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MODERNISING THE LEGAL FRAMEWORK FOR THE CROSS-BORDER SALE OF GOODS IN THE EU: A COMPARATIVE ANALYSIS OF DIRECTIVES 1999/44/EC AND 2019/771

ANNOTATION. *Introduction.* The cross-border sale of goods within the European Union has long been subject to the minimum harmonisation framework established by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. For over two decades, this instrument served as the foundational reference for EU consumer sales law; however, its minimum harmonisation approach generated regulatory fragmentation, legal uncertainty, and an inadequate response to the emergence of goods with embedded digital elements.

Summary of the main results of the study. This article undertakes a comparative legal analysis of Directive 1999/44/EC and its successor, Directive (EU) 2019/771, which became fully applicable on 1 January 2022. The analysis identifies the principal structural and substantive differences between the two instruments, focusing on the shift from minimum to targeted full harmonisation, the introduction of an explicit dual conformity standard combining subjective and objective elements, the codification of a durability criterion, the extension of the reversed burden of proof from six months to one year, and the novel treatment of goods with digital elements. The article examines the significant body of Court of Justice of the European Union (CJEU) case law interpreting Directive 1999/44/EC -including the landmark judgments in Quelle AG, Weber and Putz, Duarte Hueros and Faber -and traces the influence of these decisions on the legislative drafting of Directive 2019/771. The cross-border implications of the reform are assessed, with particular attention to the reduction of compliance costs for traders operating across Member States, the strengthening of consumer rights in distance and online sales, and the interface between Directive 2019/771 and Directive (EU) 2019/770 on contracts for the supply of digital content and digital services.

Conclusion. The article concludes that Directive 2019/771 represents a substantive improvement over its predecessor and a significant step towards the creation of a genuine digital internal market. However, the retained Member State options, the complexity of regulating goods with digital elements, and the unresolved interface with the platform economy continue to pose challenges that will require further legislative and judicial clarification.

KEY WORDS: *cross-border sale of goods, Directive 1999/44/EC, Directive 2019/771, EU consumer contract law, conformity of goods, remedies, digital internal market.*

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Introduction. The regulation of cross-border sales of goods within the European Union has undergone a fundamental transformation with the adoption of 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 [1]. This legislative act, which became fully applicable on 1 January 2022, repealed and replaced Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees [2], which had governed the field for over two decades. The transition from Directive 1999/44/EC to Directive 2019/771 represents not merely an incremental refinement but a fundamental reorientation of EU consumer sales law, shifting from a minimum harmonisation to a targeted full harmonisation approach, and extending the regulatory framework to address the particular challenges posed by goods with embedded digital elements.

The significance of this reform cannot be overstated. Cross-border sales of consumer goods remain central to the functioning of the EU internal market, and regulatory fragmentation among Member States has long been identified as a principal impediment to cross-border trade and consumer confidence. By establishing uniform conformity requirements and an enhanced remedial framework, Directive 2019/771 seeks to address this market failure. At the same time, the new Directive responds to fundamental shifts in the nature of consumer goods markets: the proliferation of connected and digitally enhanced products has rendered the conceptual framework of Directive 1999/44/EC increasingly inadequate.

The purpose of this article is to examine the principal legal innovations introduced by Directive 2019/771 in comparison with its predecessor, with particular emphasis on the enhanced conformity standards, the revised hierarchy of remedies, the expanded reversed burden of proof, and the implications of these changes for the cross-border sale of goods within the EU. The analysis draws upon the relevant case law of the Court of Justice of the European Union (CJEU), which played a significant role in shaping the reform, and situates the Directive within the broader context of the EU's Digital Single Market strategy.

Analysis of Recent Research and Publications. The academic literature on the reform of EU consumer sales law is substantial and multidisciplinary. Foundational contributions to the analysis of EU contract law harmonisation - including the comparative assessment of minimum versus maximum harmonisation models - have been made by Schulze and Zoll [3], whose systematic treatment of European contract law constitutes an essential reference for scholars and practitioners. The legislative history of Directive 2019/771 has been extensively documented through the European Parliament's Committee on Internal Market and Consumer Protection reports [4] and the Commission's supporting legislative documents [5, 6].

The CJEU case law interpreting Directive 1999/44/EC particularly the decisions in Quelle AG [7], Weber and Putz [8], Duarte Hueros [9], and Faber [10] has been the subject of extensive academic commentary that identified the areas in which legislative reform was necessary. The Wathelet judgment [11] raised important questions concerning the scope of the seller concept in the context of intermediary sales that retain relevance under the new framework. The interface between Directive 2019/771 and Directive (EU) 2019/770 on digital content contracts [12] represents an emerging area of analysis, given the rapidly growing market for goods with embedded digital elements.

Main results of the research. Adopted against the background of a fragmented European consumer sales market, Directive 1999/44/EC established a minimum set of harmonised rules governing the conformity of consumer goods and the remedies available to consumers in the event of non-conformity. The Directive introduced the notion of a two-year minimum liability period (Art. 5(1)), a rebuttable presumption that non-conformity appearing within six months of delivery existed at the time of delivery (Art. 5(3)), and a hierarchy of remedies entitling consumers first to seek repair or replacement, and only where these were impossible or disproportionate, to demand a price reduction or rescission of the contract (Art. 3(2)).

The Directive's conformity standard, set out in Article 2, distinguished between subjective conformity - conformity with contractual terms and objective conformity -conformity with the quality and performance ordinarily expected by consumers for goods of the same type. While this dual framework was conceptually sound, its implementation in practice revealed substantial shortcomings. In particular, the prevalence of subjective conformity criteria meant that contractual descriptions could effectively reduce the objective standard of conformity, thereby limiting consumer protection.

A fundamental structural weakness of Directive 1999/44/EC lay in its minimum harmonisation approach (Art. 8(2)). Member States retained the authority to adopt or maintain more stringent consumer protection measures, resulting in a patchwork of national laws that created significant uncertainty for cross-border traders. Countries such as Finland, the Netherlands, and Germany applied more extensive liability periods or different burden of proof rules, creating a non-level playing field and increasing compliance costs for sellers operating across borders. This fragmentation was documented in the Commission's 2017 evaluation of the Directive [6], which concluded that the minimum harmonisation approach had failed to create a sufficiently uniform internal market framework.

Furthermore, the Directive's silence on goods incorporating digital components is a limitation reflecting the legislative context of 1999, meant that increasingly common categories of goods, such as smartphones, smart appliances, and connected vehicles, fell within a regulatory lacuna. The question of whether embedded software constituted an element of the good for conformity purposes, and whether updates to such software were required as part of the seller's obligations, was not addressed by the existing framework.

The CJEU's interpretive engagement with Directive 1999/44/EC produced a series of landmark judgments that both clarified its scope and highlighted the need for legislative reform. These decisions exercised a formative influence on the substantive content of Directive 2019/771 and continue to constitute authoritative precedent for the interpretation of the corresponding provisions of the new Directive.

In Quelle AG v Bundesverband der Verbraucherzentralen [7], the Court of Justice ruled that a seller who replaces a non-conforming good with a new item may not charge the consumer for the use of the original item during the period prior to replacement. The Court held that such a charge would undermine the 'free of charge' guarantee enshrined in Article 3(3) of Directive 1999/44/EC and would deter consumers from exercising their remedial rights. This ruling directly addressed a practice that several Member States had permitted under national law, thereby highlighting the inadequacy of the minimum harmonisation approach.

In the conjoined cases of Gebr. Weber GmbH v Jürgen Wittmer and Ingrid Putz v Medianess Electronics GmbH [8], the Court addressed the scope of the seller's obligation in circumstances where a non-conforming good had been incorporated into another item. The Court ruled that the seller's obligation to carry out replacement 'free of charge' under Article 3(3) of the Directive encompassed the cost of removing the defective good and installing the replacement, even where these operations were substantial and costly. This expansive interpretation significantly increased the financial exposure of sellers in construction and manufacturing contexts and generated calls for legislative clarification.

In Soledad Duarte Hueros v Autociba SA [9], the Court held that a national court adjudicating a consumer sales dispute must be able to award a price reduction even where the consumer has not expressly requested this remedy in the proceedings, provided that the other remedies available to the consumer under Directive 1999/44/EC are not available or appropriate in the circumstances. The Court grounded this obligation in the principle of effectiveness and the need to ensure that national procedural rules do not render the exercise of consumer rights excessively difficult or practically impossible.

In Froukje Faber v Autobedrijf Hazet Ochten BV [10], the Court addressed the obligations of national courts where a consumer who is party to a sales dispute has not invoked their status as a consumer or the protection of Directive 1999/44/EC. The Court held that the national court is obliged of its own motion to examine whether the person is a consumer within the meaning of the Directive and to apply the corresponding consumer protection rules, where the facts of the case so indicate. This ruling reinforced the ex officio obligations of national courts in consumer contract disputes and placed heightened requirements on the interpretation of national procedural law.

In Sabrina Wathelet v Garage Bietheres & Fils SPRL [11], the Court examined the application of Directive 1999/44/EC to the sale of a second-hand vehicle by a professional dealer acting as an intermediary on behalf of a private owner. The Court held that the concept of 'seller' under the Directive covers not only persons selling goods in their own name but also professionals who negotiate or conclude contracts in the name of a private person if the average consumer could not be expected to understand the legal relationship between the dealer and the owner. This judgment has direct implications for the growing market in platform-facilitated consumer-to-consumer sales involving professional intermediaries.

The legislative process culminating in Directive 2019/771 was initiated against the background of the European Commission's Digital Single Market Strategy, presented in May 2015. The strategy identified regulatory complexity facing online and cross-border traders as one of the most significant barriers to the development of an integrated digital economy in the EU. Building on extensive stakeholder consultations and the findings of the 2017 ex post evaluation of Directive 1999/44/EC [6], the Commission published in December 2015 a package of legislative proposals for new directives on digital contracts.

The legislative proposal for what would become Directive 2019/771, initially presented as COM (2015) 634 final [5] was conceived as a targeted full harmonisation measure, departing significantly from the minimum harmonisation model of its predecessor. The proposal was confined to online and other distance sales of goods, reflecting the Commission's initial intention to regulate primarily the digital dimension of consumer sales. However, during the parliamentary and Council legislative processes, the scope was extended to cover all forms of sale of goods to consumers, including physical retail sales, to avoid creating a fragmented legal framework between online and offline commerce.

The proposal drew upon the conceptual architecture of the Common European Sales Law (CESL), which, although ultimately withdrawn by the Commission in 2015, had contributed substantially to the academic and policy discourse on the desirable content of a reformed EU consumer sales law. Elements of the CESL's conformity standard in particular the explicit distinction between subjective and objective conformity criteria and the inclusion of durability as an element of conformity -were incorporated into the draft directive.

The legislative process was protracted, reflecting the complexity of achieving consensus among Member States with divergent legal traditions and levels of consumer protection. The European Parliament's Committee on Internal Market and Consumer Protection produced successive reports recommending strengthening the durability requirements and extending the reversed burden of proof period [4]. The Council Working Party engaged in extended negotiations on the scope of the full harmonisation clause and the conditions under which Member States could maintain more favourable national rules. The final text of Directive 2019/771, adopted on 20 May 2019, reflected a series of legislative compromises between the objectives of maximum harmonisation and respect for Member State legal diversity.

Article 4 of Directive 2019/771 establishes the targeted full harmonisation principle: Member States shall not maintain or introduce provisions diverging from those laid down in the Directive, including provisions that are more or less stringent, unless the Directive provides otherwise. This represents a categorical shift from the minimum harmonisation model of Directive 1999/44/EC and constitutes the cornerstone of the new legislative framework.

The practical implications of targeted full harmonisation for cross-border trade are significant. Sellers operating across Member States can, in principle, apply a single set of core rules throughout the EU, substantially reducing compliance costs and legal uncertainty. However, the 'unless the Directive provides otherwise' qualification introduced a degree of flexibility that partially preserved national divergence. Member States retain options inter alia to extend the two-year liability period (Art. 10(3)), to maintain a longer reversed burden of proof period [Art. 11(2)], and to apply more favourable rules regarding the right of rescission for minor non-conformities. These retained options constitute a residual source of regulatory variation that cross-border sellers must monitor.

One of the most significant substantive innovations of Directive 2019/771 is its extension to cover goods with digital elements that is, goods incorporating or inter-connected with digital content or digital services in such a way that the absence of such digital content or service would prevent the goods from performing their functions (Art. 2(5)(b)). This category encompasses smartphones, smart televisions, connected vehicles, wearable devices, and a growing range of consumer electronics.

The inclusion of goods with digital elements raises complex legal questions concerning the interface with Directive (EU) 2019/770 on contracts for the supply of digital content and digital services [12]. Article 3(3) of Directive 2019/771 provides that where a sales contract includes the supply of digital content or a digital service as part of a package and the digital content or service is not separately supplied the Directive applies to the digital elements as well. However, where the digital content or service is supplied under a separate contract, Directive 2019/770 applies to the digital elements (Art. 3(4)).

Article 7(3) of Directive 2019/771 establishes a particularly significant obligation: the seller is responsible for ensuring that the consumer is informed about and supplied with updates for goods with digital elements for the period during which the consumer may reasonably expect updates. This update obligation extends beyond the control of the immediate seller and encompasses digital components provided by third parties, including the manufacturer of the digital system. The Directive thus creates a seller liability regime that penetrates the supply chain in a manner unprecedented in EU consumer sales law.

Directive 2019/771 significantly reformulates and strengthens the conformity standard relative to its predecessor. The Directive establishes a dual conformity test consisting of subjective requirements (Art. 6) and objective requirements (Art. 7), both of which must in principle be satisfied for goods to be regarded as conforming with the sales contract.

The subjective conformity requirements correspond broadly to the contractual standard: goods must match the description, type, quantity, quality and functionality agreed in the contract; be fit for any particular purpose made known to the seller and accepted by the seller; be delivered with all accessories, packaging and instructions as agreed; and, where relevant, be supplied with agreed updates (Art. 6).

The objective conformity requirements represent a substantial expansion relative to Directive 1999/44/EC. Article 7 provides that goods must: (a) be fit for the purposes for which goods of the same type would normally be used; (b) be delivered with such accessories, packaging and instructions as the consumer may reasonably expect; (c) be of the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility and security, normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller or other persons in previous links of the chain of transactions, including the producer (Art. 7(1)).

The explicit reference to durability as an objective conformity criterion is novel. While Directive 1999/44/EC implicitly required that goods last for a reasonable period, it did not expressly identify durability as a component of conformity. The express codification of durability in Article 7(1)(d) of Directive 2019/771 removes this ambiguity and places durability understood as the ability of goods to maintain their required functions and performance over time under normal use at the centre of the conformity assessment.

The relationship between subjective and objective conformity requirements is calibrated in Article 7(5), which provides that parties may derogate from objective conformity requirements only through explicit agreement, communicated specifically to the consumer and accepted by the consumer before the conclusion of the contract. This provision prevents sellers from systematically excluding objective standards through standard terms and conditions, addressing a significant weakness identified in the application of Directive 1999/44/EC.

The hierarchy of remedies established by Directive 2019/771 represents a refinement of the framework introduced by its predecessor while preserving its essential architecture. Article 13 provides that consumers are entitled, in the first instance, to bring the goods into conformity by repair or replacement at the seller's choice unless the chosen remedy is impossible or disproportionate compared to the alternative. Where neither repair nor replacement is available or has not been successfully completed, consumers may request a proportionate price reduction or rescission of the contract.

A significant innovation concerns the consumer's right of rescission for minor non-conformities. Article 13(5) provides that the consumer shall not have the right to rescind the sales contract if the lack of conformity is minor. However and this is the critical legislative choice the burden of establishing that a non-conformity is minor lies with the seller. This allocation of the burden of proof reflects the influence of the Duarte Hueros judgment [9] and strengthens the consumer's practical ability to assert the right of rescission.

Article 14(2) codifies the principle established in Quelle AG [7] and Weber and Putz [8] that repair or replacement must be carried out free of any costs incurred in order to bring the goods into conformity, including the costs of postage, transport, labour and materials, and notably the costs of removal of goods that have been installed in a manner consistent with their nature and purpose before the non-conformity became apparent, and the cost of installation of the repaired or replacement goods. This provision gives statutory expression to a principle that, under Directive 1999/44/EC, was established exclusively through judicial interpretation.

Article 14(3) introduces a further consumer-protective rule: where the seller has failed to complete repair or replacement within a reasonable time or without significant inconvenience to the consumer, the consumer may terminate the contract with the seller for the performance of the repair or replacement and obtain reimbursement of any amounts paid in respect of the non-conforming goods. This provision acknowledges the practical difficulties that consumers frequently encounter in enforcing their remedial rights in cross-border contexts.

One of the most practically significant changes introduced by Directive 2019/771 is the extension of the period during which the reversed burden of proof operates in the consumer's favour. Article 11(1) provides that any lack of conformity that becomes apparent within one year of the time when the goods were delivered 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. This represents a doubling of the six-month period established by Article 5(3) of Directive 1999/44/EC.

Moreover, Article 11(2) grants Member States the option to maintain or introduce legislation providing that the reversed burden of proof applies for a period longer than one year. Several Member States, including Hungary and Lithuania, had already applied more extended reversed burden of proof periods under the minimum harmonisation framework; these provisions may be maintained under the new Directive. The significance of this change for cross-border sales is considerable: consumers purchasing goods from sellers in other Member States benefit from a uniform minimum standard of evidential protection, reducing the risk that the geographic location of the seller affects substantive consumer rights.

The extension of the reversed burden of proof reflects a policy judgment about the information asymmetry between consumers and sellers. Sellers - particularly manufacturers and authorised dealers -possess superior technical knowledge about the goods they supply and are better placed to establish the cause and timing of non-conformities. Allocating the burden of proof to the seller for the first year of ownership is therefore consistent with both consumer protection objectives and principles of evidentiary efficiency.

Article 20 of Directive 2019/771 introduces an innovative provision requiring Member States to ensure that sellers who are liable to consumers as a result of a lack of conformity for which a producer, a previous seller in the same chain of transactions, or any other intermediary is responsible, shall be entitled to pursue remedies against the party responsible in the chain. While the modalities of such recourse are left to Member States, this provision acknowledges the commercial reality of complex multi-tier supply chains and seeks to ensure that liability is ultimately borne by the party responsible for the deficiency.

The producer liability provision has particular relevance for cross-border transactions involving goods manufactured in non-EU countries and sold through multi-tier distribution networks. While Article 20 does not create a direct consumer action against producers or manufacturers, a limitation noted by consumer organisations during the legislative process, it incentivises contractual allocation of responsibility within supply chains and may reduce the disincentive for downstream sellers to offer effective remedies to consumers.

The internal market implications of the transition from Directive 1999/44/EC to Directive 2019/771 operate at multiple levels. At the most fundamental level, the shift to targeted full harmonisation eliminates, in principle, the barrier to cross-border trade arising from divergent national implementations of the minimum harmonisation framework. Sellers offering goods to consumers in other Member States may now rely on a substantially uniform set of conformity standards, liability periods, and remedial rules, reducing the compliance costs associated with cross-border operations.

The alignment of consumer expectations across Member States represents a complementary benefit. Where consumers throughout the EU can rely on equivalent minimum rights, the deterrent effect of legal uncertainty on cross-border purchasing is attenuated. This effect is particularly significant for e-commerce, which constitutes the principal channel through which consumers access goods from sellers in other Member States. The European Commission has consistently emphasised the relationship between harmonised consumer rights and the development of cross-border e-commerce in its Digital Single Market communications.

However, the retained Member State options introduce a residual degree of divergence that must be carefully managed by cross-border sellers. A seller choosing to apply the minimum standards provided by the Directive a two-year liability period, a one-year reversed burden of proof period may encounter consumers in Member States that have exercised the option to provide more extended protection, and who are entitled to assert additional rights under national law. The interaction between these options and the full harmonisation baseline requires careful attention from legal advisors in cross-border commercial contexts.

The interface between Directive 2019/771 and Directive (EU) 2019/770 is particularly significant for cross-border sales of goods with digital elements. Where a consumer purchases a connected device that includes both a hardware component governed by Directive 2019/771 and a separately contracted digital service governed by Directive 2019/770, the applicable legal framework and available remedies may differ depending on how the transaction is structured. The legislative boundary between the two Directives drawn in terms of whether digital content or services are "incorporated in" or "inter-connected with" the goods [Art. 2(5) of Directive 2019/771] is not always straightforward to apply in practice, generating interpretive challenges for national courts and enforcement authorities.

Platform-mediated cross-border sales present a distinct set of challenges. The growing significance of online marketplaces as a channel for consumer sales -particularly following the acceleration of e-commerce during and after the COVID-19 pandemic means that many cross-border consumer purchases are facilitated by platform intermediaries who are not themselves sellers within the meaning of Directive 2019/771. The Wathelet judgment [11] established that professionals acting as intermediaries may in certain circumstances be treated as sellers; however, the scope of this principle in the context of major online marketplaces requires further clarification, particularly in light of the new legislative framework established by the Digital Services Act.

While Directive 2019/771 represents a substantial improvement over its predecessor, critical analysis reveals several residual challenges. The targeted full harmonisation approach, while beneficial for cross-border trade, may paradoxically reduce the level of consumer protection in Member States that had maintained higher standards under the minimum harmonisation framework of Directive 1999/44/EC, except to the extent that such Member States exercise the available legislative options.

This risk of a 'levelling down' of protection constrained by the Directive's minimum standards, represents a tension inherent in the move from minimum to full harmonisation that the legislator has not fully resolved.

The durability obligation for goods with digital elements presents significant implementation challenges. The requirement that sellers ensure the provision of updates for the period during which the consumer may reasonably expect such updates - a subjective and contextually variable standard will generate uncertainty regarding the applicable duration across different categories of goods and different market segments. The absence of specified minimum update periods for particular categories of goods represents a legislative gap that is likely to require address through future secondary legislation or judicial interpretation by the CJEU.

The allocation of responsibilities in platform-mediated cross-border sales remains inadequately addressed by Directive 2019/771 in isolation. While the Digital Services Act imposes certain transparency and due diligence obligations on online platforms, it does not create direct seller-equivalent liability for platforms facilitating third-party sales. The interaction between the consumer rights framework of Directive 2019/771 and the platform liability provisions of the Digital Services Act will require coherent interpretation and enforcement coordination to ensure effective consumer protection in marketplace sales.

The codification of the extended remedial obligations established in Weber and Putz [6] in particular the costs of removal and reinstallation creates significant financial exposure for sellers of goods that are by their nature incorporated into other structures. Small and medium-sized enterprises operating in cross-border e-commerce may face disproportionate remedial costs in such circumstances, creating incentives to structure supply arrangements in ways that complicate consumer enforcement. The adequacy of existing judicial and out-of-court dispute resolution mechanisms to address such cases efficiently represents a further area warranting policy attention.

It is submitted that similar problems do not arise under the CISG. While Article 36(1) of the CISG states that the seller is only liable for the non-conformity that exists at the time in which the risk passes to the buyer, Article 36(2) of the CISG further states that the seller is also liable for the lack of conformity occurring after the passing of risk as long as it is caused by a breach of any of the seller's obligations [13, p. 296].

EU consumer law has traditionally focused on contracts for the sale of goods and now needs to address the digital age. Given the economic importance of contracts for the sale of digital content and digital services and the absence of national provisions in most Member States, a maximum harmonisation directive in this area of law could provide both consumers and businesses with greater certainty in a fast-developing area of law. The new rules offer consumers a remedial framework should the digital content or service prove to be faulty, requiring the trader to fix the problem or, if the problem persists, offer a price reduction or allow the consumer to terminate the contract and get a refund [14, p. 779].

Likewise, the unfair nature of the practice, according to Directive 2019/2161 of the European Parliament and of the Council of 27 November

2019, amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, which has harmonised private protection against unfair commercial practices at the European level, can obviously be combated by means of individual remedies such as price reductions or termination of the contract [15, p. 44].

The new directive preserves the existing hierarchy of remedies and codifies case law, by considering repair and replacement as co-equal primary remedies and by specifying to what extent the consumer can choose between them, under which conditions he is entitled to the secondary remedies and how all remedies are to be applied. The main difference with existing law is the maximum harmonizing character. Several remedies currently available in Member States for liability under the legal guarantee, such as immediate termination, are no longer allowed. Admittedly, the directive leaves many related aspects to the discretion of the Member States, which avoids the most problematic drawbacks of maximum harmonization. But these transposition choices also have sustainability consequences, which need to be considered [16, p. 12].

The transition from Directive 1999/44/EC to Directive (EU) 2019/771 signifies a profound transformation in the European Union’s approach to consumer contract law. This modernization was primarily motivated by the imperative to align the legal framework with the realities of the Digital Single Market and to eliminate the fragmentation of national laws that previously obstructed cross-border commerce.

A pivotal structural modification introduced by the new regime is the transition from a model of minimum harmonization to one of full harmonization, which restricts Member States from maintaining or introducing divergent consumer protection standards. This shift ensures a high degree of legal certainty for sellers, who can now operate under a uniform set of rules across all EU jurisdictions.

Furthermore, the legislative scope has been significantly broadened to include goods with digital elements, thereby addressing the legal status of modern smart devices.

Unlike the previous directive, which focused exclusively on tangible items, the current framework explicitly defines the seller's obligations regarding digital content or services that are integral to the product's functionality. This includes the essential requirement to provide consumers with regular security and functional updates, without which a product may be deemed non-conforming.

The updated framework also refines the criteria for conformity by balancing subjective contractual agreements with objective requirements. Consequently, product quality is assessed not only against the description provided in the contract but also against its capacity to perform functions typical of similar goods, including expected durability and proper installation. Consumer protection is further enhanced by extending the period for the reversal of the burden of proof from six months to one year, which significantly simplifies the process of establishing defects in cross-border disputes. In instances of serious non-conformity, consumers now possess the flexible right to seek an immediate price reduction or contract termination, bypassing the initial requirement for repair or replacement.

Looking ahead, this legal architecture will continue to evolve within the context of the circular economy, with particular emphasis on the right to repair and environmental sustainability. Future interpretations of objective conformity requirements are expected to increasingly account for a product's lifecycle, encouraging manufacturers to move away from planned obsolescence. The integration of artificial intelligence into consumer goods will represent the next frontier of modernization, necessitating a clear distinction between product conformity and liabilities arising from the actions of autonomous systems.

Conclusion. The comparative analysis of Directive 1999/44/EC and Directive (EU) 2019/771 reveals a transition of fundamental importance for the law governing the cross-border sale of goods within the European Union. The new Directive addresses the principal structural deficiencies of its predecessor the minimum harmonisation approach, the regulatory lacuna regarding goods with digital elements, the limited period of reversed burden of proof, and the absence of an explicit durability criterion -through a combination of targeted full harmonisation, an expanded dual conformity standard, an extended reversed burden of proof, and a codified remedial hierarchy informed by the case law of the CJEU.

The influence of CJEU jurisprudence is clearly visible throughout Directive 2019/771. Provisions directly codifying the principles established in Quelle AG (no charge for prior use), Weber and Putz (removal and reinstallation costs), and Duarte Hueros (burden of proof for minor non-conformity) demonstrate the productive legislative dialogue between the Court and the Union legislator that characterises the development of EU consumer contract law.

For cross-border sales of goods within the EU, Directive 2019/771 provides a substantially more robust and uniform legal framework than existed under its predecessor. The targeted full harmonisation approach creates greater legal certainty for traders and consumers alike, while the enhanced conformity standards - particularly the codified durability criterion and the objective conformity test for goods with digital elements strengthen consumer confidence in cross-border purchasing.

However, significant challenges remain. The retained Member State options preserve a degree of regulatory divergence. The regulation of goods with digital elements introduces complex questions of scope, duration of update obligations, and interface with Directive 2019/770 that will require further judicial and legislative clarification. The rapidly evolving platform economy and the increasing prevalence of marketplace-mediated cross-border sales demand coherent and coordinated responses from national enforcement authorities and the Commission.

Addressing these residual challenges will be essential if Directive 2019/771 is to fulfil its potential as a cornerstone of the EU's digital internal market and a model for modern consumer sales law. Future legislative review should consider: harmonising the Member State options to reduce residual divergence; establishing minimum update periods for specified categories of goods with digital elements; clarifying the interaction between the seller liability framework and the Digital Services Act in the context of platform sales; and ensuring that dispute resolution mechanisms are adequate to address the particular challenges of cross-border consumer complaints in a proportionate and timely manner.

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МОДЕРНІЗАЦІЯ ПРАВОВОЇ БАЗИ ЩОДО ТРАНСКОРДОННОГО ПРОДАЖУ ТОВАРІВ В ЄС: ПОРІВНЯЛЬНИЙ АНАЛІЗ ДИРЕКТИВ 1999/44/ЄС ТА 2019/771

АНОТАЦІЯ. *Вступ.* Транскордонний продаж товарів у межах Європейського Союзу тривалий час регулювався рамками мінімальної гармонізації, встановленими Директивою 1999/44/ЄС про певні аспекти продажу споживчих товарів та пов'язані гарантії. Понад два десятиліття цей інструмент слугував основоположним орієнтиром у сфері права захисту прав споживачів ЄС; однак його підхід до мінімальної гармонізації породжував регуляторну фрагментацію, правову невизначеність та неадекватне реагування на поширення товарів із вбудованими цифровими елементами.

Виклад основних результатів дослідження. У цій статті здійснено порівняльно-правовий аналіз Директиви 1999/44/ЄС та її наступника, а саме Директиви (ЄС) 2019/771, яка набула повної чинності 1 січня 2022 року. Аналіз виявляє ключові структурні та змістовні відмінності між двома документами, зосереджуючись на переході від мінімальної до цільової повної гармонізації, запровадженні чіткого подвійного стандарту відповідності, що поєднує суб'єктивні та об'єктивні елементи, кодифікації критерію довговічності, розширенні терміну зворотного тягаря доведення з шести місяців до одного року, а також на оригінальному підході до товарів із цифровими елементами. У статті досліджується судова практика Суду справедливості Європейського Союзу щодо тлумачення Директиви 1999/44/ЄС, зокрема знакові рішення у справах Quelle AG, Weber та Putz, Duarte Hueros та Faber -та простежується вплив цих рішень на законодавчу розробку Директиви 2019/771. Оцінюються наслідки реформи для транскордонної торгівлі, зокрема зниження витрат на дотримання вимог для трейдерів, що діють на різних національних ринках, посилення прав споживачів у сфері дистанційних та онлайн-продажів, а також взаємодія між Директивою 2019/771 та Директивою (ЄС) 2019/770 щодо договорів про постачання цифрового контенту та цифрових послуг.

Висновки. Зроблено висновок, що Директива 2019/771 є суттєвим кроком уперед порівняно із попередником і значним досягненням на шляху до створення єдиного цифрового ринку ЄС. Водночас збережені опції держав-членів, складнощі регулювання товарів із цифровими елементами та невирішений інтерфейс із платформною економікою продовжують становити виклики, що потребують подальшого законодавчого та судового врегулювання.

КЛЮЧОВІ СЛОВА: *транскордонний продаж товарів, Директива 1999/44/ЄС, Директива 2019/771, договірне право ЄС, відповідність товарів, засоби правового захисту, цифровий єдиний ринок.*

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