

歐洲議會暨理事會準則第 1999/44/EC 號

**「關於特定面向之消費品銷售及其保證」**

一九九九年五月二十五日

**DIRECTIVE 1999/44/EC OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**on certain aspects of the sale of consumer goods  
and associated guarantees**

of 25 May 1999

歐洲議會及歐洲聯盟理事會，

基於建立歐洲共同體條約，特別是第九十五條，

本於執委會之提案<sup>①</sup>，並納入經濟暨社會委員會之意見<sup>②</sup>，

依條約第二五一條所定程序，並按照調解委員會於一九九九年五月十八日<sup>③</sup>通過之共同草案，基於以下考量：

- (1) 依條約第一五三條第一、三項之規定，共同體應依據第九十五條之規定採取各種措施，以促成高水準之消費者保護；
- (2) 內部市場涵蓋了一個保障貨物、人員、服務及資金得以自由流通之無內部邊界的區域。貨物之自由流通不僅關係到商業貿易，同時也關係到私人。此意味著，任何會員國之消費者應有權在公平且一致之有關消費品買賣的最低規定的基礎上，於其他會員國國內自由地購買消費品。
- (3) 各會員國關於消費品銷售之法規存有差異，以致於各會員對於消費品的銷售市場並不一致，可能出現出賣人之間扭曲性的競爭。

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>①</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>②</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 18 May 1999<sup>③</sup>,

- (1) Whereas Article 153 (1) and (3) of the Treaty provides that the Community should contribute to the achievement of a high level of consumer protection by the measures it adopts pursuant to Article 95 thereof;
- (2) Whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is guaranteed; whereas free movement of goods concerns not only transactions by persons acting in the course of a business but also transactions by private individuals; whereas it implies that consumers resident in one Member State should be free to purchase goods in the territory of another Member State on the basis of a uniform minimum set of fair rules governing the sale of consumer goods;
- (3) Whereas the laws of the Member States concerning the sale of consumer goods are somewhat disparate, with the result that national consumer goods markets differ from one another and that competition between sellers may be distorted;

(4)使消費者得於其居住國以外之其他會員國購得商品，以便享有內部市場之利益，此點於實現內部市場時扮演了一個重要的角色。因此，必須避免市場因新的人為界限之出現而分崩離析。消費者因新興溝通科技所提供之更便捷地進入其他會員國或第三國之銷售體系的可能管道，很明顯地增多。若未對於有關消費品買賣之相關規定為最起碼的調和化工作的話，藉助新興遠距溝通技術之商品銷售，其發展將會受到阻礙。

(5)建立一套在共同體內任何地點所為之貨物買賣均有適用之有關消費者權利的共同最低限度之規定，將可強化消費者之信賴，並促使消費者善加利用內部市場所能提供的利益。

(6)消費者所遇到的困難，以及與出賣人之間的衝突，主要是源自貨物違反契約。關於貨物與契約不符之爭執的主要根源；鑒於因而宜在這方面調和國家有關消費品買賣之立法，惟不與國家的契約與非契約義務相關法律之規定與原則相牴觸；

(7)鑒於貨物尤其必須與契約的內容相符；鑒於與契約相符對不同國家的法律傳統而言可被視為共通的原則；鑒於若干國家的法律傳統中不可能單靠此一原則，以確保對消費者之最低水準的保護；鑒於在這種法律傳

(4) Whereas consumers who are keen to benefit from the large market by purchasing goods in Member States other than their State of residence play a fundamental role in the completion of the internal market; whereas the artificial reconstruction of frontiers and the compartmentalisation of markets should be prevented; whereas the opportunities available to consumers have been greatly broadened by new communication technologies which allow ready access to distribution systems in other Member States or in third countries; whereas, in the absence of minimum harmonisation of the rules governing the sale of consumer goods, the development of the sale of goods through the medium of new distance communication technologies risks being impeded;

(5) Whereas the creation of a common set of minimum rules of consumer law, valid no matter where goods are purchased within the Community, will strengthen consumer confidence and enable consumers to make the most of the internal market;

(6) Whereas the main difficulties encountered by consumers and the main source of disputes with sellers concern the non-conformity of goods with the contract; whereas it is therefore appropriate to approximate national legislation governing the sale of consumer goods in this respect, without however impinging on provisions and principles of national law relating to contractual and noncontractual liability;

(7) Whereas the goods must, above all, conform with the contractual specifications; whereas the principle of conformity with the contract may be considered as common to the different national legal traditions; whereas in certain national legal traditions it may not be

統中，特別是額外的國家規定，有助於在當事人未同意特殊契約條款，或當事人已簽訂契約條款或協議，惟直接或間接放棄或限制消費者權利，且損及此準則所規定之權利而對消費者無拘束力的案件中，確保消費者獲得保護；

(8) 鑒於為了促進契約相符原則之適用，引進一種涵蓋所有最具共通情況之契約相符推定是有用的；鑒於該推定並未限制契約自由原則；此外鑒於缺乏特殊契約條款及最低限度保護條款時，此推定所提及諸要素可用來判定貨物與契約不相符合；鑒於消費者合理期待的品質與性能主要取決於貨物是新品或中古；鑒於此推定所提及諸要素為逐漸累增；鑒於若案件情況導致某特別要素明顯窒礙難行，而推定之其餘要素仍然適用；

(9) 鑒於銷售者應直接對消費者負有貨物與契約相符之責任；鑒於這種傳統的解釋深化在各會員國的法律秩序中；鑒於銷售者仍然應該依國家法律所規定，自由向

possible to rely solely on this principle to ensure a minimum level of protection for the consumer; whereas under such legal traditions, in particular, additional national provisions may be useful to ensure that the consumer is protected in cases where the parties have agreed no specific contractual terms or where the parties have concluded contractual terms or agreements which directly or indirectly waive or restrict the rights of the consumer and which, to the extent that these rights result from this Directive, are not binding on the consumer;

(8) Whereas, in order to facilitate the application of the principle of conformity with the contract, it is useful to introduce a rebuttable presumption of conformity with the contract covering the most common situations; whereas that presumption does not restrict the principle of freedom of contract; whereas, furthermore, in the absence of specific contractual terms, as well as where the minimum protection clause is applied, the elements mentioned in this presumption may be used to determine the lack of conformity of the goods with the contract; whereas the quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand; whereas the elements mentioned in the presumption are cumulative; whereas, if the circumstances of the case render any particular element manifestly inappropriate, the remaining elements of the presumption nevertheless still apply;

(9) Whereas the seller should be directly liable to the consumer for the conformity of the goods with the contract; whereas this is the traditional solution enshrined in the legal orders of the Member States;

生產者求償，即受同一契約約束之上游銷售者或中間商，除非他放棄該項權利；鑒於此準則不影響銷售者、生產者、上游銷售者或任何其他中間商之間的契約自由原則；鑒於規範銷售者向誰及如何求償的規定由國家法律決定；

- (10) 鑒於貨物與契約不符的案件中，消費者應有權利要求貨物免費恢復到符合契約，不管是採取修復或更換，或不可行，則可要求降價或終止契約；
- (11) 鑒於消費者首先得要求銷售者修復或更換貨物，除非該補償辦法為不可能或不合適；鑒於某一補償辦法是否得宜應客觀地判定；鑒於某一補償辦法，相較於其他辦法，若增加不合理費用，則屬不當；鑒於該補償辦法應明顯高於其他補償辦法之費用，始能判定費用不合理；
- (12) 鑒於不符契約案件中，銷售者始終可借由和解提供消費者任何可行的補償辦法；鑒於消費者可決定是接受或拒絕該辦法；
- (13) 鑒於為促進消費者利用內部市場和在其他會員國購買消費品，基於消費者利益，應建議行銷於多個會員國

whereas nevertheless the seller should be free, as provided for by national law, to pursue remedies against the producer, a previous seller in the same chain of contracts or any other intermediary, unless he has renounced that entitlement; whereas this Directive does not affect the principle of freedom of contract between the seller, the producer, a previous seller or any other intermediary; whereas the rules governing against whom and how the seller may pursue such remedies are to be determined by national law;

- (10) Whereas, in the case of non-conformity of the goods with the contract, consumers should be entitled to have the goods restored to conformity with the contract free of charge, choosing either repair or replacement, or, failing this, to have the price reduced or the contract rescinded;
- (11) Whereas the consumer in the first place may require the seller to repair the goods or to replace them unless those remedies are impossible or disproportionate; whereas whether a remedy is disproportionate should be determined objectively; whereas a remedy would be disproportionate if it imposed, in comparison with the other remedy, unreasonable costs; whereas, in order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of the other remedy;
- (12) Whereas in cases of a lack of conformity, the seller may always offer the consumer, by way of settlement, any available remedy; whereas it is for the consumer to decide whether to accept or reject this proposal;
- (13) Whereas, in order to enable consumers to take advantage of the internal market and to buy consumer goods in another Member State,

之消費品生產者，在其產品上至少附上其在每個行銷國之聯絡地址；

- (14) 鑒於提及交貨時間並不表示各會員國需為通行的風險修改其相關規定；
- (15) 鑒於各會員國得規定，任何給消費者的退款可就消費者自交貨日起已使用的情形而酌予降低；鑒於解約生效的細部規定得由國家法律定之；
- (16) 鑒於中古貨物之特性使其通常無法更換；鑒於消費者更換的權利通常因而不適用於這些貨物；鑒於針對這種貨物，各會員國得要求當事人同意負起短期的責任；
- (17) 鑒於宜將銷售者對於交貨時存在的任何不符契約所應負之責任加以期限上的限制；鑒於各會員國對於消費者行使權利的期限，也可規定限制在收到貨物的兩年內；鑒於在國家立法時，若期限開始的日期並非交貨日期，則國家法律規定的有效期限，自交貨日算起不得低於兩年；
- (18) 鑒於各會員國得規定必須在明顯出現任何不符契約時

it should be recommended that, in the interests of consumers, the producers of consumer goods that are marketed in several Member States attach to the product a list with at least one contact address in every Member State where the product is marketed;

- (14) Whereas the references to the time of delivery do not imply that Member States have to change their rules on the passing of the risk;
- (15) Whereas Member States may provide that any reimbursement to the consumer may be reduced to take account of the use the consumer has had of the goods since they were delivered to him; whereas the detailed arrangements whereby rescission of the contract is effected may be laid down in national law;
- (16) Whereas the specific nature of second-hand goods makes it generally impossible to replace them; whereas therefore the consumer's right of replacement is generally not available for these goods; whereas for such goods, Member States may enable the parties to agree a shortened period of liability;
- (17) Whereas it is appropriate to limit in time the period during which the seller is liable for any lack of conformity which exists at the time of delivery of the goods; whereas Member States may also provide for a limitation on the period during which consumers can exercise their rights, provided such a period does not expire within two years from the time of delivery; whereas where, under national legislation, the time when a limitation period starts is not the time of delivery of the goods, the total duration of the limitation period provided for by national law may not be shorter than two years from the time of delivery;
- (18) Whereas Member States may provide for suspension or interruption

才暫停或中止期限，以及在修復、更換或銷售者與消費者進行和解協商時，在適宜且遵照國家法律的情況下，暫停或中止對期限的限制；

(19) 鑒於各會員國應允許規定一期限，在此期限內消費者必須告知銷售者任何不符契約的情形；鑒於各會員國為使消費者獲得更高的保護得不作此義務要求；鑒於共同體範圍內消費者無論如何必須擁有最少二個月的時間來告知銷售者有不符契約情形；

(20) 鑒於各會員國應防範這種期限損及消費者跨界購物；鑒於所有會員國應通知執委會有關此規定之執行狀況；鑒於執委會應監控此規定之不同適用對消費者與內部市場的影響；鑒於一會員國執行此規定的資訊應適用於共同體所有其他會員國、消費者及消費者組織；鑒於所有會員國執行狀況的摘要因此應刊登於「歐洲共同體官方議事錄」上；

(21) 鑒於對特定貨物類別，銷售者及生產者對於貨物發生任何缺陷，目前都有提供一保證期限；鑒於此保證會造成競爭；鑒於這種保證雖是合法的行銷工具，但不應誤導消費者；鑒於為確保消費者不被誤導，這些保

of the period during which any lack of conformity must become apparent and of the limitation period, where applicable and in accordance with their national law, in the event of repair, replacement or negotiations between seller and consumer with a view to an amicable settlement;

(19) Whereas Member States should be allowed to set a period within which the consumer must inform the seller of any lack of conformity; whereas Member States may ensure a higher level of protection for the consumer by not introducing such an obligation; whereas in any case consumers throughout the Community should have at least two months in which to inform the seller that a lack of conformity exists;

(20) Whereas Member States should guard against such a period placing at a disadvantage consumers shopping across borders; whereas all Member States should inform the Commission of their use of this provision; whereas the Commission should monitor the effect of the varied application of this provision on consumers and on the internal market; whereas information on the use made of this provision by a Member State should be available to the other Member States and to consumers and consumer organisations throughout the Community; whereas a summary of the situation in all Member States should therefore be published in the Official Journal of the European Communities;

(21) Whereas, for certain categories of goods, it is current practice for sellers and producers to offer guarantees on goods against any defect which becomes apparent within a certain period; whereas this practice can stimulate competition; whereas, while such guarantees

證應包含包括說明該保證不影響消費者合法權利在內的特定資訊；

②② 鑒於照一般常識，當事人不能限制或放棄給予消費者的權利，否則所提供的法律保護會被阻擾；鑒於此原則應適用於那些暗示消費者在契約成立時已知曉任何不符契約情形的條款；鑒於此準則賦予消費者的保護不應因選擇以非會員國法律為契約適用而減低；

②③ 鑒於各會員國在這領域的立法與案例顯示對於確保高水準之消費者保護的關心與日俱增；鑒於按此等及執行此一準則所獲得的經驗，有必要設想更為廣泛的調和，尤其是規定生產者對缺陷直接負起應承擔之責任；

②④ 鑒於應允許各會員國採行或繼續維持此準則範圍內之更嚴格的規定，以確保一更高水準之消費者保護；

②⑤ 鑒於根據一九九八年三月三十日執委會有關消費糾紛庭外和解法人組織適用原則的建議<sup>①</sup>，各會員國可以建立法人組織，以確保公正且有效處理國家及跨國性質之爭訟中費者可資利之調解者；

are legitimate marketing tools, they should not mislead the consumer; whereas, to ensure that consumers are not misled, guarantees should contain certain information, including a statement that the guarantee does not affect the consumer's legal rights;

②② Whereas the parties may not, by common consent, restrict or waive the rights granted to consumers, since otherwise the legal protection afforded would be thwarted; whereas this principle should apply also to clauses which imply that the consumer was aware of any lack of conformity of the consumer goods existing at the time the contract was concluded; whereas the protection granted to consumers under this Directive should not be reduced on the grounds that the law of a non-member State has been chosen as being applicable to the contract;

②③ Whereas legislation and case-law in this area in the various Member States show that there is growing concern to ensure a high level of consumer protection; whereas, in the light of this trend and the experience acquired in implementing this Directive, it may be necessary to envisage more far-reaching harmonisation, notably by providing for the producer's direct liability for defects for which he is responsible;

②④ Whereas Member States should be allowed to adopt or maintain in force more stringent provisions in the field covered by this Directive to ensure an even higher level of consumer protection;

②⑤ Whereas, according to the Commission recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes<sup>①</sup>, Member States can create bodies that ensure impartial and efficient handling of compla-



26) 鑒於為保護消費者之集體利益，宜將此準則納入一九九八年五月十九日歐洲議會與理事會第 98/27/EC 號有關消費者利益之保護的不作為請求之訴準則中所包含之相關準則目錄中<sup>26</sup>—

### 發布以下準則：

#### 第一條 適用範圍與定義

1. 本準則之目的乃就消費品銷售及連帶責任的特定面向，調和各會員國之相關法律、規章與行政命令，以確保在內部市場範圍內有一共同最低限度之消費者保護。
2. 本準則之用語定義如下：
  - (a) 消費者：指此準則所涵蓋之契約中非屬於其職業或營業活動之任何自然人，
  - (b) 消費品：意指任何有形之動產，但不包括下列標的
    - 以表演或其他由法律授權的方式售出，
    - 非以限定的容積單位或以特定數量方式包裝之水或瓦斯，
    - 電力；

ints in a national and cross-border context and which consumers can use as mediators;

26) Whereas it is appropriate, in order to protect the collective interests of consumers, to add this Directive to the list of Directives contained in the Annex to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests<sup>26</sup>,

### HAVE ADOPTED THIS DIRECTIVE:

#### Article 1 Scope and definitions

1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market.
2. For the purposes of this Directive:
  - (a) consumer: shall mean any natural person who, in the contracts covered by this Directive, is acting for purposes which are not related to his trade, business or profession;
  - (b) consumer goods: shall mean any tangible movable item, with the exception of:
    - goods sold by way of execution or otherwise by authority of law,
    - water and gas where they are not put up for sale in a limited volume or set quantity,
    - electricity;

- (c) 銷售者：指依據契約而於其職業或營業活動中銷售消費品之任何自然人或法人；
- (d) 生產者：指消費品之廠商、輸入消費品到共同體境內之進口商或有意成為生產者而在消費品標示其姓名、商標或其他特殊標記者；
- (e) 保證：指銷售者或生產者對消費者所為而無對價之義務承諾，於未能提供符合保證條款或相關廣告所載之消費品時，將免費予以退費、更換、修復或處理；
- (f) 修復：意指於違反契約要求時，使消費品回復至與銷售契約相符之狀態。
3. 各會員國得規定，所謂「消費品」不包含消費者有機會親自參與交易之公開拍賣所售出之中古貨物。
4. 供加工或製造的消費品契約亦應視同本準則規範之銷售契約。

## 第二條 合於契約之履行

1. 銷售者必須交付消費者合於銷售契約之貨物。
2. 下述情形之消費品視為合於契約：

- (c) seller: shall mean any natural or legal person who, under a contract, sells consumer goods in the course of his trade, business or profession;
- (d) producer: shall mean the manufacturer of consumer goods, the importer of consumer goods into the territory of the Community or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the consumer goods;
- (e) guarantee: shall mean any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;
- (f) repair: shall mean, in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale.
3. Member States may provide that the expression 'consumer goods' does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person.
4. Contracts for the supply of consumer goods to be manufactured or produced shall also be deemed contracts of sale for the purpose of this Directive.

## Article 2 Conformity with the contract

1. The seller must deliver goods to the consumer which are in conformity with the contract of sale.
2. Consumer goods are presumed to be in conformity with the contract if they:

- (a) 符合銷售者提供之說明書，以及具有銷售者以樣品或樣式給予消費者之貨物的同樣品質；
  - (b) 配合消費者於訂定契約時告知銷售者且銷售者亦接受的任何特殊要求；
  - (c) 符合同類型貨物正常使用的效果；
  - (d) 顯示在同類型貨物為正常且消費者可合理期待之品質與效能，例如貨物的性質，以及銷售者、生產者或其代理商特別在廣告或標示上對貨物所公開陳明之特色；
3. 如果消費者於締結契約時已知違約情事，或客觀上係可得而知該違約情事，或違約情勢是導源於消費者所提供之材料時，非屬本條所稱之契約不履行。
4. 銷售者於下列情形不受第二項(d)款所稱公開表述之拘束：
- 可證明其不知或客觀上未能得知系爭表述，
  - 可證明系爭表述於締約時已予以改正，或
  - 可證明購買消費品之決定得不受系爭表述之影響。

- (a) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;
  - (b) are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;
  - (c) are fit for the purposes for which goods of the same type are normally used;
  - (d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.
3. There shall be deemed not to be a lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.
4. The seller shall not be bound by public statements, as referred to in paragraph 2(d) if he:
- shows that he was not, and could not reasonably have been, aware of the statement in question,
  - shows that by the time of conclusion of the contract the statement had been corrected, or
  - shows that the decision to buy the consumer goods could not have been influenced by the statement.

5. 任何因不正確安裝消費品所導致的契約不履行，若安裝為銷售契約的一部分，且由銷售者進行或負責安裝時，應視同貨物之契約不履行。此規定亦適用於應由消費者自行安裝，卻因安裝指示有問題而導致不正確安裝的產品。

### 第三條 消費者權利

1. 銷售者應就交貨時存在的契約不履行對消費者負責。
2. 於契約不履行時，消費者有權依第三項規定，經免費修復或更換貨物以達到合於契約，或者要求適當降價或依第五、六項規定解除契約。
3. 首先消費者得要求銷售者免費修復或更換系爭消費品，除非不可能或顯不合比例。  
凡使得銷售者因下列情形而增加費用支出者，該補救方式即屬不合比例：

— 系爭消費品於合於契約履行時所具有之價值，

— 考量到契約不履行的程度，以及

— 能否在不對消費者造成顯著不便的情況下採行其他

5. Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his responsibility. This shall apply equally if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

### Article 3 Rights of the consumer

1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered.
2. In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, in accordance with paragraph 3, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods, in accordance with paragraphs 5 and 6.
3. In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case free of charge, unless this is impossible or disproportionate. A remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account:
  - the value the goods would have if there were no lack of conformity,
  - the significance of the lack of conformity, and
  - whether the alternative remedy could be completed without sig-

補救辦法。

任何修復或更換之採行，應在合理期限內為之，且不得對消費者造成顯著不便，並應顧及貨物性質及消費者需求貨物的目的。

4. 第二、三項中所稱「免費」，指回復到與契約內容相符之必要費用，特別是郵資、工錢與材料費。
5. 消費者得要求適當的降價或解除契約：
  - 若消費者無法行使修復或更換的權利，或
  - 若銷售者在合理期限內未能完成補救辦法，或
  - 若銷售者完成補救辦法將造成消費者明顯的不便。
6. 若契約不履行程度輕微，消費者不得行使解約權。

#### 第四條 求償權

對於因生產者行為或疏忽所導致的契約不履行，終端銷售者須對消費者負責，而終端銷售者對於其契約中負有連帶責任之上游銷售者或任何其他居間商個人或多人有求償權。應負擔賠償責任者、有求償權之終端銷售者、以及相關求償程序與方式，由內國法定之。

nificant inconvenience to the consumer.

Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

4. The terms 'free of charge' in paragraphs 2 and 3 refer to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.
5. The consumer may require an appropriate reduction of the price or have the contract rescinded:
  - if the consumer is entitled to neither repair nor replacement, or
  - if the seller has not completed the remedy within a reasonable time, or
  - if the seller has not completed the remedy without significant inconvenience to the consumer.
6. The consumer is not entitled to have the contract rescinded if the lack of conformity is minor.

#### Article 4 Right of redress

Where the final seller is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain. the person or persons liable against whom the final seller may pursue remedies, together with the relevant actions and conditions of exercise, shall be determined by national law.

### 第五條 期限

1. 自交貨日起兩年內，銷售者應依第三條規定負契約不履行責任。若內國法就第三條第二項所定之請求權有消滅時效之規定時，則消滅時效自交貨日起不得短於兩年。
2. 各會員國得規定消費者為維護其權利，應在其得知契約不履行時起二個月內告知銷售者契約不履行之情形。

各會員國應通知執委會有關此規定之執行狀況。執委會應監控各會員國不同適用對消費者與內部市場的影響。

最遲在二〇〇三年一月七日之前，執委會應就各會員國執行狀況提出報告。報告應刊登於「歐洲共同體官方公報」上。

3. 於提出反證前，自交貨日起六個月內明顯出現之契約不履行，均應推定為於交貨日時即已存在，但此推定與貨物性質或契約不履行之本質相矛盾時，不在此限。

### 第六條 保證

1. 於保證聲明以及相關廣告所載條件下，對提供保證者

### Article 5 Time limits

1. The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. If, under national legislation, the rights laid down in Article 3 (2) are subject to a limitation period, that period shall not expire within a period of two years from the time of delivery.
2. Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity.

Member States shall inform the Commission of their use of this paragraph. The Commission shall monitor the effect of the existence of this option for the Member States on consumers and on the internal market.

Not later than 7 January 2003, the Commission shall prepare a report on the use made by Member States of this paragraph. This report shall be published in the Official Journal of the European Communities.

3. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.

### Article 6 Guarantees

1. A guarantee shall be legally binding on the offerer under the condi-

具有拘束力。

2. 保證應：

- 表明消費者於關於消費品買賣之有效的內國法規定範圍內享有法定權利，並應明示此等權利不受保證之影響，
- 以淺顯易懂之文字說明保證之內容，以及根據保證行使請求權之必要步驟，尤其是保證之有效期限與地域範圍，以及保證者之姓名與地址。

3. 應消費者之要求，保證應以書面為之或其他供消費者使用並易於獲取之耐久性媒介為之。

4. 有消費品上市之會員國得於合於契約條款的前提下，規定保證於其領土應以一種或多種共同體官方語文撰寫。

5. 若保證違反第二、三、四項之要求，其效力不受影響，消費者仍可信賴該保證，並要求其承諾之事項。

**第七條 強行規定**

1. 契約條款或於通知銷售者契約不履行之前與銷售者達成之協議，其內容導致本準則所保障之權利直接或間接失效或受到限制者，依內國法之規定，消費者對此

tions laid down in the guarantee statement and the associated advertising.

2. The guarantee shall:

- state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee,
- set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.

3. On request by the consumer, the guarantee shall be made available in writing or feature in another durable medium available and accessible to him.

4. Within its own territory, the Member State in which the consumer goods are marketed may, in accordance with the rules of the Treaty, provide that the guarantee be drafted in one or more languages which it shall determine from among the official languages of the Community.

5. Should a guarantee infringe the requirements of paragraphs 2, 3 or 4, the validity of this guarantee shall in no way be affected, and the consumer can still rely on the guarantee and require that it be honoured.

**Article 7 Binding nature**

1. Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the rights resulting from this

不受約束。

各會員國得規定，對中古貨物，銷售者與消費者可訂定比第五條第一項所定更短的责任期限，但不得少於一年。

2. 當契約選擇以非會員國法律為準據法，而該契約涉及會員國管轄權時，各會員國應採取必要措施以確保此準則對消費者所提供之保護不受到影響。

#### 第八條 內國法與最低限度保護

1. 本準則所定權利之行使，不因消費者行使內國法中有關契約與非契約責任之其他權利而受影響。
2. 各會員國於本準則適用範圍內訂定或維持符合條約之更嚴格的規定，以確保一更高之消費者保護水準。

#### 第九條

各會員國應採取適當措施，告知消費者有關內國法律與本準則之轉換，並應適度鼓勵特定組織告知消費者其權利。

Directive shall, as provided for by national law, not be binding on the consumer.

Member States may provide that, in the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter time period for the liability of the seller than that set down in Article 5 (1). Such period may not be less than one year.

2. Member States shall take the necessary measures to ensure that consumers are not deprived of the protection afforded by this Directive as a result of opting for the law of a non-member State as the law applicable to the contract where the contract has a close connection with the territory of the Member States.

#### Article 8 National law and minimum protection

1. The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may invoke under the national rules governing contractual or noncontractual liability.
2. Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty in the field covered by this Directive, to ensure a higher level of consumer protection.

#### Article 9

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, professional organisations to inform consumers of their rights.



### 第十條

98/27/EC 號準則之附錄應補充下列規定：

「10. 歐洲議會暨理事會一九九九年五月二十五日 1999/44/EC 號準則，關於特定面向之消費品銷售及連帶責任（OJ L 171, 7.7.1999, p. 12）。」

### 第十一條 轉換

1. 會員國應於二〇〇二年一月一日前，因應本準則而制定發布必要之法令規章。會員國並應即時知會執委會其相關內容。

會員國發布此等法令規章時，應於本文中指明與本準則之關連性，或於官方公告時明示其關連性。建立關連性之相關細節，由各會員國定之。

2. 會員國應告知執委會於本準則適用範圍內區域所發布之內國法令規章之原文。

### 第十二條 檢討

執委會至遲應於二〇〇六年七月七日前檢討此準則之適用情形，並提交報告於歐洲議會及理事會。此報告中尤應評估引進生產者直接責任制之可行性，必要時應連同提出建議案。

### Article 10

The Annex to Directive 98/27/EC shall be completed as follows:

'10. 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 (OJ L 171, 7.7.1999, p. 12).'

### Article 11 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 2002. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

### Article 12 Review

The Commission shall, not later than 7 July 2006, review the application of this Directive and submit to the European Parliament and the Council a report. The report shall examine, inter alia, the case for introducing the producer's direct liability and, if appropriate, shall be accompanied by proposals.

第十三條 生效

本準則於公告於「歐洲共同體官方公報」日起生效。

第十四條

此準則適用於會員國。

一九九九年五月二十五日於布魯塞爾。

此致歐洲議會

主席

J. M. GIL-ROBLES

此致理事會

主席

H. EICHEL

（楊傳裕譯，蔡宗珍校正）

NOTE

- ① OJ C 307, 16.10.1996, p. 8 and OJ C 148, 14.5.1998, p. 12.
- ② OJ C 66, 3.3.1997, p. 5.
- ③ 一九九八年三月十日歐洲議會意見（OJ C 104, 6.4.1998, p.30），一九九八年九月二十四日理事會共同立場（OJ C 333, 30.10.1998, p.46），以及一九九八年十二月十七日歐洲議會決定（OJ C 98, 9.4.1999, p. 226）。一九九九年五月五日歐洲議會決定。一九九九年五月十七日理事會決定。
- ① OJ L 115, 17.4.1998, p. 31.
- ② OJ L 166, 11.6.1998, p. 51.

Article 13 Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 25 May 1999.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

H. EICHEL

註釋

- ① OJ C 307, 16.10.1996, p. 8 and OJ C 148, 14.5.1998, p. 12.
- ② OJ C 66, 3.3.1997, p. 5.
- ③ Opinion of the European Parliament of 10 March 1998. (OJ C 104, 6.4.1998, p. 30), Council Common Position of 24 September 1998 (OJ C 333, 30.10.1998, p. 46) and Decision of the European Parliament of 17 December 1998. (OJ C 98, 9.4.1999, p. 226). Decision of the European Parliament of 5 May 1999. Council Decision of 17 May 1999.
- ① OJ L 115, 17.4.1998, p. 31.
- ② OJ L 166, 11.6.1998, p. 51.