods with his name, trade mark, or other distinguishing sign.¹³⁹

4.2.2. Buyer's Remedies: Three-level Hierarchy

Legal remedies under the guarantee for proper functioning are essentially the same as in the event of a lack of conformity.¹⁴⁰ The most important difference lies in their hierarchy: under the guarantee for proper functioning, repair has priority, while replacement comes in second place, followed by a reimbursement of the price or its reduction.¹⁴¹

If goods covered by a mandatory guarantee do not comply with the specifications or lack the characteristics stated in the guarantee statement and associated advertising, the consumer may first request the repair of the product.¹⁴² If the product is not repaired within 30 days of the date on which the producer or authorised service centre received the consumer's request, the producer shall replace the goods free of

134 Arts. 19 and 21.a ZVPot.

135 Možina, 2009, p. 157.

136 See Proposal for the Consumer Protection Act, Explanatory Memorandum to Art. 94, p. 149.

137 *Ibid.*

138 Art. 4(20) ZVPot-1.

139 *Ibid.*

140 Wingerl, 2020, p. 132. See also Možina, 2009, pp. 157–159.

141 See Art. 97 ZVPot-1.

142 Art. 97(1) ZVPot-1.

charge with an 'identical, new and faultless good'.¹⁴³ This period can be extended by a maximum of 15 days, bringing the maximum repair period to 45 days.¹⁴⁴

If the producer fails to repair the goods or replace them with identical, new and faultless goods within the referred time limit, the buyer may request a full refund of the price paid or a proportionate reduction in price.¹⁴⁵ If the consumer requests a proportionate reduction in price, this reduction shall be in proportion to the reduction in the value of the goods received by the consumer compared with the value of the goods if they had been intact.¹⁴⁶ Notwithstanding, the consumer may request the producer to refund the paid amount if the problem occurs within less than 30 days from the delivery of the goods.¹⁴⁷

The producer or authorised service provider may provide the consumer with a similar product free of charge for the duration of the repair of the goods covered by the guarantee for proper functioning.¹⁴⁸ If the producer fails to provide the consumer with replacement goods for temporary use, the consumer has the right to claim compensation for the damage suffered as a result of not being able to use the product.¹⁴⁹

The resulting costs (materials, replacement parts, labour, product transportation) are covered by the guarantor.¹⁵⁰ For the replaced goods or their essential parts, the producer shall issue a new guarantee statement.¹⁵¹

4.2.3. *Obligations of Guarantor*

The guarantee for proper functioning is not only a timeframe during which the guarantor must ensure fault-free operation and repair the product free of charge, but also a comprehensive framework¹⁵² entailing rather extensive responsibilities on the part of the producer.

143 *Ibid.*

144 Art. 97(2) ZVPot-1 states: '(2) The time limit referred to in the preceding paragraph may be extended to the shortest time required for the repair to be finished or replacement to be made but for no more than 15 days. In setting the extended time limit, the nature and complexity of the goods, the nature, and seriousness of the non-conformity and the effort required to finish the repair or replace the goods shall be taken into account. The producer shall inform the consumer of the number of days of the time limit extension and the reasons therefor before the time limit referred to in the preceding paragraph expires'.

145 Art. 97(3) ZVPot-1.

146 Art. 97(4) ZVPot-1.

147 Art. 97(5) ZVPot-1.

148 Art. 97(7) ZVPot-1.

149 Art. 97(8) ZVPot-1.

150 Art. 97(9) ZVPot-1.

151 Art. 97(6) ZVPot-1.

152 See Pintar, 2011, p. VII.

The producer of “technical” products must provide a guarantee statement for his goods, which includes all the required elements.¹⁵³ In addition to this obligation, the guarantor must also supply the consumer with assembly and usage instructions for the product, as well as a list of authorised service centres for its repair.¹⁵⁴ The producer is required to appoint an authorised service centre to handle repairs and provide spare parts if the producer does not conduct these activities himself.¹⁵⁵ During the guarantee period, the producer is obliged to offer free-of-charge repairs.¹⁵⁶ The most profound obligation extends beyond the one-year obligatory guarantee period: the producer is obliged, for a minimum of three years following the expiration of the guarantee period, to provide (against payment) repair services, maintenance for the goods, as well as the availability of spare parts and attachments.¹⁵⁷ This can be accomplished either through the producer’s own servicing or by entering into a servicing agreement with a third party.¹⁵⁸

4.3. Old Solutions with Sustainable Potential

The Slovenian mandatory guarantee for “technical” products has been heavily criticised in academia.¹⁵⁹ The mandatory guarantee may appear to be an outdated provision. Historically, it was established owing to the Yugoslav market conditions.¹⁶⁰ Despite the differently designed system of guarantees in consumer sales contracts at the EU level, it has remained in the Slovenian legal system to this day.¹⁶¹ However, despite being outdated, this provision demonstrates significant sustainability potential.¹⁶²

As Možina highlighted, the mandatory guarantee for proper functioning constitutes an additional burden for producers on the Slovenian market that is generally absent in other Member States.¹⁶³ The mandatory guarantee provisions in the consumer legislation peculiarly apply not only to B2C contracts, but also to B2B contracts. He questions the justification for this additional obligation in B2B contracts, as it does not pertain to consumer protection in that context, and warns that the advantage

153 See Arts. 91(1), 95 and 96 ZVPot-1.

154 Art. 95 ZVPot-1.

155 *Ibid.*

156 *Ibid.*

157 *Ibid.*

158 *Ibid.*

159 See Možina, 2011, p. 38 *et seq.* For critical economic analysis see Kovač, 2012, p. 105 *et seq.*

160 See Možina, 2009, p. 145.

161 Judgement of the Supreme Court of Slovenia, Case No. II Ips 1001/2008, 17. 5. 2012, para. 9.

162 Weingerl, 2020, p. 129 *et seq.* Strojjan, 2023, p. 84.

163 Možina, 2011, p. 46.

of providing spare parts and repair services after the guarantee period is only apparent.¹⁶⁴ The guarantor can provide these after-sales services at an exceptionally high cost.¹⁶⁵ From an economic analysis perspective, Kovač fully supports Možina's position. He analyses the mandatory guarantee system through three chief functions: warranty as an insurance policy, as an incentive for product quality, and as a quality signal.¹⁶⁶ Kovač argues that the mandatory guarantee for proper functioning is economically inefficient and should be abolished from a legal and economic standpoint.¹⁶⁷ He advocates for seller's liability, augmented with the opinion of commercial guarantee, which can serve its economic functions (such as signalling, stimulating competition, and providing effective incentives).¹⁶⁸

However, the mandatory guarantee is well-received by the Slovenian public, as consumers are familiar with it owing to their accustomed usage.¹⁶⁹ Moreover, the ZVPot-1 proposal reflects the view that the mandatory guarantee will maintain a high level of protection that Slovenian consumers have enjoyed to date.¹⁷⁰ Although this is not necessarily the case, the mandatory guarantee system does offer certain sustainability-oriented solutions. First, it prioritises repair over product replacement. Second, it includes an obligation to provide spare parts and repair services. Therefore, Weingerl concludes that the guarantee for proper functioning is the most sustainability-friendly measure within Slovenian consumer sales law, apart from the rule excluding the replacement of defective goods with refurbished ones.¹⁷¹ She emphasises the importance of thoroughly evaluating any potential changes in the context of sustainability goals and commitments to a circular economy.¹⁷² Weingerl suggests that this framework could be used as a model for the system of remedies in the case of defective goods.¹⁷³

164 Možina, 2011, pp. 47–48.

165 *Ibid.*

166 Regarding the economic function of warranties see also: Parisi, 2004, p. 407; Schäfer and Ott, 2004, pp. 338–341.

167 Kovač, 2012, pp. 113–114.

168 *Ibid.*

169 See Možina, 2011, p. 46.

170 See Proposal for the Consumer Protection Act, Explanatory Memorandum to Art. 94, p. 149.

171 See Weingerl, 2020, p. 132.

172 *Ibid.* See also: Ocepek, 2022, p. 154.

173 Weingerl, 2020, p. 132. Compare Slovenian mandatory guarantee for proper functioning and proposed solutions in Tonner and Malcolm, 2017, pp. 32–34; Van Camp and Bouyon, 2017, pp. 49–52.

5. Conclusion

The position of the dissatisfied consumer in Slovenia is the result of both old Slovenian (Yugoslav) legal solutions and the implementation of new EU directives.¹⁷⁴ Thus, the Slovenian legal system provides for two parallel mandatory systems of consumer protection in certain situations.¹⁷⁵ Compared with the original ZVPot, the new ZVPot-1 has renewed the seller's liability and narrowed the scope of the mandatory guarantee system (the seller has been removed as a guarantor).¹⁷⁶

The liability of the seller covers a period of two years after the delivery of goods. Any lack of conformity which becomes apparent within one year of the time when the goods were delivered is presumed to have existed at the time of delivery. ZVPot-1 provides for a hierarchy of remedies in accordance with Directive 2019/771. In the case of lack of conformity, the consumer is entitled, first, to have the goods brought into conformity by repair or replacement and, second, to a price reduction or termination of the sales contract. To benefit from these rights, the consumer must notify the seller of the non-conformity within two months. However, the mandatory one-year guarantee for proper functioning does not cover the lack of conformity within a certain period, but rather proper functioning. It applies only to the list of "technical" goods. Mandatory guarantors are no longer sellers and producers, but only producers. The mandatory guarantee system provides for a strict three-step hierarchy: first, repair; second, replacement with identical, new and faultless goods; and third, reimbursement of the price paid for the good. There is no obligation to notify. The guarantor has some additional obligations. The most extensive is to provide repair services, maintenance of the goods, and availability of spare parts and accessories for at least three years after the end of the mandatory one-year guarantee.

The ZVPot-1 offers relatively strong protection for consumers in Slovenia with regard to the issues discussed. However, the Slovenian consumer protection system is rather complex as it contains two parallel mandatory frameworks with different conditions. Such double regulation can cause considerable confusion, particularly for consumers, who are primarily intended to be protected.¹⁷⁷ It will be interesting to follow further national implementation of European directives in the field of consumer protection, such as Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828 ('Right to Repair' Directive 2024/1799),¹⁷⁸ and its impact on existing frameworks.

¹⁷⁴ Strojjan, 2023, p. 71.

¹⁷⁵ Možina, 2008, p. 177.

¹⁷⁶ Strojjan, 2023, p. 75.

¹⁷⁷ Možina, 2008, p. 177.

¹⁷⁸ OJ L 2024/1799, 10. 7. 2024.

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