

Dominika MORAVCOVÁ*

Lack of conformity of the goods with the contract under Slovak legislation

ABSTRACT: Consumer protection is a fundamental issue covered by the EU acquis in internal markets. Despite the efforts to approximate the legal regulations of the Member States in this area, there are still disparities between their legal systems regarding selected consumer protection issues. A relatively new EU directive has established a minimum standard around lack of conformity of the goods within the EU. The Slovak Republic has not yet transposed the directive into its national legislation. Is the legislation in this area in Slovakia set in a Euro-conform manner or is it necessary to adopt new provisions in this field? This study addresses the current legislation in Slovakia concerning lack of conformity of the goods. We also identify the shortcomings of the current legislation and address the issue of the amendment, which should change the status quo.

KEYWORDS: lack of conformity of the goods, liability for defects, the Slovak Civil Code, warranty, the Slovak Consumer Protection Act.

1. Introduction

The completion of the EU internal market brings several challenges to its Member States. We agree with the opinion that consumer protection is a key issue in economic integration as it points to the opening of borders within the internal market. Concurrently, it is linked to the intervention by Member States in the bona fide protection of legitimate social goals and values and thus interferes with the rules of the internal market.¹ The dynamic area of consumer protection has an increasingly important role to consider, not only from the perspective of the internal market but also because of the growing importance of e-commerce. E-commerce within the internal market further blurs the borders between Member States, and consumers shopping from

1 Weatherill, 2013, p.1.

* PhD candidate, Faculty of Law, Pan-European University, Bratislava, Slovakia. <https://orcid.org/0000-0003-0936-6749>.

the comfort of their homes may often not even be aware that they are entering into a contract with an entity from another Member State. The EU aims to ensure that all consumers across the EU benefit from a high level of consumer protection within the internal market and a wide range of possibilities for defending their interests.² The purpose of the determination of consumer rights is *per se* to create real equality.³ Consumer protection at the union level is among the strongest worldwide.⁴ The Founding Treaties established consumer protection as a shared competency of the Union and the Member States.⁵

Shared competences can also be referred to as joint or parallel competences, as both the EU and the Member States are equally able to adopt legally binding acts in this area. As long as the EU has not yet fully exercised its competence in this area, Member States can adopt legal acts; but they are also bound by the EU *acquis*, which means that they must not, in exercising this competence, infringe legislation already adopted by the EU in the area concerned.⁶ It is precisely in consumer protection; therefore, despite the disparities in the national legislation of the Member States, the EU is consistently striving for and aiming at the gradual harmonisation of the legal systems of the Member States in this area, and it is adopting a series of legal acts of secondary law, which are bringing about a progressive harmonisation of the level of consumer protection across Member States.

One of the issues addressed concerning consumer protection at the EU level is the lack of conformity of the goods to contracts. This area is the focus of this study. This study analyses how this area is covered by Slovak legislation and identifies potential gaps in the current legislation. A partial aim is to determine the challenges facing Slovak legislation in this area as well as the planned amendment.

Starting with the EU *acquis*, as in the fundamental judgment in the case of *Costa v ENEL*, the CJEU established that the founding treaties have created a legal system, which has become an integral part of the legal systems of the Member States and takes precedence over the national legislation of the Member States.⁷ Within the EU *acquis*, a key act in this area was adopted: the relatively new Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods, which became applicable on 1 January 2022 (hereinafter referred to as the ‘Directive’). It replaced the Consumer Sales and Guarantees Directive (1999/44/EC). The Directive is a legally binding EU Act within the meaning of Article 288(3) TFEU and binds Member States as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national

² European Parliament, 2022.

³ Mészáros, 2018.

⁴ Šajn, 2019.

⁵ Art. 4(2)(f) TFEU.

⁶ Siman and Slaštan, 2012, p. 84.

⁷ Case 6-64 *Flaminio Costa v E.N.E.L.* [1964] ECLI:EU:C:1964:66.

authorities the choice of form and methods.⁸ Thus, it is necessary to begin the analysis of Slovak legislation with an introduction to the directive in question. The core of this study focuses on the legislation currently in force in Slovakia. The last part focuses on the planned amendment, which should reflect the results set out in the Directive.

2. Directive on certain aspects concerning contracts for the sale of goods

As mentioned in the Introduction, the key directive adopted at the EU level is the directive on certain aspects concerning contracts for the sale of goods. The aim of this directive was to establish certain rules on sales contracts between sellers and consumers to establish common standards for consumer sales contracts in cases of a lack of conformity of the goods with the contract. This Directive seeks to reflect the current needs of the digital market regarding e-commerce as a key driver of growth within the internal market.⁹ In general, within the meaning of Article 3, sales contracts between a consumer and a seller and those for the supply of goods to be manufactured or produced fall within the *ratione materiae* of the Directive. The Directive then specifies the contracts that are excluded from the material scope, including certain contracts for the supply of digital content or digital services, as well as other exceptions.¹⁰ Under this Directive, the seller is liable to the consumer for any lack of conformity that exists when the goods are delivered, which becomes apparent within two years. Generally, if the seller delivers to the buyer goods that do not conform with the contract, the buyer has various available remedies.¹¹ The directive, *inter alia* defines precise remedies if there is no conformity of the goods with the contract and also ways to exercise them.¹² They also addressed the issue of commercial guarantees. This institute is a voluntary service offered by the seller or producer, and even in practice, by a third party. However, consumer rights are not affected under legal guarantees.¹³ In addition to the above-mentioned directive, there is another important directive, Directive (EU) 2019/770, on certain aspects concerning contracts for the supply of digital content and digital services entered into applications on the same date. This Directive gave consumers the right to remedy faulty digital content or services.

The Directive is a legally binding EU Act in which Member States are obliged to transpose their national legislation. However, as noted on the EUR-Lex website, the

⁸ Art. 288(3) TFEU.

⁹ Point 4 of the preamble to the Directive.

¹⁰ Art. 3 of the Directive.

¹¹ Värv, A., Karu, P., 2009.

¹² EUR-Lex, 2019.

¹³ ECC-Net, n.d.

Slovak Republic has not yet transposed the Directive into national legislation¹⁴. If we look at the text of the directive and compare it with the Slovak law, we cannot say that the content of the directive does not need to be transposed. The Directive also contains new notions that need to be implemented in the Slovak legal order. The European Commission shares the same opinion, initiating infringement proceedings against the Slovak Republic in the case of a lack of transposition of both directives.¹⁵ To support Slovakia on this matter, we already began to amend our legislation so that these key directives can be transposed into our legal system. The interministerial comment procedure ended on 15 February 2022, and its evaluation is still ongoing. This study discusses how this area is currently covered by our legal order; briefly discusses the planned amendment, which we believe will soon be in force; and establishes legislation that will correspond with EU law.

3. Current Slovak legislation

As an explanatory memorandum to the proposed amendment, general consumer protection institutions are currently fragmented into several legal acts. The orientation of their interrelationship and their subsequent correct application are made more difficult from the point of view of both the consumer and entrepreneurs, thus undermining the principle of legal certainty.¹⁶ The Civil Code covers the most extensive material¹⁷, as in the *lex generalis* provision. The second key source is the Consumer Protection Act¹⁸, which provides for *lex specialis*. Consumer protection issues are also partially regulated by other legal acts, such as the Act on Consumer Protection in the Sale of Goods or Providing of Services under a Distance Contract, the Act on Alternative Dispute Resolution, and many others¹⁹. This study focuses on the lack of conformity of the goods and the way they are regulated in the Slovak legal

14 EUR-Lex, 2021.

15 European Commission, 2022.

16 Explanatory memorandum to the planned amendment.

17 Act No. 40/1964 Coll. Civil Code (hereinafter referred to as the Civil Code).

18 Act No. 250/2007 Coll. on Consumer Protection and on Amendments to Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended (hereinafter referred to as the Consumer Protection Act).

19 Act No. 102/2014 Coll. on Consumer Protection in the Sale of Goods or Providing of Services under a Distance Contract or a Contract Concluded Outside the Seller's Premises and on Amendments and Additions to Certain Acts, as amended, Act No. 391/2015 Coll. on Alternative Dispute Resolution of Consumer Disputes and on Amendments and Additions to Certain Acts, as amended, Act No. 299/2019 Coll. on supervision and assistance in resolving unjustified geographic discrimination of customers in the internal market and amending, Act No. 128/2002 Coll. on state control of the internal market in matters of consumer protection and on amending and supplementing certain as amended.

order; therefore, we will not go deeper into the sources that do not concern the area in question.

Currently, the Slovak legal system knows only about the Institute of Liability for Defects. Current legislation does not refer to this institute, in the sense of the Directive, as a lack of conformity of the goods, but as a general and objective liability for defects. This liability arises as an ancillary legal relationship, provided that the object of the main relationship is the performance under consideration. The seller is liable for the existence of the agreed characteristics of the object, for its usability, and for the fact that the assigned object is free from legal defects.²⁰ Slovak civil law has regulated this institute primarily in parallel with several legal acts. The main source of law in this field is the Civil Code, which contains general legal and specific provisions for selected contract types.²¹ A general rule for this liability can be found in both the section on general liability and the general provisions related to the sale contract. In the Civil Code, we also find *lex specialis* provisions for the sale of goods in stores (consumer contracts of sale).²² In addition, we find a regulation concerning the area we are analysing in the Consumer Protection Act, in which the complaint procedure is regulated. In the following section, we will briefly address the basic notions from the analysed area, and then we will discuss both the Civil Code and Consumer Protection Act provisions in more depth.

3.1. Fundamental notions

This subchapter defines the basic notions that, from our perspective, are not defined in full compliance with EU law. Therefore, in the amendment, most notions will already be defined in accordance with Union Law, with the Directive, or even new notions will be incorporated into our legal system.

Consumer contract

The basic notions are defined in the Civil Code, under which 'a consumer contract is any contract, regardless of its legal form, concluded between a supplier and a consumer. A supplier is a person who, in concluding and fulfilling a consumer

20 Dufalová and Križan and Skorková, 2017, p. 152.

21 For example, works contract and others.

22 The Civil Code – part 1(General provisions) – Chapter 5 on consumer contracts, Part 8, Chapter 2, the contract of sale, Section 4 of this Part, specifically on consumer contracts of sale + as *lex generalis*, the general provisions on the contract of sale will also apply.

contract, is acting within the scope of his/her commercial or other business activity.' Contrastingly, 'a consumer is a natural person who, when concluding and fulfilling a consumer contract, is not acting within the scope of his commercial activity or other business activity'.²³ Further definitions can be found alongside the Consumer Protection Act: 'For the purposes of this Act a consumer shall be a natural person who, when concluding and fulfilling a consumer contract, does not act within the scope of his or her business activity, occupation or profession'; and 'a seller who, when concluding and fulfilling a consumer contract, is acting within the scope of his business activity or profession, or a person acting on his behalf or his account'.²⁴ In addition, *the lex specialis* regulation is concerned with distance contracts.

Goods

Concerning 'goods', the Consumer Protection Act defines only a product. A product or service includes property, rights, and obligations.²⁵ The word product is used twice here because, in Slovak, we have two different terms for it: one reflecting the product and the other reflecting the manufactured product. Goods are defined only for the purposes of the VAT Act and are understood to be tangible goods, which are movable property and immovable property, including land, electricity, water, cold, heat, banknotes, and coins, if they are sold for collection at a price other than their nominal value.²⁶

3.2. Liability for defects under the Civil Code

The current situation is based on liability for defects in the Civil Code and the complaint procedure in the Consumer Protection Act. To simplify, consolidate, and harmonise the regulation of liability for defects in goods, digital services, and digital content with EU law, the planned amendment proposes leaving only the regulation in the Civil Code. However, at present, the situation persists in which the area under analysis is fragmented into several legal acts, and parallel regulations concerning liability for defects can also be discussed. As already stated, liability for defects is generally dealt with in the Civil Code, both in the section on general liability, the general provisions on the contract of sale, and the *lex specialis* provisions on the sale of goods in the store (consumer contracts of sale).

23 §52 of the Civil Code.

24 §2 of the Consumer Protection Act.

25 §2(zd) of the Consumer Protection Act.

26 §8 of the Act No. 222/2004 Coll. on value added tax.

Civil law theory divides liability for defects into legal, contractual, and possibly other types, which includes liability unilaterally declared by the seller.²⁷ Naturally, the minimum standard guaranteed by a legal guarantee must be met. General liability for defects²⁸ states that, 'Whoever transfers to another a thing for consideration is liable for the fact that the thing at the time of performance has the qualities expressly mentioned or customary, that it can be used according to the nature and purpose of the contract or according to what the parties have agreed, and that the thing is free from legal defects'.²⁹ The commercial guarantee is also mentioned here in the sense that the parties could agree on periods of liability for defects according to stricter principles than those provided by the law. The obliged party shall issue a written confirmation of such an agreement with the authorised person (a letter of guarantee). The acquirer must point out the defect without undue delay after having had the opportunity to inspect the item. The general deadline for reprimanding is six months from the time of inspection/discovery (subjective deadline) but within an objective deadline of up to 24 months unless the law provides otherwise.³⁰ This is a timeframe of a preclusive nature; therefore, if the buyer does not point out the defect within this period, his/her right will expire.³¹

Regarding the regulation of further steps, it is provided under the general regime that if the defect cannot be remedied, and if because of the defect, the object cannot be used properly in the way it should be, the acquirer could claim cancellation of the contract. The acquirer could also seek a proportionate price reduction, replacement, repair, or completion of what is missing.³² The right to a proportional discount is available to the buyer if the defect is remediable even if it is irremediable. As noted by Lazar et al., according to the judicial practice in Slovakia, if the buyer was aware of the defects and nevertheless concluded the contract, he/she is no longer entitled to the above-mentioned rights of liability for defects in the case of this object.³³ Under the Civil Code, liability claims could also be asserted in court within a general limitation period of three years from the time the defect was discovered. Regarding the exercise of the right to liability for defects, the beneficiary is entitled to compensation for the necessary costs incurred in connection with the exercise of the right to liability. This right must be exercised with the party liable within one month of the expiration of the period in which the defects must be noted. This was a preclusive deadline. Therefore, the buyer has an obligation to notify the seller. In addition, a claim for

27 Dufalová and Križan and Skorková, 2017, p. 153.

28 §499-§510 of the Civil Code.

29 §499 of the Civil Code.

30 §502 and §505 of the Civil Code.

31 Lazar et al., 2014, p. 111.

32 §507 of the Civil Code.

33 Lazar et al., 2014, p. 111.

compensation for damage resulting from the defect was still considered. A defect that appears within six months of acceptance shall be deemed to have existed on the date of acceptance unless it is contrary to the nature of the item or the seller proves otherwise.³⁴ This provision provides a general framework within the general part of the Civil Code.

Sales contracts are also regulated.³⁵ This section imposes a general notification obligation on the seller to notify the buyer of defects that they are aware of at the time of negotiating the contract of sale.³⁶ If the defect only comes to light afterwards and the buyer has not been warned of it, the buyer has the following possibilities and rights:

- The right to a proportional discount on the agreed price corresponding to the nature and extent of the defect.
- If the defect makes an item unusable, they have the right to withdraw from the contract.
- The buyer could withdraw if the seller has assured them that the item has certain characteristics or is free from defects, and this turns out not to be true.
- The buyer is entitled to the reimbursement of the necessary costs in connection with the exercise of rights of liability for defects (together with the notification obligation).
- The right to compensation for damages is not affected.³⁷

Defects must be claimed without undue delay; the buyer can only take action before the court if he has raised them within the warranty period of 24 months from the acceptance of the goods.³⁸

In the Civil Code, there is also a *lex specialis* regulation in the section dedicated to special provisions for the sale of goods in a store.³⁹ This is a *lex specialis* regulation of consumer sales contracts. These provisions refer to the aforementioned general regulation on contracts of sale. First, we find a provision, which states that the seller is obliged to cover all costs (return, delivery, and others) arising for the buyer.⁴⁰ Then follows a broad provision of §616 defining the terms quality and quantity. The object sold must be of the required or legally prescribed quality, quantity, measure, or weight, and must be free from defects; in particular, it must comply with binding technical standards. Foodstuffs must be marked with a use-by date or date of minimum expiry.

34 §101, §508-§510 of the Civil Code.

35 Part 8, Chapter 2 'The contract of sale' of the Civil Code.

36 §596 of the Civil Code.

37 §597, §598 and §600 of the Civil Code.

38 §599 of the Civil Code.

39 Part 8, Chapter 2, Section 4 of the Civil Code.

40 §612 and §614a) of the Civil Code.

If necessary, according to the nature of the item, the seller must inform the buyer of the instructions or technical standards. Within the meaning of §618, there is an obligation to sell items that have defects that do not prevent proper use at prices lower than the price of a normal faultless item. Of course, a prerequisite exists for the buyer to be notified of this.⁴¹ These are the basic rules on liability for defects established in this section for consumer sales contracts:

- The seller is liable for defects which the goods have on acceptance,
- The seller is not liable for defects of used items caused by the usage,
- If a lower price is agreed upon because of a defect, the seller is no longer liable for that defect.⁴²

The time limits are as follows: unless the goods are perishable (e.g. foodstuffs) or second-hand, the seller is liable for defects that occur after receipt within the warranty period. The general warranty period is set to 24 months. A shorter period can be agreed upon for an item, but not less than 12 months. Further, for items intended for longer use, specific regulation could provide for a warranty period longer than 24 months, which can also be applied to a part of a product, as is common practice in electronics for selected components. The warranty period commences from the buyer's date of acceptance of the item. At the buyer's request, the seller must provide a guarantee in writing; in other words, a warranty certificate or some proof of purchase if the nature of the item allows it. This includes invoices.

The so-called commercial warranty is also regulated here very briefly. A warranty certificate or advertisement could also refer to a warranty that goes beyond that provided by law. The seller defines the terms and scope of the guarantee in the warranty certificate.⁴³ Naturally, as already mentioned, this guarantee must not give consumers less protection than a legal guarantee. This also applies to unilateral declarations made by sellers.

The provisions of §622 and §623 subsequently address, how the situation of defects in consumer sales contracts can be resolved. Defects are classified as remediable or irremediable. These are the basic rules regulating the resolution:

- If it is possible to remove the defect, the buyer has the right to remove it free of charge, promptly, and properly (the seller is obliged to remove it without undue delay).
- The buyer could demand replacement of the item instead of removal, or if it concerns only one part, replacement of the part (if this does not incur unreasonable costs for the seller regarding the price of the item and severity of the defect).

41 §616-§618 of the Civil Code.

42 §619 of the Civil Code.

43 §620-§621 of the Civil Code.

- The seller could always replace the defective item with a defect-free item instead of removing the defect (this cannot cause difficulties for the buyer).
- If there is a defect that cannot be remedied and prevents the proper use of the item, the buyer has the right to exchange the item or withdraw from the contract (this also applies if the defect occurs again or if multiple defects and the item cannot be used properly).
- In the case of irreparable defects, the buyer is entitled to a reasonable discount on the item price.⁴⁴

If a replacement occurs, the warranty period will start again from the acceptance of the new item, which applies equally if only part of the product is changed. If there is a defect in an item sold at a lower price or as used, but the seller is responsible for this defect because—for example, he or she did not inform the buyer about it—the buyer is also entitled to an additional adequate discount. Further, the law addresses the question of where the rights of liability for defects are exercised. It is primarily with the seller but possibly also with the entrepreneur listed in the warranty certificate as the intended repairer. However, this entrepreneur should be in the place of the seller or closer to the buyer. Finally, these liability rights are no longer available if they are not exercised within the warranty period. For perishable goods, this must not occur later than the day after the purchase.⁴⁵ These provisions provide a subchapter on the regulations under the Civil Code.

3.3. Complaints procedure under the Consumer Protection Act

In addition to the aforementioned complaint procedure, the Consumer Protection Act sets out the seller's obligations. Such a basic obligation is, of course, to issue proof of purchase that contains all the prescribed particulars; whereas in the case of the sale of a second-hand product or a product that has been modified, a defective product, or a product whose utility is otherwise limited, these facts must be clearly indicated in this document. Among other things, the seller is obliged to sell products in the required weight, measure, and quantity, and sell products and services of standard quality. If the quality is below the normal or prescribed quality, consumer attention must be drawn to the differences. As part of the information obligations, before concluding the contract or before sending the order, they must inform the consumer if the information is not obvious regarding the nature of the goods about its main characteristics and the nature of the service. They must also inform consumers about

44 §622 and §623 of the Civil Code.

45 §624 – §627 of the Civil Code.

the functionality and, in the case of electronic content, about the compatibility with hardware and software. Regarding the commercial guarantee, the customer must be informed of the existence and details of a commercial guarantee, if the seller provides such a guarantee. The provision addresses additional requirements. Accordingly, the following provision sets out the obligation to inform the consumer about the characteristics of the product sold or the nature of the service provided: the manner of use, assembly, and maintenance of the product; dangers arising from its improper use; conditions of preservation and storage; and risks associated with the service provided. Further, the information obligations across the supply chain are specified. When the manufacturer or importer does not enter a direct relationship with the seller, they are obliged to inform the supplier truthfully about the characteristics of the product. The supplier is obliged to inform the seller about the characteristics of the product truthfully and completely. The information provided by the manufacturer, importer, or supplier shall include a full description of the potential risks posed by the product, measures to avoid them, and information relevant to the use of the product.⁴⁶ Regarding liability across the supply chain, this is precisely the area that the planned amendment will clarify because today, we can only imagine a standard action for damages or an action brought based on negotiated terms in a contract.

In the area under discussion, in addition to the information obligations, we are also interested in the complaint procedure as regulated by the Consumer Protection Act. In its introductory provisions, the Act defines a complaint as the application of liability for defects in a product or service. The resolution of a complaint involves the termination of the complaint procedure by handing over a repaired product, replacing the product, refunding the purchase price of the product, paying a proportional discount on the price of the product, a written notice to take over the product, or a reasonable refusal to accept the complaint.⁴⁷

The liability for defects is enshrined in Section 18 of the Consumer Protection Act, which addresses complaints. This provision starts with the seller's information obligation to inform the consumer about the conditions and method of complaint and the addresses where the complaint can be submitted. The seller or his authorised employee shall inform the consumer of his rights under the general rule, which is the Civil Code as a *lex generalis* rule. The complaint procedure is as follows: based on the rights of the consumer under the Civil Code, the consumer shall specify the rights he/she is claiming. Subsequently, the seller determines the method for processing complaints. The complaint should preferably be processed immediately in complex cases within three working days of application. In justified cases, particularly where a complex technical assessment of the condition of the product or service is required, no later than 30 days

46 §4, §10a), §11, §12 and §16 of the Consumer Protection Act.

47 §2(l)(m) of the Consumer Protection Act.

from the date on which the complaint is made. These 30 days are the maximum when the seller fails to comply, the consumer's position is strengthened, and the consumer is given more rights. After the expiry of this period, the consumer has the right to withdraw from the contract or exchange the product for a new product.

The procedure for dealing with a complaint also depends on the time interval between the purchase and complaint date. If the consumer has submitted a complaint within the first 12 months of purchase, the seller may only reject the complaint based on a professional assessment; regardless of the outcome of the expert review, the consumer may not be required to pay the costs of the expert review or any other related costs to the expert review. The seller shall provide the consumer with a copy of the expert review justifying the rejection of the complaint no later than 14 days after its date. If the consumer has submitted a complaint 12 months after the purchase of the product and the seller has rejected it, the person who handled the complaint is obliged to indicate in the complaint-handling document to whom the consumer can send the product for expert review. If the product is sent to a designated person for expert review, the costs of the expert review, as well as any other costs reasonably incurred in connection with it, shall be covered by the seller regardless of the outcome of the expert review. If the expert review proves that the seller is liable for a defect, the consumer could resubmit the claim; the warranty period will not expire while the expert review is being conducted. The seller shall refund the consumer within 14 days of the date of resubmission of the complaint, all costs incurred for the expert review, and all costs reasonably incurred in connection with the complaint. The reasserted complaints cannot be rejected. In this case, the consumer's position is strengthened, supported by the reimbursement of costs. The seller is obliged to issue a confirmation to the consumer when claiming to issue a written document on the handling of the claim no later than 30 days from the date of the claim and is obliged to keep a record of claims. Moreover, unless a special regulation specifies otherwise, the settlement of a complaint shall be without prejudice to the consumer's right to compensation for damages.⁴⁸ If we are discussing remedial issues, in addition to the possibility of claiming damages, these issues also include the consumer's ability to turn to an alternative dispute resolution body to protect their consumer rights; in the case of a cross-border dispute, the consumer has the right to turn to the European Consumer Centre, and⁴⁹ the section concerning the complaint procedure concludes the chapter dealing with the current legislation in Slovakia. As we believe that the entry into force of the planned amendment in this area regarding the above-mentioned EU directives is a matter of the near future, we consider it necessary to discuss this amendment briefly.

48 §18 of the Consumer Protection Act.

49 European Consumer Centre Slovakia, 2022.

4. Planned amendment in the area under analysis

As mentioned, less-than-ideal parallel regulation fragmented into several legal acts will be resolved through the planned amendment. The most significant changes brought about by the new legislation are the comprehensively reworked provisions on liability for defects in a Euro-conforming manner within the limits of the key directives. The draft bill introduces new general consumer protection legislation to replace the current Consumer Protection Act. Among the most significant changes are the unification of terminology used in accordance with EU legislation, the updating of information obligations for contracts concluded at a distance or away from the trader's business premises in connection with digitisation, and the new regulation of information obligations for operators of online markets. For example, the term supplier has been replaced by the term trader. Simultaneously, the draft law eliminated duplication, application problems, internal contradictions of individual provisions, and terminological differences.⁵⁰

In particular, the provisions on liability for defects have been modified. As previously mentioned, the *status quo* is based on the regulation of liability for defects in the Civil Code and on the regulation of the complaint procedure in the Consumer Protection Act. To simplify, consolidate, and harmonise the regulation of liability for defects, digital services, and digital content with EU law, it is proposed that only the regulations in the Civil Code, as amended by the draft-amending article, be retained. The seller's liability in the event of defects caused by incorrect installation is also regulated in the context of the digital era. In the article mentioned §596 and §598 should be omitted from the Civil Code. In the provisions on consumer sales contracts under the Civil Code, the most significant changes pertain to the lack of conformity of the goods. Present §618–§648 will be extended to cover in detail all aspects of liability, warranty, buyer's rights, counterclaims, the institution of remedying defects, the requirements for claiming a defect, and the burden of proof. Further, a series of provisions will be added in the articles of §852, in which liability for defects will be addressed in depth in the *lex specialis* regulation of consumer contracts with digital performance.⁵¹ In addition to transposing the above-mentioned directives, this new legislation is also intended to consider the area of continuous digital content delivery.⁵² Parallel regulations under the Consumer Protection Act will be deleted and the Act will deal more with the issue of e-commerce and distance contracts.

Finally, the proposal for new legislation modernises the current consumer legislation, brings it into line with EU law, and updates our legislation for the modern digital

50 Explanatory memorandum to the planned amendment.

51 Draft Civil Code.

52 Explanatory memorandum to the planned amendment.

era. When checking the table of conformity between the planned amendment and the aforementioned key Directive, we find that in the immanent part of the Directive's provisions, a change in the Slovak legal system will be necessary in the light of the correct transposition of this directive.⁵³ We consider Slovak legislation insufficient concerning commercial guarantees. Few legal provisions specify the basic obligations of the seller, but we would have welcomed a more in-depth discussion of this area, especially in a single provision and not in parallel in several sections.

5. Conclusion

This study addresses the lack of conformity of the goods with contracts under Slovak legislation. Currently, the analysed area is covered by the Institute of Liability for Defects in the Slovak legislative order. The liability for defects, as shown in this study, is regulated in parallel by several provisions of Slovak legal acts. The most extensive legal liability regulations for defects are found in the Civil Code. This regulation is general and discusses several *lex specialis* provisions for selected contract types. This study primarily focuses on consumer contracts.

After a brief introduction to EU law, we mainly focused on the Civil Code, followed by the Consumer Protection Act. Finally, we discuss the planned amendments in this area. The aim was to analyse the current legislation in force in Slovakia and identify its possible shortcomings. One of the main problems is the lack of transposition of a key directive in this area, which undermines harmonisation with other EU Member States and thus potentially weakens the level of consumer protection under this issue. The lack of transposition is also a source of problems with different regulations of key notions, in which a revision is necessary. We see as a weakness the current fragmented parallel regulation in several provisions and legal acts, which, in our opinion, could cause uncertainty, not only on the consumer side. Naturally, the Slovak legislation, as well as the EU *aquis*, in the sense of Article 169 TFEU, primarily focuses on increased consumer protection, as well as on the protection of consumers' information rights.⁵⁴ It is necessary to mention the issue of information about entrepreneurs. Therefore, we believe that if the relevant authorities in EU Member States address the issue of information on the sellers' side, this could ultimately have a positive impact on increased consumer protection. Today, even regarding e-commerce, it is not difficult for small entrepreneurs to enter the market, and these actors may often not be sufficiently informed about all the rights of the consumers they contract with. Of course, their lack of knowledge of the law does not discount them, but we

53 The table of conformity between the planned amendment and the Directive.

54 Article 169 TFEU.

Lack of conformity of the goods with the contract under Slovak legislation

think that a campaign aimed at raising awareness among businesses would have a positive impact on the whole area of consumer protection.

However, we see the positive aspect of the current legislation as a relatively clear regulation, which, although fragmented into several regulations, is not contradictory in its wording, and the fact that some obligations and rights are regulated in several provisions underlines, to some extent, their importance and positive impact on the issue of information. Nevertheless, Slovak legislation requires an amendment concerning liability for defects. It should be added that consumer law is consistently evolving dynamically as it must respond to new market impulses, business models, or technological advances, including digitalisation. We believe that the amendment in this area planned for August 2023 will soon come into force, and that the Slovak Republic will address the transposition of the directives into its legal order in an effective manner, as is required for a modern EU Member State.

Bibliography

- Act No. 40/1964 Coll. Civil Code.
- Act No. 250/2007 Coll. on Consumer Protection and on Amendments to Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended.
- Act No. 102/2014 Coll. on Consumer Protection in the Sale of Goods or Providing of Services under a Distance Contract or a Contract Concluded Outside the Seller's Premises and on Amendments and Additions to Certain Acts, as amended.
- Act No. 391/2015 Coll. on Alternative Dispute Resolution of Consumer Disputes and on Amendments and Additions to Certain Acts, as amended.
- Act No. 299/2019 Coll. on supervision and assistance in resolving unjustified geographic discrimination of customers in the internal market and amending.
- Act No. 128/2002 Coll. on state control of the internal market in matters of consumer protection and on amending and supplementing certain as amended.
- Act No. 222/2004 Coll. on value added tax.
- 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 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.
- Dufalová, L., Križan, M., Skorková, V. (2017) *Repetitórium občianskeho hmotného práva*. 2nd edn. Bratislava: Iuris libri, 2017. 272 p. ISBN 978-80-89635-33-7.
- Draft Civil Code and Draft Consumer Protection Act [Online]. Available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2022-39> (Accessed: 23 November 2022).
- ECC-Net (n.d.) *Commercial warranties are they worth the money? Summary*. Help and advice for consumers in Europe [Online]. Available at: https://assets.ctfassets.net/yhw377pukdz9/7ihmKyoH6ZWLaySneottqR/2e929792d3c/cdcad757d0ed-4d57cc8074/Commercial_warrenties_____are_they_worth_the_money_____summary.pdf (Accessed: 20 April 2023).
- European Commission (2022) *Infringement decisions* [Online]. Available at: https://ec.europa.eu/atwork/applying-eu-law/infringements_proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=SK&title=&submit=Search (Accessed: 23 October 2022).
- European Consumer Centre Slovakia (2022) *How can the ECC Slovakia help you?* [Online]. Available at: <https://esc-sr.sk/en/> (Accessed: 14 October 2022).
- European Parliament (2022) *Consumer protection measures* [Online]. Available at:

Lack of conformity of the goods with the contract under Slovak legislation

- <https://www.europarl.europa.eu/factsheets/en/sheet/47/consumer-protection-measures> (Accessed: 11 October 2022).
- European Union – EUR-Lex (2019) *Rules on contracts for the sale of goods between sellers and consumers* [Online]. Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/rules-on-contracts-for-the-sale-of-goods-between-sellers-and-consumers.html> (Accessed: 22 October 2022).
- European Union – EUR-Lex (2021) *National transposition measures communicated by the Member States concerning: 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 (Text with EEA relevance.)* [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32019L0771> (Accessed: 22 October 2022).
- Explanatory memorandum to the planned amendment. [Online]. Available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2022-39> (Accessed: 25 October 2022).
- Judgment of the Court of 15 July 1964, Flaminio Costa v E.N.E.L., C-6-64, ECLI:EU:C:1964:66.
- Lazar, J. et al. (2014) *Občianske právo hmotné*. 1st edn. Bratislava: Iuris libri, 2014. 1302 p. ISBN 978-80-89635-08-5.
- Mészáros, P. (2018) *Ochrana zdravia spotrebiteľa*. In NOVOTNÁ, M. (ed.) *Zásady európskeho súkromného práva v aplikačnej praxi. Spotrebiteľský kódex: áno či nie?* Praha: Leges, 2018, ISBN 978-80-7502-324-7. [Online]. Available at: <https://www.truni.sk/sites/default/files/uk/f000222.pdf> (Accessed: 23 Jun 2023).
- Siman, M., Slašťan, M. (2012) *Právo Európskej únie*. 1st edn. Bratislava: Euroiuris, 2012. 1232 p. ISBN 978-80-89406-12-8.
- Šajn, N. (2019). *Protecting European consumers*. European Parliamentary Research Service, 2019. [Online]. Available at: https://what-europe-does-for-me.eu/data/pdf/focus/focus22_en.pdf (Accessed: 22 April 2023).
- The table of conformity between the planned amendment and the 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 [Online]. Available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2022-39> (Accessed: 25 November 2022).
- Treaty on the Functioning of the European Union.
- Värv, A., Karu, P. (2009) *The Seller's Liability in the Event of Lack of Conformity of Goods*. JURIDICA INTERNATIONAL [Online]. Available at: https://www.juridicainternational.eu/public/pdf/ji_2009_XVI_85.pdf (Accessed: 23 April 2023).

- Weatherill, S. (2013) EU *Consumer law and policy*. 2nd edn. Cheltenham: Edward Elgar, 2013. E-ISBN 978-0-85793-698-1. [Online]. Available at: https://books.google.sk/books?hl=sk&lr=&id=rfYBAQAAQBAJ&oi=fnd&pg=PR1&dq=info:O8JoKQxFbjcJscholar.google.com/8ots=i48kG7Kdou&sig=yLHZjsPSMJWPgltPOIZTmVAACuU&redir_esc=y#v=onepage&q&f=false (Accessed: 23 April 2023).