

COMMERCIAL WARRANTIES

ARE THEY WORTH THE MONEY?

SUMMARY



**Legal guarantees
and commercial
warranties on
consumer goods
in the EU, Iceland
and Norway**



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the European Union

Help and advice
for consumers
in Europe





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Whereas the legal guarantee is mandatory under EU consumer law, the commercial warranty is a voluntary service offered by the seller or the producer, sometimes even by a third party. It is important to note that a commercial warranty cannot affect the consumer's rights under the EU legal guarantee. Rather it should upgrade them, for example, by having a longer duration, covering situations not covered by the legal guarantee, or offering additional services such as repair at home.

Objective of the joint project

The main objective of this report was to compare the legal guarantee and commercial warranty schemes in the EU Member States, Iceland and Norway and to analyse whether commercial warranties really keep their promises and are worth the additional cost. As well as compiling a comprehensive legal study, ECCs carried out checks online and on sellers' premises and studied accounts from consumers to get an insight into how well consumers are protected by EU law and/or commercial warranties when they discover that goods they have purchased do not conform to their expectations or have defects. From 29 October to 14 November 2014, the ECC-Net conducted a total of 342 checks in 25 European countries for 3 product categories (photo camera, TV, washing machine) for a total of 79 product references from 9 brands. 104 websites were screened and 127 shops contacted (covering 151 trading names, some of which were present in several EU Member States). During these checks the ECCs looked into:

- The after-sales service of 72 shops,
- The possibility of easy access to an independent expert opinion,
- The importance of commercial warranties in the sales' process online and in shops,
- Whether and how consumers are informed about the legal guarantee and commercial warranties and if there are any geographical restrictions,
- The names given to commercial warranties in the Member States,
- The duration of commercial warranties,
- The costs involved online and in shops.

The checks were supplemented by a survey led by ECC Belgium from 15 July to 5 October 2014, to which 543 consumers responded.

Legal guarantee



The legal guarantee to which every European consumer is entitled was introduced by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. This is a minimum harmonisation directive which takes into account pre-existing rules in several Member States providing a higher level of protection for consumers with regard to the non-conformity of goods. **Understanding these national differences is important when it comes to cross-border trade as sellers tend to apply the legislation of their country**, unless they target specific countries through online sales or other distance-selling means and have developed country specific after sales services.

The main differences in the application of Directive 1999/44/EC in the various EU Member States, Iceland and Norway concern:

■ **Direct liability of the seller:** On many occasions the seller redirected the consumer to the producer, even for application of the legal guarantee.

■ **Duration of the legal guarantee:** The Directive provides for a 2-year legal guarantee of conformity, from the date of delivery of the item to the consumer. The majority of countries have implemented this but 7 countries apply a longer duration and 4 of them take into account the expected lifespan of the product. In 14 countries, the time limit can be reduced for second-hand products but not to less than 1 year.

■ **Deadline for the consumer to notify the seller of a defect or non-conformity:** The Directive foresees the possibility for Member States to impose a notification deadline which cannot be shorter than 2 months. 12 countries have transposed the 2-month deadline while 18 countries have not adopted a firm time limit. In 15 of these 18 countries, the consumer should act within reasonable time of noticing the lack of conformity.

■ **Burden of proof of the existence of a defect:** In principle, in any legal dispute, the party who claims application of a right must prove its case. Exceptionally, this burden of proof can be reversed. All Member States introduced this reversal of burden of proof in favour of the consumer in their national law. 5 went further by extending the normal 6-month duration of the reversal. But in 16,98% of the cases, the seller refused the item to be returned to him even within the first 6 months and redirected the consumer to the producer.

■ **Duration of the legal guarantee after repair or replacement:** in 12 countries, the 2-year legal guarantee is suspended during repair or replacement and resumes as soon as the consumer receives the repaired or replacement item.

■ **Possibility for the seller to claim compensation for the time during which the consumer had use of the item before it was found to be faulty:** Quite often a defect does not occur right away but only after the consumer has used the item for some time. If the item is replaced, the consumer receives a new item which is to his/her advantage. Even though the Directive provides for the remedy to be free of charge, the seller may consider that this entitles him/her to compensation. This issue is not covered by the Directive and Member States are therefore free to impose national rules. In 8 countries, the seller is allowed to ask the consumer for compensation for the time he/she had use of an item that later turned out to be defective.

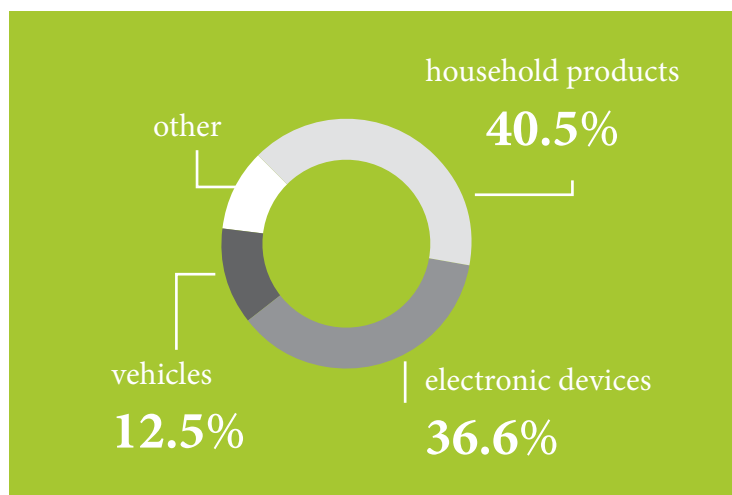
The report also looks at other guarantees foreseen by national law coexisting with the legal guarantee of conformity, such as the legal guarantees against hidden defects.



Commercial warranties

Commercial warranties have become an integral part of marketing. Both Directive 1999/44/EC and Directive 2011/83/EU on consumer rights include specific rules related to commercial warranties. During check n° 3 on the importance of commercial warranties in the sales process online and in shops conducted by the ECC-Net, it became clear that the majority of items in the product categories checked are offered for sale with a commercial warranty. In about 60% of the online offers checked, a reference to a commercial guarantee was made.

The survey led by ECC Belgium found that 56% of respondents had purchased a commercial warranty. The products for which they had been purchased most often were...

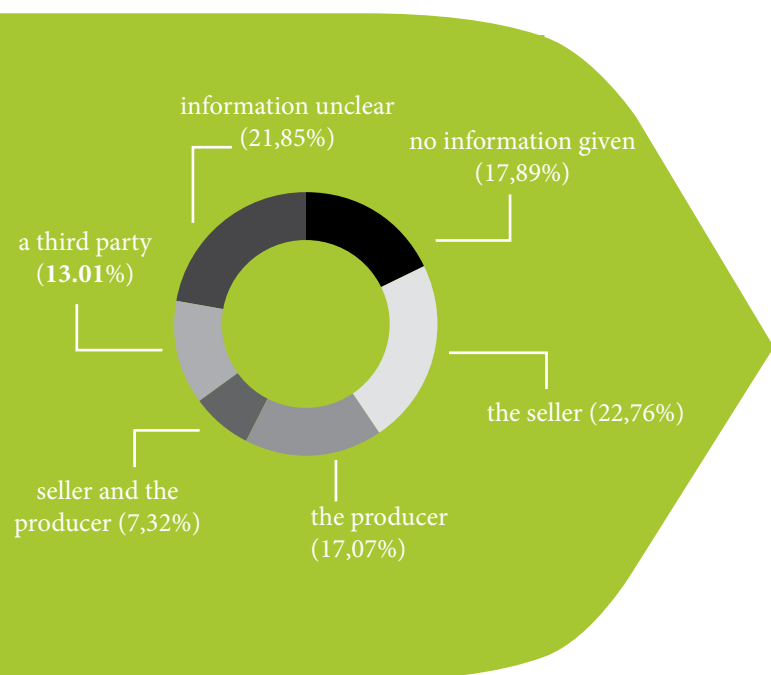


Information obligation

The seller has several obligations with regard to the timing of provision of information, the form to be respected and the content of the commercial warranty.

- 22 countries normally require a written warranty document for off- and on-premises contracts. A durable format is accepted at the consumer's request in 20 countries.
- In 15 Member States, it is a legal requirement that the commercial warranty be explained in plain, simple, clear, comprehensive and understandable terms.
- The use of the national language is requested in 9 countries at least.

During check n° 4 the ECCs investigated whether and how consumers are informed about the legal guarantee and commercial warranties and found that information was often unclear or incomplete, especially on the legal guarantee.



■ 3/4 of online checks and 2/3 of checks on premises revealed unsatisfactory provision of information on the legal guarantee.

■ Only in 50 of 202 cases (24.57%) was a reference to the legal guarantee included in the product description. Online, in 21.14% of cases, the information was directly accessible at the specific product page and not hidden in the terms and conditions. In the shops, in 30.38% of cases was a reference to the legal guarantee visibly included in the product description.

The ECCs therefore had to look more deeply into the information available and question the sales agents in order to get more information.

■ When searching for the provider of the advertised commercial warranty, in only 60.16% of cases online was it possible to find this out.

■ In 66.67% of cases, consumers were not clearly informed about how to return a defective item to the seller.

■ In 33 of 79 checks in shops (41.77%), the duration of the legal guarantee was given or could be determined by the ECC. In 25 cases, correct information (2 years or 3 years) was provided. In one case the duration was indicated incorrectly as "maybe 12 months", and in another as 5 years.

Duration of commercial warranties in the Member States

The duration of commercial warranties in the Member States is usually between 1 and 5 years, and in most cases 2 years, as with the legal guarantee. More expensive items usually have a longer warranty which often applies to specific parts of the product.

During the study led by ECC Belgium, several consumers commented that they suspect planned obsolescence of consumer goods as in most cases, defects appeared after the end of the commercial warranty period. They thus felt that the producer/seller offered a risk-free warranty.

Costs involved

Commercial warranties vary between countries. In some Member States it is more common for them to be offered against payment than in others. In some, they must be offered free of charge. For warranties offered against payment, costs vary considerably, as do the benefits, especially given their duration and depreciation in value.

Only in 25 check online were warranties offered free of charge.

Commercial warranties check in 79 shops

free of charge
56,41%



against payment
32,05 %

Information or misinformation

Commercial warranties have become a marketing tool especially for white goods and audio-visual equipment. However, many consumers express confusion with regard to the guarantees and warranties to which they are entitled.

The ECC-Net regularly handles complaints from consumers who request application of the legal guarantee of conformity, but are refused by the seller on the grounds that the time limit has expired. When looking into the cases more closely, it becomes obvious that the seller is referring to a commercial warranty, not the legal guarantee.

Cases have also been reported in which consumers have been informed that no guarantee exists for the item purchased. Sellers often give consumers the impression that only the commercial warranty applies to their purchase.

Some traders add to consumer's confusion between a commercial warranty and the legal guarantee by stating that an item is covered only by a producer warranty of 1 year, as the legislation does not require that a producer warranty give coverage for 2 years. If a commercial warranty puts the consumer in a better position than the legal guarantee, such as by providing a longer reversal of burden of proof period, it might be of interest to the consumer to claim under the warranty, rather than the legal guarantee. However, warranties are not always more beneficial to the consumer.

Also, the seller is responsible for applying the legal guarantee, whereas under a commercial warranty he/she is often able to redirect the consumer elsewhere, such as to a repair centre or the producer, without giving any further assistance.

Pros and cons of commercial warranties

Directive 1999/44/EC and its national transposition laws provide protection to consumers in cases of defects in or non-conformity of goods which they purchase. However, the duration of the legal guarantee is limited and it is not always easy to prove the existence of a defect.

Commercial warranties can therefore have benefits for consumers. The ECC-Net, based on its case-handling experience and the checks performed online and offline, has drawn up a list of the main advantages of commercial warranties.

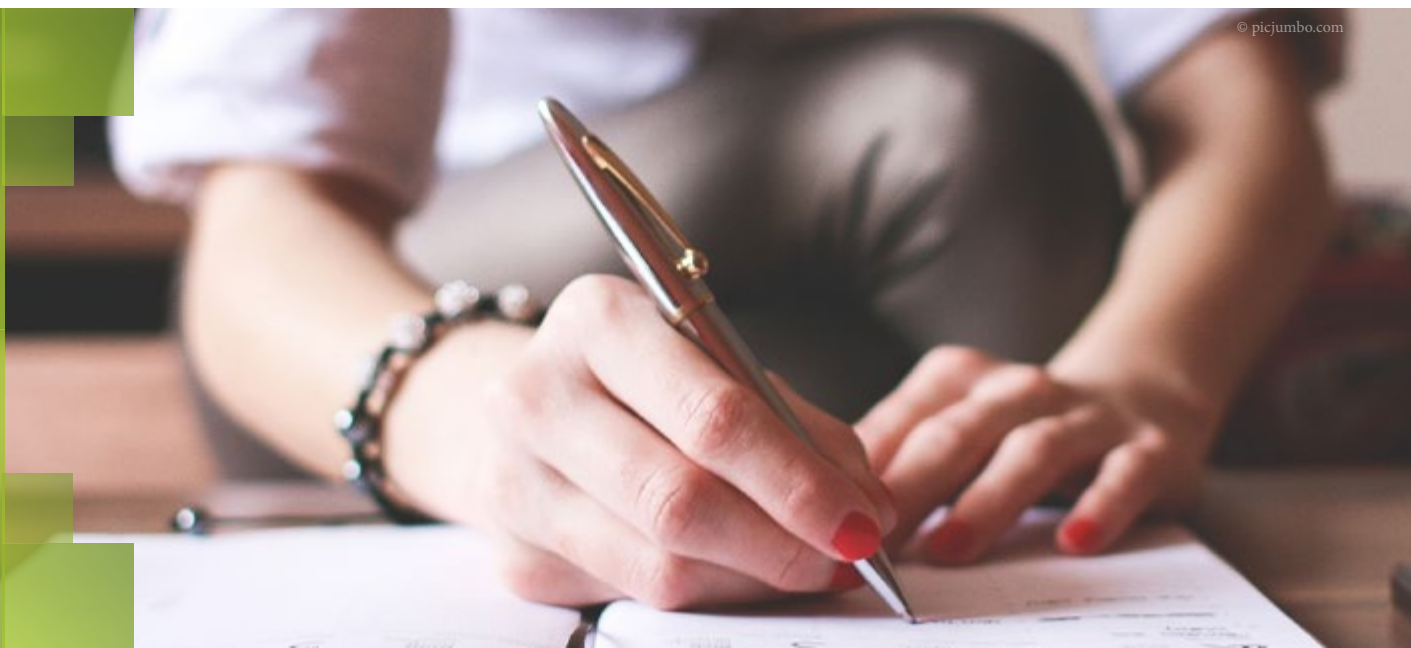


A commercial warranty can be beneficial if

- Its duration is longer than that of the legal guarantee.
- Consumers do not have to prove the existence of a defect, particularly after the first six months.
- Consumers get a replacement item during repair.
- Complaint procedures are clear and simple.
- Consumers do not need to organise shipping of the defective items.
- It provides for a repairer to come to the consumer's home.
- All costs for analysing the item, repair or replacement are borne by the guarantor.
- The item can be replaced with no attempt to repair.
- All issues are covered, including water damage, accidental breakage and oxidation.
- Consumers can usually contact any representative of the producer or reseller (if it is a producer warranty) for application of the warranty.
- It is an accessory to the item, and can be included in any re-sale.
- It offers a "cooling off" period. If the consumer is not satisfied with the product, bigger brands often offer a total refund or a voucher to the value of the purchase price.

But not every commercial warranty keeps its promises

During the study led by ECC Belgium, the 34.7% of respondents who were not satisfied with the application of their commercial warranty gave reasons including numerous exclusions, inefficiency (long delays, no answer from the seller, etc.), overlaps with other contracts (protection via a credit card, for example), and cost-benefit calculations.



Disadvantages of commercial warranties

- In some cases, consumers request application of the producer's commercial warranty, but after having examined the item, and sometimes even after a repair, the producer refuses. The consumer then has to request application of the legal guarantee. In such cases, this is often refused by the seller as an intervention on the item has already been performed. Alternatively, the seller, who in any case has sent the item back to the producer for repair, refuses application of the legal guarantee because the producer has already refused to apply the warranty.
- The prescription period under the legal guarantee might expire while the consumer is trying to obtain application of the commercial warranty, as this might not cause a suspension of the legal guarantee period.
- Commercial warranties often contain a geographical limitation and therefore might not be useful for cross-border purchases.
- The contents of a commercial warranty might not be the same in different Member States, making it difficult for a consumer to obtain application of a foreign commercial warranty in his/her home country if the warranty offered in that country is more restrictive.
- The remedies the guarantor is ready to provide might be limited: repair only, no replacement, numerous repairs prior to replacement/refund, etc.
- If a repair is impossible, the guarantor might only reimburse the residual value of the item and maybe only as a voucher.
- In some cases, excessive evidence is requested from the consumer before the commercial warranty is applied (e.g. proof of physical injury if a phone was broken during an attempted theft, proof of a manufacturing defect), or the consumer has to meet specific conditions, such as provision of an expert opinion regarding a defect at his/her own expense.

Commercial warranties might also overlap with other insurance policies a consumer might have.



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Special focus



Geographical restrictions
on territorial coverage of
commercial warranties

Consumers have reported cases to the ECC-Net in which they felt discriminated against on geographical grounds, either because they purchased an item in another country or because the commercial warranty conditions of their home country were not as beneficial as those in another Member State.

Usually the situation is as follows: a seller based in one EU Member State offers goods for sale along with the possibility to have them delivered to another Member State. At purchase he/she proposes a commercial warranty on the item.

The warranty might have geographical restrictions limiting its application to the country of the seller, or specific cross-border conditions (shorter warranty period in the consumer's home country than in the country of sale, etc.).

Article 20 of Directive 2006/123/EC on services in the Internal Market prohibits discrimination based on nationality or place of residence unless justified by objective reasons. So each situation must be analysed on a case-by-case basis.

However, a seller offering a commercial warranty in a cross-border context should be well aware of the specificities of the warranty. If it is limited to the country of sale, the consumer should be made aware of this. The ECCs asked during check n° 4 in shops (total number of checks 79) if there were any geographical restrictions to commercial warranty cover. It seems that only a fifth of the sellers are aware of geographical restrictions of the warranties they supply. 7 sellers responded that there are geographical restrictions and that the commercial warranty is only valid in the country of sale or in countries where the producer has a representative. 8 sellers claimed that there are no geographical restrictions.



CHECK LISTS

In order to find their way around commercial warranties and reach a deal which benefits them, consumers can use the check list provided by the ECC-Net before subscribing, especially for warranties involving costs,

HERE

Checklist for traders are provided

HERE

COUNTRY FACT SHEETS

For a general overview regarding legal guarantees and commercial warranties, the ECC-Net summarise the situation in each of the participating countries in a country fiche,

HERE



Help and advice for consumers in Europe



For an overview of the main rules governing legal guarantees and commercial warranties, this report also provides a summary table.

The ECCs offer individual support to consumers. They help consumers to reach amicable solutions to cross-border disputes with traders in the 30 countries of the network, either by contacting the trader involved directly or by transferring cases to Alternative Dispute Resolution schemes. If extrajudicial solutions are impossible, the ECCs give advice on further action, for example, the European small claims procedure or payment order.

This network of 30 centres provides information about national and EU laws, ensures consumer protection aspects are taken into account in national and EU legislative processes, and initiates and ensures professional cooperation with other EU networks and traders in order to better protect consumer interests.

The European Consumer Centre France has led this project in close cooperation with the ECCs of Belgium, Denmark and Germany which formed the working group for this project. All 30 ECCs participated in the compilation of this report.

This document is intended to present the legislation and situation regarding legal guarantees and commercial warranties in the various European countries at the moment of publication and in the most user-friendly manner possible. It has no legal value and the working group will not be held liable for any loss or cost incurred by reason of any person using or relying on the information in this publication.

The information provided in this extract is based on the full report so it is not complete in all points but rather a summary based on the information provided by each ECC.

The views and interpretations reflected in this report are not those of the European Commission or the national funding bodies. They are solely those of the working group based on conclusions in the reports cited and on the data and questionnaire answers submitted to the working group by all project participants.

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Table of Member States having transposed the directive on consumer rights

(based on information available in September 2014)

Country*	TRANSPOSITION STATUS	TRANSPOSITION LAW AND ENTRY INTO FORCE
AT	transposed	Entry into force 13th June 2014; transposition law: Verbraucherrechte-Richtlinie-Umsetzungsgesetz (VRUG).
BE	transposed	Entry in force 31/05/2014. transposition law of 21/12/2013.
BG	draft law	draft from the Ministry of Economy and Energy which very soon will be sent to the Council of Ministers as a proposal bill. After that the national assembly needs a few weeks to adopt the law.
CY	transposed	Entry into force 13/06/2014. Transposition law: Law 133(I)/2013 The Consumer's rights Law of 2013. The Law was published in the Government Gazette on 8/11/2013.
CZ	transposed	With effect from 1 January 2014 a new Civil Code (Act no. 89/2012 Coll.) and related implementing minor regulations were adopted in the Czech Republic. Most of requirements of Directive 2011/83/EU were implemented there. The Act on Consumer Protection (no. 634/1992 Coll.) was also amended.
DE	transposed	Entry into force 13th of June 2014.
DK	transposed	Entry into force 13th of June 2014; transposition law: Lov om forbrugeraftaler
EE	transposed	Entry into force 13th of June 2014; transposition law: The Directive 2011/83/EU has been implemented into Estonian national law, more precisely into two acts. The Law of Obligations- the new reduction is coming into the force on 13th of June 2014 Consumer Protection Act - the new reduction is coming into the force on 13th of June 2014 The new reductions include the provisions of the Directive.
ES	draft law	approved by the Spanish Government beginning of April but has not yet been submitted to the Spanish Parliament.
FI	transposed	Entry into force 13th of June 2014; transposition law: Consumer Rights Protection Law amending the Finnish Consumer Protection Act (38/1978)

*ISO_3166-1

FR	transposed	by a horizontal law, introducing and amending other dispositions of the consumer code as well: Loi « consommation » du 17 mars 2014. The transposition measures entered into force on June 13th 2014 but for certain points an application decree is necessary. The decree is foreseen for september 2014.
GR	transposed	Enforcement begins from the 13th of June 2014.
HR	draft law	The directive is implemented in the new Consumer Protection Act, which is currently under parliamentary procedure and will become effective before the summer.
HU	transposed	by the Consumer Protection Act which came into force on 8 April 2014. (some provisions became effective on 13 June 2014, and some will be effective from 1 January 2015.). transposition law: decree on The Rules of Contracts between Consumers and Undertakings
IE	transposed	Entry into force 13th of June 2014.
IS	draft law	EEA - country ; every EU-law first has to be implemented in the EEA-contract for Iceland and Norway. But it seems that only minimal changes will be needed when the time comes. It has not yet been adopted in Icelandic national law. However the process of implementation has begun.
IT	transposed	Entry into force 13th of June 2014
LT	transposed	Entry into force 13th of June 2014. transposition law: Consumer Rights Protection Law and Civil Code of the Republic of Lithuania
LU	transposed	Loi du 2 avril 2014
LV	transposed	Entry into force 13th June 21014. implementation law: Consumer Rights Protection Law
MT	transposed	Entry into force 13th of June 2014; transposition law: The Consumer Rights Regulations, Legal Notice 439 of 2013
NL	transposed	Transposition law: "Implementatiewet richtlijn consumentenrechten". The law entered into force on 13 June 2014.
NO	transposed	Entry into force 13th of June 2014; transposition law: New Right to withdrawal law (angrerettlov). There will however also be minor changes in the Consumer Goods law (forbrukerkjøpslov), Sale of Goods and Services on credit law (finansavtalelov), Sale of craftsman services law (håndverkertjenestelov) and the Marketing law (markedsføringsloven).
PL	draft law	Entry into force 25th of December 2014. the directive will be implemented through the adoption of the Law on consumer rights (Ustawa o prawach konsumenta). Polish Parliament while introducing some amendments to the bill implementing the Directive on consumer rights, extended vacatio legis to 6 months. (among others at the request of the President of the Office of Competition and Consumer Protection - our host organization). The act has already been passed by both chambers of Polish Parliament and is waiting for the signature of the President. If the law will be published in June, it will enter into force on 25/12/2014.
PT	transposed	Entry in force 13th June 2014; decree-law 24/2014, of 14th February

RO	transposed	Entry into force 13/06/2014. Transposition law: Emergency Governmental Ordinance 34/2014
SE	transposed	Entry in force 13th June 2014;
SI	transposed	Entry in force 13th June 2014; transposition law: Act amending the Consumer Protection Act
SK	transposed	The Directive 2011/83/EU is transposed in a completely new Act which came into force on 1st May 2014 (Act 102/2014 Coll.)
UK	transposed	Entry into force 13th of June 2014.

Summary of facts on the legal guaranty of conformity and commercial warranties

Main legal sources:

Directive 1999/44/EC on sale of consumer goods and associated guarantees and Directive 2011/83/EU on consumer rights, national implementations

LEGAL GUARANTEE	
Definition of non conformity	A product is faulty if it does not comply with the given description or if it cannot be used for normal purposes or the specific purposes requested by the consumer. The product is also faulty if it is not of normal quality and does not perform as can be reasonably expected.
Responsible for the application of the commercial warranty	Always the seller .
Duration of the legal guarantee	<ul style="list-style-type: none"> • 2 years in the majority of EU-countries (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Spain) as well as in Iceland and Norway, • 3 years in Sweden, • 5 years in Iceland and Norway for goods with a longer expected lifespan, • 6 years in Ireland. • United Kingdom has two different limitation periods: 6 years in England, Wales and Northern Ireland, 5 years in Scotland. • In the Netherlands and Finland, the duration is based on the expected lifespan of the item.
Shorter duration	In all countries, specific durations exist for perishable goods such as flowers and food, or goods with a marked date of maximum durability such as packed or canned food or drugs. In Romania , for example, a shorter duration is explicitly foreseen for goods with shorter expected lifespan.
Duration for second hand goods	<ul style="list-style-type: none"> • No reduction in Bulgaria, Denmark, Estonia, Finland, France, Greece, Iceland, Ireland, Latvia, Lithuania, Malta, Netherlands, Norway, Spain, Sweden and United Kingdom. • In Austria, Belgium, Croatia, Cyprus, Czech Republic, Germany, Hungary, Italy, Luxembourg, Poland, Portugal, Romania, Slovenia and Slovakia the time limit can be reduced but not to less than 1 year. • In Austria and Portugal, the express consent of the consumer has to be given on a case-by-case basis.

<p>Deadline for the consumer to signal the existence of a defect or lack of conformity with the contract to the seller</p>	<ul style="list-style-type: none"> • 2 months from discovery in Bulgaria, Croatia, Cyprus, Estonia, Italy, Latvia, Malta, Poland (until 25 December 2014), Portugal, Romania, Slovenia and Spain. • Within reasonable time of noticing the lack of conformity in Austria, Belgium (although the seller may impose a 2-month deadline), Czech Republic, Denmark, Finland, Greece, Iceland, Ireland, Lithuania, Luxembourg, Netherlands, Norway, Slovakia, Sweden and United Kingdom. • In Finland, Iceland and Norway the deadline can never be shorter than 2 months. In Denmark, Netherlands and Sweden, a complaint made within 2 months is always considered reasonable. • In Hungary, the complaint needs to be made without delay, but 2 months is always considered to be without delay. • In France and Germany, there is no deadline for signaling the existence of a defect other than the legal prescription period of 2 years.
<p>Reversal of burden of proof: the defect is presumed to exist</p>	<ul style="list-style-type: none"> • All Member States introduced this reversal of burden of proof in favour of the consumer in their national law. 5 of them went further by extending the normal 6-months duration of this reversal: • 1 year in Slovakia and Poland, 2 years in Portugal, 2 years in France from 2016. • In Slovakia, the existence of all defects within the first year must be proved by an expert at the seller's expense. • In Sweden for building elements intended to constitute a major part of a single or dual family dwelling, the reversal of burden of proof is 2 years of delivery. • In Spain, in case of a repair or replacement of the item under the legal guarantee, in the first 6 months from the moment the repaired or replaced product is delivered to the consumer, the reversal of burden of proof is applicable.
<p>Is there a third party testing body to assist the consumer with providing proof?</p>	<ul style="list-style-type: none"> • In most countries consumers can ask any specialist body or repair shop for an expert opinion, but this opinion might not be accepted by the seller. In the event of a court procedure, the judge may accept it, or ask for an independent expert opinion. • Many Danish ADR bodies have their own experts who are asked for an opinion where necessary. • In Poland, consumers can get assistance from regional trade inspectorates which have lists of experts, as do common courts. • In Malta, an expert can be appointed by the Consumer Claims Tribunal. • In the Czech Republic, Hungary and Slovenia the Ministrof Justice has an official list of independent experts whom consumers and sellers can contact. • In Bulgaria, in the event of a court procedure, an expert is appointed by the judge from a list of experts. • In Latvia, if a seller refuses a consumer's claim, the consumer can request an independent expert opinion. This is regulated by Cabinet Regulations under which the consumer can select an expert from the Latvian Consumer Rights Protection Centre database.

<p>Is there a third party testing body to assist the consumer with providing proof?</p>	<ul style="list-style-type: none"> • In Lithuania national institutions can assist with providing proof (e.g. State Non-Food Products Inspectorate). • United Kingdom has a limited number of sector-specific ADR bodies (e.g. The Furniture Ombudsman) with the expertise to produce such reports. These can be costly and consumers may have to pay upfront, but in most cases the ‘loser’ in the argument should end up paying.
<p>Hierarchy of remedies to be provided</p>	<ul style="list-style-type: none"> • In most countries, repair or replacement, and if this is impossible or not possible within a certain time frame or without significant inconvenience to the consumer, partial or total refund. • No hierarchy in Greece, Portugal and Slovenia. • In Ireland, a dual policy exists: under national law, the consumer can claim a refund, or if he/she accepts repair or replacement, under the transposed EU rules priority is given, in the first instance, to repair or replacement and, following that, partial or total refund. • In the United Kingdom consumers can reject the item outright if it is yet to be ‘accepted’. In other cases, the traders should initially be given the opportunity to correct the issue by repair or replacement. If this does not resolve the situation within a reasonable time and without significant inconvenience to the consumer, he/she can insist on a full or partial refund, the latter taking into account usage up to that point. Traders can also offer a refund outright if repair or replacement is impossible or disproportionate. • In Denmark, the consumer may claim a refund right away if the defect is significant, but not if the seller offers to repair or replace the product. • In Latvia, until Summer 2015, during the first 6 months the consumer can choose between repair, replacement or partial or total refund. After that, the consumer is, in the first instance, only entitled to repair or replacement. Only if this is not possible or cannot be done within a reasonable time frame, can the consumer request a partial or total refund.
<p>Time frame for providing a remedy</p>	<ul style="list-style-type: none"> • In most countries, the first remedy to be provided is repair or replacement. This must be done free of charge and within a reasonable time frame in Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Iceland, Italy, Lithuania, Malta, Netherlands, Norway, Poland, Romania, Spain, Sweden and United Kingdom. • In Bulgaria, France and Luxembourg, the deadline is 1 month. • In Hungary, the seller must try to perform the repair or provide a replacement within 15 days. • In Romania the seller or repairer must also bring the goods into line with requirements within 15 calendar days of when the consumer notifies them of the issue. National law specifies that if the period required for repair exceeds 15 calendar days, the consumer can cancel the contract and be refunded. • A trader operating in Estonia is obliged to accept any written complaint and answer the consumer within 15 days.

<p>Timeframe to provide the remedy</p>	<ul style="list-style-type: none"> • If repair or replacement is impossible within a set time frame, the seller must provide a partial or total refund. This has to be done within 1 month in Bulgaria, and within a reasonable time frame in Germany, Iceland, Lithuania, Malta, Norway and Sweden. • No deadline is set in Austria, Belgium, Croatia, Cyprus, Estonia, Finland, France, Hungary, Ireland, Italy, Poland, Spain, Netherlands and United Kingdom. • In Slovenia, a deadline of 8 days is fixed by law within which the seller has to satisfy the consumer's request. • In the Czech Republic, Latvia, Portugal and Slovakia, a deadline of 30 days for providing a remedy is set. In Slovakia, once this deadline passes, the item is considered unrepairable and the consumer has a right to a replacement or refund. • In Greece, the seller or repairer has to bring the goods into line with requirements within a justifiable period and without significant inconvenience to the consumer. • In Lithuania, while the seller must remove the defects within a reasonable time frame, the legislation does not define a specific time period. Rather it depends on the nature of the item, the complexity of the defects and other factors. If a deadline is established in the guarantee document or by the repair service the consumer called upon, the seller or his/her representative must comply. In case the consumer claims a refund, the money has to be returned as soon as possible but not later than 15 days after the return of the item, unless the consumer and the seller have agreed otherwise. <p>What constitutes a reasonable time frame usually varies between cases. It is thus important that the consumer fix a deadline for remedy.</p>
<p>Obligation to inform the consumer about availability of spare parts</p>	<ul style="list-style-type: none"> • In France, the producer has to inform the seller of the period in which the spare parts necessary for the use of the goods are available on the market. The seller has to tell the consumer before conclusion of the contract. • In Slovenia, the seller has to provide an obligatory guarantee for specific technical goods granted by the producer when concluding a sales contract. This guarantee includes information on the period following its expiry, during which the body issuing the guarantee provides maintenance, spare parts and coupling devices. • In Italy, there is no obligation of information but the seller should inform the consumer if the goods are out of production on the legal basis of fairness, transparency and equity in contractual relations, as these are recognised as fundamental consumer rights.

<p>Obligation to provide spare parts to the seller or repairer</p>	<ul style="list-style-type: none"> From 2016, in France, the producer has 2 months in which to supply spare parts. In Malta, if the goods are such as may require maintenance or replacement of parts, replacement parts and an appropriate repair service must be made available for a reasonable period from delivery. The trader or the producer may release themselves from this obligation by expressly notifying the consumer in writing, before the contract is concluded. In Greece and Romania, national law states that the seller (Greece) or the producer (Romania) should ensure provision of spare parts throughout the expected lifespan of the product. In Portugal, “The consumer has a right to after-sales assistance, namely provision of spare parts for the average expected lifespan of the products supplied”. In Slovenia, under the obligatory guarantee for specific technical goods, maintenance and spare parts must be available for at least 3 years after expiry of the guarantee.
<p>Remedies under the legal guarantee have to be provided free of charge</p>	<p>This includes communication costs, shipping costs, administrative fees, and repair or replacement.</p>
<p>Expensive phone lines for complaint management</p>	<ul style="list-style-type: none"> Hotlines enabling consumers to ask for application of the legal guarantee must be accessible at a basic rate in Austria, Belgium, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and United Kingdom. In the Netherlands, the basic tariff which can be applied is indicated in a ministerial regulation. In Bulgaria, Lithuania and Poland, consumers may be charged higher rates, but the price has to be indicated.
<p>Suspension of the legal guarantee during repair/replacement</p>	<ul style="list-style-type: none"> In Belgium, Bulgaria, Cyprus, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway and Romania, during repair or replacement the 2-year legal guarantee is suspended and continues as soon as the consumer receives the repaired or replacement item. In Austria, Croatia, Estonia, Greece and Iceland, a new 2-year guarantee period starts when the repaired or replacement item is delivered to the consumer. In Denmark, once a replacement item is delivered to a consumer, a new 2-year legal guarantee period starts. For repair, the consumer can claim a 3-year guarantee period if the same defect reoccurs. In Portugal, Poland and Slovakia, a new period starts in the event of a replacement. This is also the case in Slovenia for the replaced item or major components, unless otherwise agreed in the contract. In Spain, the law distinguishes between repair and replacement. For repairs, the legal guarantee is suspended. Once the item is repaired, the guarantee period continues. In the first six months from delivery of the repaired product to the consumer, the reversal of burden of proof is applicable. For replacements, a new 2-year guarantee period comes into force on delivery. During the first six months from delivery, the reversal of burden of proof is also applicable.

<p>Suspension of the legal guarantee during repair/replacement</p>	<ul style="list-style-type: none"> • A similar situation exists in Hungary where the Civil Code states: “The legal guarantee period is suspended for the time during which the goods are being repaired and the consumer cannot use them. If the goods or any major component of the goods is replaced or repaired, the guarantee period recommences for the goods or major components that have been replaced or repaired as well as for any defect resulting from the repair.” • In Germany and Sweden, the law is not explicit on this point. In Germany, the courts may consider that the legal guarantee starts anew for any exchanged parts. To prevent this, sellers usually refuse to accept the existence of a defect covered by the legal guarantee, but repair the item, claiming that it is a goodwill gesture and without acknowledging any legal obligation. • In Bulgaria, there is no legal provision for this. The Bulgarian enforcement authority considers that the legal guarantee lasts for two years from purchase. A replacement is not a new purchase and the original terms of the guarantee continue to apply. • In France, the law is not explicit. Only for commercial warranties is this point clarified. If an item is out of use for more than 7 days, the commercial warranty is extended by the time necessary for repair.
<p>Prescription period for legal action by the consumer based on the legal guarantee of conformity</p>	<ul style="list-style-type: none"> • The prescription period can never be shorter than the legal guarantee period. • In Belgium and Poland, the prescription period is 1 year from discovery of the defect, but it cannot expire before the end of the legal guarantee period of 2 years. • In Austria, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Latvia, Lithuania, Luxembourg and Malta, the prescription period in cases of non-conformity of goods is based on the legal guarantee period and is therefore 2 years from delivery to the consumer. • The prescription period is also 2 years, but from notification by the consumer of the seller of the existence of a defect in the Netherlands, Portugal and Slovenia. • In Hungary, the prescription period is limited to 2 years from delivery of the goods, but if the consumer is unable to enforce a claim for a legitimate reason, the prescription period is suspended. In such cases, the claim remains enforceable for one year from the time when the impediment is eliminated, even if the 2-year prescription period has expired or has less than 1 year to run. • In Italy, the prescription period for enforcing claims of non-conformity expires 26 months after delivery of the goods. • In Estonia and Spain, the prescription period is limited to 3 years from delivery of the goods. • In Denmark, Finland and Romania it is also limited to 3 years, but from the moment in which the consumer detected or should have detected the defect. In Slovakia, the prescription period is 3 years from the date of notification of the existence of a defect by the consumer to the seller. • In the Czech Republic and Slovakia, the general prescription period is 3 years from when the claim is made.

<p>Prescription period for legal action by the consumer based on the legal guarantee of conformity</p>	<ul style="list-style-type: none"> • In Ireland, the general limitation period of 6 years from delivery of the goods applies (as is the case in the United Kingdom outside of Scotland where it is 5 years), and Sweden foresees a 10-year general prescription period. The consumer can take legal action within 10 years of delivery if he/she has made a complaint to the seller within the legal guarantee period of 3 years. • In Norway, the prescription period is 3 years from delivery of the item, or 5 years based on the legal guarantee for longer-lasting items. To the 3 years, 1 year can be added for each year in which the consumer was unaware of the defect up to a maximum of 10 years (13 years in total).
<p>Can the consumer make a claim against the importer or any other intermediary in the sale chain up to and including the producer?</p>	<ul style="list-style-type: none"> • Most countries do not foresee such a possibility and the consumer can only make a claim against the producer or importer, for example, if they offer their own commercial warranty. • According to Finnish legislation, the consumer has the right, with certain restrictions, to make a claim related to a defect in a product against a business which supplied the goods for resale at an earlier point in the supply chain. This is also the case in Sweden if the seller is insolvent, has ceased trading or cannot be located. • In Norway, an option exists to forward a claim to an importer, a national producer or previous seller in the chain. The same option exists in the Netherlands. • In Iceland, if the seller has a claim against another intermediary the supply chain, the consumer can also make a claim against this party. • In France, under the legal guarantee against hidden defects, the consumer can make a claim against any intermediary in the supply chain other than the final seller. • The same situation exists in Spain, where the consumer can also make a direct claim against the producer for replacement or repair when contacting the seller is impossible or excessively inconvenient to the consumer. For this purpose, manufacturers, importers or other intermediaries are considered producers. • Under the Hungarian product guarantee, which covers movable goods only, the consumer can make a claim against the producer. The manufacturer, the importer and distributor are considered as producers for this purpose. A producer can be held liable for two years from the date on which they distributed the product. In the event of a fault in a product, the consumer must inform the producer without delay. Informing a producer within 2 months is considered to be without delay. The consumer is liable for any damage resulting from late notification. The consumer can ask the producer to repair the product or – if this cannot be done within a reasonable time frame and without prejudice to the consumers interests – to replace it. The producer is exempted from liability if it can be proven that 1) they did not manufacture or distribute the product, 2) the defect could not have been detected, taking into account existing scientific and technical knowledge, 3) the defect was caused by the application of legal or mandatory provisions. • In Slovenia, under the 1-year obligatory guarantee on specific technical products the consumer can make a claim against any intermediary in the supply chain.

Can the consumer make a claim against the importer or any other intermediary in the sale chain up to and including the producer?

- In **Ireland**, although it relates to commercial warranties rather than the legal guarantee, section 19(1) of the Sale of Goods and Supply of Services Act 1980 refers to a right of action for consumers against others in the supply chain. “The buyer of goods may maintain an action against a producer or other supplier who fails to observe any of the terms of the guarantee as if that producer or supplier had sold the goods to the buyer and had committed a breach of warranty, and the court may order the producer or supplier to take such action as may be necessary to observe the terms of the guarantee, or to pay damages to the buyer. In this subsection, “buyer” includes all persons who acquire title to the goods within the duration of the guarantee and, where goods are imported, “producer” includes the importer.”
- In the **United Kingdom**, it is normally only possible to make a claim for damages (including personal injury claims) caused by a faulty or unsafe product, but not for remedies under the legal guarantee. In some isolated cases, it may be possible to make such claims against third parties, but this is normally prevented by inserting appropriate clauses into contracts made higher up the supply chain.
- In **Portuguese** law, the consumer is allowed to claim repair or replacement from the producer or the representative of the producer in his/her area of residence.
- In **Latvian** law, in the event of non-conformity of goods, a consumer is entitled to submit a claim to the trader. A trader is understood as a natural or legal person (including an importer) who within the scope of his/her economic or professional activity offers or sells goods to consumers, including by intermediary of other persons acting in his/her name.

Recourse against the producer may also exist if the defective product causes economic or bodily harm, based on product liability.

COMMERCIAL WARRANTY

In all Member States, Iceland and Norway, commercial warranties are regulated by law.
The commercial warranty is binding on the provider.

Responsibility for application of the commercial warranty	The guarantor/provider of the warranty.
Costs	Commercial Warranties have to be free of charge in Finland, Latvia and Slovenia.
Timing of information	<ul style="list-style-type: none"> • Before conclusion of the contract in Austria, Belgium, Denmark, Finland, Hungary, Italy, Latvia, Lithuania, Romania, Slovenia, Spain and Sweden. • This can be done at the latest upon delivery of the item which is then considered as the moment of conclusion of the contract if there is no pre-contractual phase in Croatia, the Czech Republic, France, Germany, Italy, Netherlands, Portugal and Slovakia. • In Luxembourg, the information has to be provided at the latest at the moment of conclusion of a contract. • In France, a commercial warranty can also be offered upon repair of an item, so the information must then be provided before conclusion of a repair contract. • No specific rules are laid down in Bulgaria, Ireland Iceland and Hungary (for on-premises contracts) but general rules on pre-contractual information apply. • In the United Kingdom, consumers can expect to be made aware that the purchase of the commercial warranty is optional, that any such warranty can be provided by other parties, of their statutory rights, etc. The pre-contractual information should be given in accordance with the general applicable rules. • In Poland, the seller is not obliged to specifically inform the consumer about the existence of a commercial warranty, but must hand over all documentation concerning the purchased item, including on a commercial warranty, if it exists.
Formal requirement	<ul style="list-style-type: none"> • Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovenia, Slovakia, Spain, and Sweden normally require a written warranty document for off- and on-premises contracts. • A durable format is accepted at the consumer's request in Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Hungary, Netherlands, Portugal, Slovenia, Slovakia, Spain, Sweden (for off-premises contracts; for on-premises and distance contracts a readable and durable format is accepted) and United Kingdom. • In Germany and Hungary an obligation to provide a written document only exists for off-premises and distance contracts. • In 5 countries a written document needs to be provided only at the consumer's request: Czech Republic, Estonia, Finland, Iceland and Lithuania. • In Cyprus, Norway and Poland the law does not oblige the seller to confirm the commercial guarantee in writing.

<p>Language requirements</p>	<ul style="list-style-type: none"> It is a legal requirement that the commercial warranty be explained in plain, simple, clear, comprehensive and understandable terms in Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Italy, Luxembourg, Malta, Netherlands, Romania, Slovenia, Sweden and United Kingdom. The use of the national language is requested in France, Greece, Lithuania, Luxembourg (where the consumer can choose between French and German), Malta (where a commercial warranty must be written in at least one of the official languages, i.e. English or Maltese), Portugal, Slovenia and United Kingdom. In Belgium, the commercial warranty must be written in at least one of the official languages of the region in which the product is offered for sale.
<p>Inclusion of a reminder of the legal guarantee</p>	<ul style="list-style-type: none"> Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom: the commercial warranty has to provide a reminder of the existence of the legal guarantee and explain that the commercial warranty has no influence on the rights of the consumer under the legal guarantee provisions. In France, the consumer must be reminded of the existence of the legal guarantee of conformity and the legal guarantee against hidden defects.
<p>Information on the guarantor, cover, duration, geographical coverage and price</p>	<ul style="list-style-type: none"> Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Romania, Slovenia, Spain and United Kingdom. In Portugal, geographical coverage is not expressly mentioned. In Sweden, information on the content of the warranty must be given. However, the law does not specify what information is to be given.
<p>Information on how the consumer can exercise his/her rights (complaints procedure and after-sales service)</p>	<ul style="list-style-type: none"> Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Romania, Slovenia and United Kingdom. In Sweden, all information necessary for the consumer to make use of the warranty must be given. However, the law does not specify what information is to be given.

For an overview of the main rules governing legal guarantees and commercial warranties, this report also provides a summary table. The ECCs offer individual support to consumers. They help consumers to reach amicable solutions to cross-border disputes with traders in the 30 countries of the network, either by contacting the trader involved directly or by transferring cases to Alternative Dispute Resolution schemes. If extrajudicial solutions are impossible, the ECCs give advice on further action, for example, the European small claims procedure or payment order. This network of 30 centres provides information about national and EU laws, ensures consumer protection aspects are taken into account in national and EU legislative processes, and initiates and ensures professional cooperation with other EU networks and traders in order to better protect consumer interests.

The European Consumer Centre France has led this project in close cooperation with the ECCs of Belgium, Denmark and Germany which formed the working group for this project. All 30 ECCs participated in the compilation of this report.

This document is intended to present the legislation and situation regarding legal guarantees and commercial warranties in the various European countries at the moment of publication and in the most user-friendly manner possible. It has no legal value and the working group will not be held liable for any loss or cost incurred by reason of any person using or relying on the information in this publication. The information provided in this extract is based on the full report so it is not complete in all points but rather a summary based on the information provided by each ECC. The views and interpretations reflected in this report are not those of the European Commission or the national funding bodies. They are solely those of the working group based on conclusions in the reports cited and on the data and questionnaire answers submitted to the working group by all project participants.

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