



# **Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU**

Country fiche: Spain

**EUROPEAN COMMISSION**

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# 1. Spain

## 1.1 Regulatory background

This section describes the transposition of Directive 1999/44/EC on Consumer Sales in the Spanish legislative system. This Directive was initially transposed via Law 23/2003, 10th July, on Guarantees in the Sale of Consumer Goods<sup>1</sup>. This law was subsequently derogated and merged<sup>2</sup> within Law 1/2007, 16th November, which approved the General Law for Consumers and Users Protection and complementary laws. Law 1/2007 has recently been modified by Law 3/2014, 27<sup>th</sup> March<sup>3</sup>.

A number of complementary laws encompass the primary legislative framework for Consumer Protection rules. These are Law 26/1984, 19th July, for Consumer and Users Protection; Law 26/1991, 21st November, on contracts off premises; Law 47/2002, 19th December, on the amendment of the Organization of the retail market for the transposition of Directive on distant contracts; Law 23/2003, 10th July, on Guarantees on Consumer Sales; Law 22/1994, 6th July, on civil responsibility for damages caused by defective products; and Law 21/1995, 6th July, on travel packages.

The purpose of this unification was to “bring closer the national legislation on consumers and users protection to the EU legislation”<sup>4</sup>, and further, “establish the juridical regime of consumer and users protection”<sup>5</sup> in Spain. Ultimately, the goal of the legislation is to improve the security of consumers.

### 1.1.1 Transposition of Directive 1999/44/EC

Directive 99/44/EC has been in almost all of its articles transposed into the Spanish legislative system<sup>6</sup>. The table in the next pages illustrates how each article has been transposed and the modifications which have been introduced taking advantage of the minimum harmonization clause of Directive 99/44/EC<sup>7</sup>. The extensions of the Directive are to be found in particular with the definitions, the regulation of the remedies and the claiming periods that the Spanish law establishes. Each point is subsequently explained below<sup>8</sup>.

#### Definitions

The definitions contained in Article 1 of Directive 99/44/EC are all transposed in Law 3/2014 but one: the concept of “seller”. The preamble to the law noted that the definition

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<sup>1</sup> Law 23/2003, 10th July, on Guarantees in the Sale of Consumer Goods. BOE num. 165, 11-07-2003, pp. 27160-27164. Available at: <https://www.boe.es/boe/dias/2003/07/11/pdfs/A27160-27164.pdf>

<sup>2</sup> The merger of these laws was based on Directive 98/27/CE of the European Parliament relating to actions to obtain an injunction to protect the collective interests of Consumers. In the Annex of the aforementioned Directive, it is identified a list of the legislative objects to be potentially merged. This request was incorporated in the Law 44/2006, 29th December, on the improvement of consumer and users protection on its fifth final ruling.

<sup>3</sup> Law 3/2014, 27<sup>th</sup> March, on the modification of Law 1/2007, 16<sup>th</sup> November, on the merged text from Law on Consumer and Users Protection and other complementary laws. Last version from July 2015. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2007-20555>

<sup>4</sup> Law 1/2007, 16<sup>th</sup> November, on the General Law for Consumers and Users Protection. Recital III.

<sup>5</sup> Law 1/2007, 16<sup>th</sup> November, on the General Law for Consumers and Users Protection. Article 1.

<sup>6</sup> All articles were transposed except article 6.5 Directive 1999/44/EC. This is commented in the following paragraphs.

<sup>7</sup> Directive 1999/44/EC is a minimum harmonization: its article 8.2 mentions that “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”.

<sup>8</sup> All the articles mentioned below pertain to Law 3/2014, 27<sup>th</sup> March, on the modification of the merged text from Law on Consumer and Users Protection and other complementary laws. From now on, “Law 3/2014”. If alternative legislation is mentioned, this will be cited accordingly.

is regulated by the civil legislation, which defines the “seller” to be the person “who intervenes in buying and selling (...) acting within the framework of its business activities”<sup>9</sup>.

The concept of “goods” is defined in article 6 (“product”), and understood as movable items. Transposing article 3 of the Directive, second-hand goods obtained through public auctions are not covered under this legislation (article 115.2, Law 3/2014) <sup>10</sup>.

One of the most significant departures of the Spanish legislation can be found in the definition of the “commercial guarantee”. Directive 1999/44/EC understands “guarantees” as “any agreement assumed by the seller or the producer with respect the consumer and given *without extra charge*” (article 2.e). However, in the Spanish law, this characteristic is not mentioned. The definition found in the Spanish legislation emphasizes the difference between the commercial guarantee and “the legal obligations with respect to the guarantee of conformity, reimbursement, substitution or repair, or to give a special service”<sup>11</sup>. Therefore, it can be understood that (a) both commercial non-paid and paid-for guarantees are included within the concept of “commercial guarantee” and that (b) in any case they do not replace the statutory rights.

## Remedies

The remedies provided for under the Spanish transposition, are more extensive than the corresponding provisions of Directive 99/44/EC.

The Spanish legislation retains the hierarchy between remedies. This can be seen in article 119 Law 3/2014 which directly transposes article 3.3 of Directive 1999/44/EC. According to article 119, the consumer has the right to request repair or replacement (article 119.1.), whilst respecting the remedy that constitutes the most reasonable option for the seller (article 119.2.). The latter article also introduces the determination of “reasonable” costs.

The option of repair suspends the calculation of the time coverage referred to in article 123 (i.e. the time span for the statutory rights). This possibility is proposed by the Directive in recital 18<sup>12</sup>. The time coverage (e.g. two years conformity of goods, six months burden of proof, etc.) is therefore frozen, starting from the date that the good is given for repair, and finishing when the consumer receives back the product. Continuing with the remedy of repair, the Spanish legislator establishes that the burden of proof is on the seller for the first six months (thereafter, it is on the consumer). If the repair is completed and the product delivered, but it is still not in the conformity with the contract, the consumer may require a replacement (unless this option is disproportionate), a price reduction, or termination of the contract<sup>13</sup>.

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<sup>9</sup> Commented in Law 1/2007, 16<sup>th</sup> November, on the General Law for Consumers and Users Protection. Recital III.

<sup>10</sup> In the Green Paper from the EC, this aspect is considered as an expansion (“a more limited exclusion”) of the Directive, because some second-hand goods are indeed covered with this formulation by Law 3/2014. See COM (2007) 210 final, p. 7. Available at:

[http://ec.europa.eu/consumers/archive/cons\\_int/safe\\_shop/guarantees/CSD\\_2007\\_EN\\_final.pdf](http://ec.europa.eu/consumers/archive/cons_int/safe_shop/guarantees/CSD_2007_EN_final.pdf)

<sup>11</sup> The complete definition states: “any agreement undertaken by a businessman or a producer (“the guarantor”) in front of the consumer and user, aside from its legal obligations with respect to the conformity guarantee, the reimbursement of the paid price, substitution or repair of the goods or to give a service related to it, in the case that the specifications or any other element not related with the conformity of the good with the terms and conditions, announced in the guarantee documentation or in the corresponding publicity, at disposal at the moment or before the contract is closed”. Article 59 bis(j) Law 3/2014.

<sup>12</sup> “Member States may provide for suspension or interruption 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”. Directive 1999/44/EC Recital 18.

<sup>13</sup> Article 127 Law 3/2014.

The option of replacement is regulated on a similar basis. However, in article 120(g) Law 3/2014 it is specified that this option is not available for fungible goods nor in the case of second-hand goods.

Directive 99/44/EC, gives no indications to Member States on how to calculate a price reduction for a returned product. The Spanish legislator has introduced a measure, considering "price reduction" as "proportional to the existing difference between the value the good should have had at the moment of purchase and the value that the good effectively had at the moment of the delivery" (article 122).

An extension from the Directive is also found in respect of durable goods. Article 126.1 expands the type of coverage for these goods. The consumer in Spain is entitled to "an adequate technical system", and the guarantor obligated to ensure "the existence of spare parts during a 5-year period" after the product has been discontinued. Article 126.2 further specifies that the spare parts and the technical assistance will not imply a superior price relative to the "average costs estimates in each sector".

Finally, in relation to remedies, this law does not transpose article 6.5 Directive 99/44/EC, according to which, if the content of the guarantee is violated, the consumer can still rely on the commercial guarantee.

### **Claiming periods**

In article 123.1 it is mentioned that the statutory rights of the consumer last for 2 years from the date of delivery. In the case of second-hand goods, the seller and the consumer can agree a period which will be no less than 1 year<sup>14</sup>. The burden of proof in both cases will have the duration of 6 months. These terms respect the provisions from the Directive.

In Spain the consumer is entitled to claim for non-conformity for a maximum of 3 years (article 123.3). This is an aspect at the discretion of Member States according to recital 17 Directive 1999/44/EC.

Following recital 19, Law 3/2014 introduced in article 123.4 a period of two months for the consumer to inform the seller about the default, counting from the date the defect was discovered. This ruling specifies nonetheless that the right to have the conformity redressed is respected if it exceeds this period, but any external losses provoked by the defective product fall to the consumer.

### **Producer liability**

Directive 1999/44/EC only contemplates the seller's liability. The Spanish legislator decided nonetheless to also incorporate the producer's liability. After receiving the consumer claim, the seller in turn has a one-year period to claim from the person responsible for the lack of conformity (article 124).

#### **1.1.2 Table of the transposition**

The next page displays the articles from Directive 99/44/EC on Consumer Sales and its subsequent transposition into the Spanish legislative system. As indicated previously, all the articles of the Directive but one have been transposed, and some of them contain

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<sup>14</sup> The original law was modified in 3/2014, but this aspect was not changed from law 1/2007 in which article 123.1 states: "En los productos de segunda mano, el vendedor y el consumidor y usuario podrán pactar un plazo menor, que no podrá ser inferior a un año desde la entrega."



an extension of the scope provided by the European legislation. This is briefly described in the table ("Comment").

**Table 1: Transposition of Directive 1999/44/EC in the Spanish legislation**

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	3/2014.	Objectives and nature of the law (expanded)
	1.2.a	Def. Consumer goods	3/2014. Art. 3.	Consumer means 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.
	1.2.b	Def. Consumer	3/2014. Art. 6.	Concept of "product": any movable item
	1.2.c	Def. Seller	1/2007. III	Seller is not defined, for remission to the civil legislation, who intervenes in a contract of buying and selling, in the case of this law, acting within the business activities framework.
	1.2.d	Def. Producer	3/2014. Art. 5.	Producer means the manufacturer of consumer goods, the importer of consumer goods into the territory of the European Union or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the consumer goods
	1.2.e	Def. Guarantee	3/2014. Art. 125.1.	(merged article 6.1. and partially 1.2.(e) of the Directive) "Commercial guarantee is that which can be offered additionally with voluntary character"
	1.2.f	Def. Repair		Not transposed
	1.3	Exclusion second hand	3/2014. Art. 115.2.	Exclusion of second hand goods acquired in administrative auctions in which consumers can be present
	1.4	Contracts of sale types	3/2014. Art. 115.1.	<i>Direct transposition</i> - Contracts for the supply of consumer goods shall be deemed contracts of sale
Conformity with the contract	2.1	Conformity requirement	3/2014. Art. 114	It merges article 2.1. and 3.1. of the Directive, but it is a Direct transposition, (2.1) stating that goods must be delivered to the consumer in conformity with the contract of sale; and that (3.1) the seller is liable for any lack of conformity which exists at the time the good is delivered
	2.2	Good conformity	3/2014. Art. 116.1.(d)	Stating that goods will be in conformity with the contract if they comply with a set of conditions (e.g. compliant with the description given by the seller; fit for purpose; quality and performance similar to goods of the same type), but adding "unless due to the circumstances of the case some of the following [requirements] are not applicable"
	2.3	Lack of conformity	3/2014. Art. 116.3.	<i>Direct transposition</i> - Disregarding lack of conformity if the consumer was aware of the fault, or if the lack of conformity had its origin in materials supplied by the consumer
	2.4	Seller statements	3/2014. Art. 116.1.(d)	<i>Direct transposition</i> - The seller shall not be bound by public statements in case she/he was not aware of the statement; the statement had been corrected; or the statement did not influence the decision of the consumer to purchase the good
	2.5	Installation	3/2014. Art. 116.2.	<i>Direct transposition</i> - Incorrect installation considered equivalent to lack of conformity if installation formed part of the sale or if the installation instructions created the shortcomings
	3.1	Liability	3/2014. Art. 114.	See article 2.1.

Rights of the consumer	3.2	Remedies	3/2014. Art. 118	Firstly, repair or replacement, according to the consumer's wishes, within a reasonable time frame and free of charge. Secondly, refund or reduction of the purchase price if repair or replacement is impossible, but only under certain conditions. (respecting art. 5.2.)
	3.3	Conditions	3/2014. Art. 119.2.	<i>Direct transposition</i> - Repair or replacement offered first and free of charge, unless implying disproportionate costs for the seller. Repair or replacement to be completed within a reasonable time taking into account the value of the good; the significance of the lack of conformity, or whether the remedy can be completed without inconvenience to the consumer
	3.4	Free of charge	3/2014. Art. 120.(a)	<i>Direct transposition</i> - "Free of charge" referring to the necessary costs incurred to bring the goods into conformity, including postage
	3.5	Reduction of the price	3/2014. Art. 121	<i>Direct transposition</i> - Right to price reduction or contract rescission if the consumer is not entitled to the other remedies, or if the seller has not completed them within a reasonable time or without significant inconvenience to the consumer
	3.6	Contract rescission	3/2014. Art. 122	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	3/2014. Art. 124	When the consumer and user find it impossible or overburdening go against the seller for non-conformity of products with the contract may claim directly to the producer in order to obtain the replacement or repair of the product.
Time limits	5.1	Time period	3/2014. Art. 123.1.	Two years
	5.2	Defect confirmation	3/2014. Art. 123.4.	Two months
	5.3	Reversed burden	3/2014. Art. 123.1.	(second paragraph) Six months
Guarantees	6.1	Legally binding	3/2014. Art. 125.1.	(direct, merges article 6.1. and partially 1.2.(e) of the Directive)
	6.2	State rights and contents	3/2014. Art. 125.2.	<i>Direct transposition</i> - The guarantee shall state that the consumer has legal rights under applicable national legislation, make clear that those rights are not affected by the guarantee; give the guarantee details and process for claiming, plus name, address of guarantor plus scope and duration.
	6.3	Written contract	3/2014. Art. 125.	Commercial guarantee always in written contract in case of durable goods
	6.4	Language of guarantees	3/2014. Art. 125.1	Added: "at least in Spanish"
	6.5	Respect 6.2-4		Not transposed
Binding nature	7.1	Right restrictions		Not transposed
	7.1	Reduced period (2nd hand)	3/2014. 123.1.	One year at least for second-hand products Not transposed

	7.2	Measures of protection	3/2014. Art. 67.2.	"The articles 114 to 126 will be applicable to users and consumers, no matter which is the law chosen by the parts for the contract"
National law and minimum protection	8.1	Supplementary rights		
	8.2	National rules retain		
Information	9	Inform of the rights		
Modification	10	Directive 98/27/EC		
Transposition	11.1	Date		
	11.2	Provisions		
Review	12	Jul-06		
Entry into force	13	Day of publication		
Address	14	To Member States		
Recitals	15	Period-of-use deduction		
	18	Suspension 2-year period	3/2014. Art. 122	Three year maximum period

\* The mention of "direct" means a direct transposition, disregarding the fact that the sentences can be placed differently or paraphrased relative to the Directive formulation

**Legend**

	<i>Articles at the discretion of the Member State (not mandatory)</i>
	<i>Rules on procedures to transpose</i>
	<i>Recitals –at the discretion of the Member State</i>

### 1.1.3 Additional rights

The additional rights available to Spanish consumers and users are principally contained in the Law 3/2014 and other related laws. Law 29/2009, 30th December, modifies the legal framework for unfair commercial practices and advertising for the improvement of the consumers and users protection<sup>15</sup>.

Article 8 of Law 3/2014, summarises the basic rights of users and consumers in addition to the rights envisaged by the Consumer Sales Directive. These rights are:

- protection against risks affecting health or safety;
- protection of their legitimate economic and social interests, in particular against abusive clauses in contracts;
- compensation for damages or injuries;
- correct information on the goods and services; and education and knowledge about its use, consumption or enjoyment;
- hearing in consultation, participation in the procedure for drawing up the general provisions that affect them directly and representation; and,
- protection of rights through effective proceedings.

#### Right of information

With this regard, article 8(d) specifies the right to receive the “correct” information on goods; article 18.2 “in a clear and comprehensible way”; and article 60.1., “prior to the contract”.

Related to the information prior to the contract, the entrepreneur is obligated to offer information on the “legal guarantee (...), the post-purchase services and the commercial guarantee” to the consumer (article 60.2.(e) and 98.1.(c) for off premises contracts).

#### Right of withdrawal

The right of withdrawal<sup>16</sup> is extensively legislated in chapter III Law 3/2014. This right has to be stated in the contract with details on its requirements (article 97.1.(i)) and is valid within a maximum period of 14 days (article 102.1). For distance and off-premises contracts, the right of withdrawal is established in similar terms, but in such cases, “the consumer will carry with the direct costs of the shipping of the good or service, unless the businessman has offered to cover them or in the case the businessman has not specifically informed the consumer of this charge” (article 108.1).

Other additional rights includes the restriction on additional payments, unless agreed (article 60.bis Law 3/2014) and on charges for certain methods of payment (article 66.bis). Nevertheless, consumers and users are protected from unfair commercial practices and misleading advertisement by Law 29/2009. The objective of this law is to ensure that “the legislation on consumer protection is coherently integrated within the market regulation (...), to ensure that this guardianship is the most effective” (preamble II, Law 29/2009).

## 1.2 Enforcement and redress

In case of a problem with a consumer good, consumers should address their claim to the seller (i.e. seller liability, article 114 Law 3/2014). The seller might have a department to attend consultation and claims, but these services are not an obligation for the seller in

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<sup>15</sup> Incorporating Directive 2005/29/EC on unfair commercial practices and 2006/114/EC on misleading and comparative advertising.

<sup>16</sup> “The right of withdrawal from a contract is the right of the consumer and user to stop the validity of a contract (...), without need of justification for the decision nor any type of penalty” (art. 68.1 LAW 3/2014).

the case of the goods covered by this law<sup>17</sup>. However, article 21.2 Law 3/2014 specifies that if existing, customer services "must guarantee direct personal attention".

A second option at hand for the consumer is mediation<sup>18</sup>. The Spanish consumer can ask for this procedure at the local level (Local Municipality of Consumer Information, OMIC), regional level (Directorate General for Consumer at each Autonomous Community) and through Consumer Associations<sup>19</sup> and certain bodies from specific sectors (e.g. Service of Consultations and Claims of the DG General Insurance and Pension Funds)<sup>20</sup>. The mediation is an out-of-court settlement, but is different from the arbitration process as it consists of reconciling the positions from both the consumer and seller perspectives. In Spain, prior to Law 5/2012, the mediation process was mainly regulated at regional level<sup>21</sup>.

If consumers are not satisfied at the end of this process in how the problem has been resolved, they can go to other bodies from the public administration to ask for an arbitration process<sup>22</sup>. Certain public administration bodies can act as enforcers when an infringement to consumers' rights and protection has occurred (article 46.1 Law 3/2014). These bodies form the Consumer Arbitration System.

### Consumer Arbitration system

This system is the instrument available to consumers and users to resolve claims that arise with respect to consumer goods<sup>23</sup>. It can enable the consumer to receive compensation for proven harm or damages (article 48), or claim for situations of unexpected and non-informed price increases (article 49.1.(e)). This system is mainly regulated by articles 57-58 Law 1/2007 and RD 231/2008, 15<sup>th</sup> February, of the regulation of the Consumer Arbitration System<sup>24</sup>.

The bodies entitled to intervene in this process are the arbitration boards ("*Juntas de arbitraje*"). The arbitration boards are numerous:

- Local: municipalities (40); supra-municipalities (2)
- Regional: provinces (10); Autonomous Community (18)
- National: (1)

Their functions<sup>25</sup> are to (a) decide on adhesion requests and grant or withdrawal of the adherence to new boards of the Consumer Arbitration System; (b) manage and update contact data from the companies or professionals that adhere to the system; (c) publicize

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<sup>17</sup> Obligatory Consumer Attention Services are found in the case of supplier companies for gas and electricity for instance (RDL 13/2009, additional rulings), but both are services specifically mentioned to be out of the scope of the legislation on consumer rights by both the Directive 1999/44/EC (article 2(b)) and the Spanish law referent to consumer sales (3/2014, article 115.2).

<sup>18</sup> Mentioned in article 19.4 Law 3/2014, but legislated by Law 5/2012, 6th July, on mediation in civil and market aspects.

<sup>19</sup> These bodies are also found at the different administrative levels (local, regional and national). Law 3/2014 in its articles 22 to 32 establishes their regulatory framework. Law 5/2012 mentions these bodies in its article 5.

<sup>20</sup> The basic provisions of the Consumer Arbitration System can be found in articles 57 and 58 3/2014 and the Royal Decree 231/2008 of 15 February, which regulates the Consumer Arbitration System. Besides these main references, the activity of these Consumer Arbitration Boards, as well as other administrative bodies in charge of Consumer Protection is regulated by Law 30/1992 of 26 November on the Legal Regime of Public Administrations and Common Administrative Procedure.

<sup>21</sup> For an overview of the system prior to law 5/2012, one might refer to: Vázquez de Castro, E. (2010). Mediation in Consumer Matters. An Approach in European and Spanish Law. UOC. Vol.1, Núm. 2.

<sup>22</sup> Mainly regulated by Law 5/2012, 6th July, on mediation in civil and market aspects.

<sup>23</sup> In matters not covered by these rules (i.e. 3/2014), the Consumer might refer to the provisions of Law 60/2003 of December 23, Arbitration for electronic products and acts carried out electronically; and Law 11/2007 of 22 June, electronic access of citizens to public services.

<sup>24</sup> Without such system, the regulation which applies are Law 60/2013, from 23rd December, on Arbitration for electronic products and related electronic activities and Law 11/2007, 22 June, of electronic Access of the citizenry to public services.

<sup>25</sup> Royal Decree 231/2008 of 15 February, which regulates the Consumer Arbitration System. Article 6.

companies or professionals who adhere to it; and (d) develop and update the list of accredited members. Furthermore in respect of consumers and proceedings: to (e) promote and manage consumer arbitration procedures; (f) manage the arbitration archive, which compiles data on the proceedings; (g) give information on the performance of the bodies; and (h) make available to consumers or users and businesses or professionals the arbitration application forms and additional information related to the process.

The arbitration boards will also decide on which arbitration body can best address the claim in light of the specific consequences. The participation in the process is voluntary, but the decisions are binding and have the effect of judgments. If still not satisfied by this process, or alternatively to it, consumers and users<sup>26</sup> can opt for a court settlement in the “Ordinary Civil Jurisdiction”.

### Court settlements

The main law involved under this process is the Civil Indictment Law<sup>27</sup> (hereafter: LEC). Before starting the process, article 415 LEC explores the possibility of conciliation. For claims under €6,000 the process will be through a verbal trial; if over this sum, an ordinary trial will be required. The process for claims less than €2,000 does not need a lawyer. Not only can consumers defend themselves in their individual interest, but according to article 11 LEC and 53 Law 3/2014, the different public bodies from the local, regional and national administrations can also do so.

For the defence of collective consumer interests, there is the possibility for a Cessation action, through a verbal trial, which can stop a given activity from a trader that causes detriment to a (specific or non-specific) group of consumers and users. These actions can be pursued in respect of certain issues (e.g. contractual conditions, contracts off premises, travel packages, etc.).

### Cases

There have been a number of court cases dealing with conflicts with regard to guarantees for consumer goods in Spain. An article from the Spanish magazine CESCO on Consumer Law, describes some of the recent resolutions regarding consumer goods guarantees. These verdicts introduced clarifications on the interpretation that should be given to some articles of Law 3/2014<sup>28</sup>. Two cases are summarized in the next box, with their respective interpretation of the Law.

#### Box 1: Court cases on the burden of proof, Zamora 2012<sup>29</sup>

In the appeal No 35/2021 of 8 March (JUR 2012/137492), the court decided that it was the responsibility of the guarantor to prove that the defect was created by a misuse of the purchased product. Otherwise, “the consumer (...) just needs to prove that the defect appeared within the period under which the guarantee covers from the respective defect or the lack of functioning of that good”<sup>30</sup>.

<sup>26</sup> Spanish legislation refers to both consumers and users

<sup>27</sup> Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-323>

<sup>28</sup> García Montoro, Lourdes (2013) Falta de conformidad en la venta de bienes de consumo: garantía legal del vendedor y garantía comercial adicional. Revista CESCO de Derecho de Consumo. N° 7/2013. Available at: <http://cesco.revista.uclm.es/index.php/cesco/issue/view/57>

<sup>29</sup> García Montoro, Lourdes (2013) CESCO N° 7/2013

<sup>30</sup> Italics as cited on the reference document: García Montoro, Lourdes (2013) Falta de conformidad en la venta de bienes de consumo: garantía legal del vendedor y garantía comercial adicional. Revista CESCO de Derecho de Consumo. N° 7/2013. P. 53

**Box 2: Court case on joint liability for seller and insurer, Barcelona 2011<sup>31</sup>**

In the appeal No 301/2011 of 16 July (JUR 2011/320924), a seller and an insurer were declared jointly liable for the defects of the purchased vehicle. The verdict estimated that the vehicle had a defect prior to the moment when it was sold, which could hardly be known by the seller. The verdict states that "*the commercial guarantee is additional and complementary to that of the seller, but does not replace the latter, so that responsibility must be solidarity between the two co-defendants*"<sup>32</sup>. The seller was liable for giving a remedy to the lack of conformity (Art. 118 LAW 3/2014. *Right to remedy for the Consumer*), and the insurer had to pay the guaranteed money (legislated by the Insurance Contract Act, 15/1980).

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<sup>31</sup> Garcia Montoro, Lourdes (2013) CESCO N° 7/2013

<sup>32</sup> Italics as cited on the reference document: García Montoro, Lourdes (2013) Falta de conformidad en la venta de bienes de consumo: garantía legal del vendedor y garantía comercial adicional. Revista CESCO de Derecho de Consumo. N° 7/2013. P. 53



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<sup>33</sup> A complete list of legislation relating to Consumer Protection can be accessed from the Spanish Consumer Institute of the Government of Spain. Available at: <http://consumo-inc.gob.es/guiaCons/codigoCom.htm?id=450>

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