

## **European Union Product Warranty Directive To Begin January 1, 2002**

*The following information was provided by the U.S. Department of Commerce.*

If you export to any country in the European Union, you need to be aware of legislation that requires a warranty of at least two years from the delivery of goods. Sellers whose products are found not to conform to the "contract" between the buyer and seller at the time the goods were delivered are required to replace or repair the nonconforming goods free of charge, reduce the price of the goods, or release the consumer from the contract. If you sell a consumer good, this Directive covers your products. The following questions and answers are provided by the Department of Commerce to further explain the Directive.

### What do you mean by "contract"?

While the term "contract" may apply to a written agreement between the seller and the buyer, warranties as to the product's fitness for certain applications or its performance characteristics are also considered to form a "contract" between seller and buyer. Even advertising can create liability.

### What's my liability?

According to Article 2 of the Product Warranty Directive, consumer goods are presumed to be in conformity with the contract if they:

1. 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;
2. 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;
3. Are fit for the purposes for which goods of the same type are normally used; and/or
4. Show the quality and performance which are normally 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 specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labeling.

### What about conformity?

Lack of conformity due to incorrect installation is considered lack of conformity of the goods if installation formed part of the contract. By contrast, if at the time the contract was concluded, the consumer was aware of, or could not reasonably be unaware of a lack of conformity with the contract, the seller has no liability to the consumer for that lack of conformity. Likewise, if the lack of conformity has its origin in materials supplied by the consumer, the seller has no liability.

### Other important points to note:

First, this law cannot be applied extraterritorially. So, in practical terms, if you export from the United States, you have the option to refuse to accept your importer's liability. (Even if you are also the importer, depending on how this law is interpreted in the courts, you may be able to refuse to accept liability so long as you are not the final seller of the good.)

Second, unless proven otherwise, e.g., in a civil proceeding, any lack of conformity which becomes apparent within six months of the delivery of the goods is to be presumed to have existed at the time of delivery, unless this presumption is incompatible with the nature of the goods or the lack of conformity. This means that the buyer has a maximum of six months to establish that the goods do not conform to the contract. Further, the burden of proof is on the buyer.

The third point to remember is that case law will ultimately interpret the gray areas. To limit your liability, you may want to consider including language on the product's packaging or in product literature that specifies its intended uses.

Also, this law is guided by the "rule of reason," which states that there is no lack of conformity if the buyer was aware of, or could reasonably be expected to be aware of a lack of conformity. So, the two-year warranty would not apply to perishable goods, or unintended uses, for example. Presumably, this would also include goods that do not normally have a two-year life span, e.g., a pencil.

Finally, the person or persons liable against whom the final seller may pursue remedies is to be determined by national law. Hence, you should be in contact with the national authorities responsible for the implementation of consumer protection legislation in the Member States to which you export to determine the extent of your liability under the law. It is our understanding that the Government of the United Kingdom is especially well prepared to counsel companies on the implementation of this Directive, for example. Contact Allen Patch ([Allen.Patch@mail.doc.gov](mailto:Allen.Patch@mail.doc.gov)) or Sondra Robbins ([Sondra.Robbins@mail.doc.gov](mailto:Sondra.Robbins@mail.doc.gov)) at the Iowa Export Assistance Center of the U.S. Department of Commerce if you want help in determining who to contact in the various Member State administrations.

#### How does the Product Warranty Directive change my liability in Europe?

This Product Warranty Directive was not meant to change your liability, it was intended to harmonize the consumer protection rules within the EU. However, the reality is that the standard may have been raised in some Member States not previously providing a minimum two-year warranty, and implementing legislation will vary from Member State to Member State. On this latter point, this Directive sets a minimum standard. Member States are free to adopt more stringent regulation, so long as it does not contradict the Product Warranty Directive. For these reasons, U.S. exporters should contact the national authorities in the Member States to which they export to discuss how implementation of the Product Warranty Directive will affect their exports. Member States have until the end of 2001 to submit their implementing legislation to the Commission for review.

This is a summary of information provided by the Department of Commerce. The full text of this Directive, is here: [http://www.europa.eu.int/eur-lex/en/lif/dat/1999/en\\_399L0044.html](http://www.europa.eu.int/eur-lex/en/lif/dat/1999/en_399L0044.html).