

THE GUARANTEE DIRECTIVE 1999/44/EC

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**The EC Guarantee Directive
and the implementation into national law**

Contents of the new legal requirements

Contents

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- 2. Implementation into national law (example Germany)**
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- 4. What Sanyo needs to do (Q&A)**

1.1 Directive 1999/44/EC

- Only valid for sales to private end user/private consumer (= B2C) (≠ implementation into national law (e.g. Germany): also B2B)
- 2 years legal guarantee (Gewährleistung) (≠ commercial guarantee (Garantie))
- Burden of proof (for lack of conformity at time of delivery): end user/consumer
Exemption during the first 6 months: seller (no lack of conformity at the time of delivery)
-> “unless proved otherwise, any lack of conformity shall be presumed to have existed at the time of delivery”
But: end user/consumer needs to prove lack of conformity.
- Right of redress (Regress) of the final seller (only if B2C (private!!) in the contractual chain!!)
- To be implemented into national law until 01/01/2002

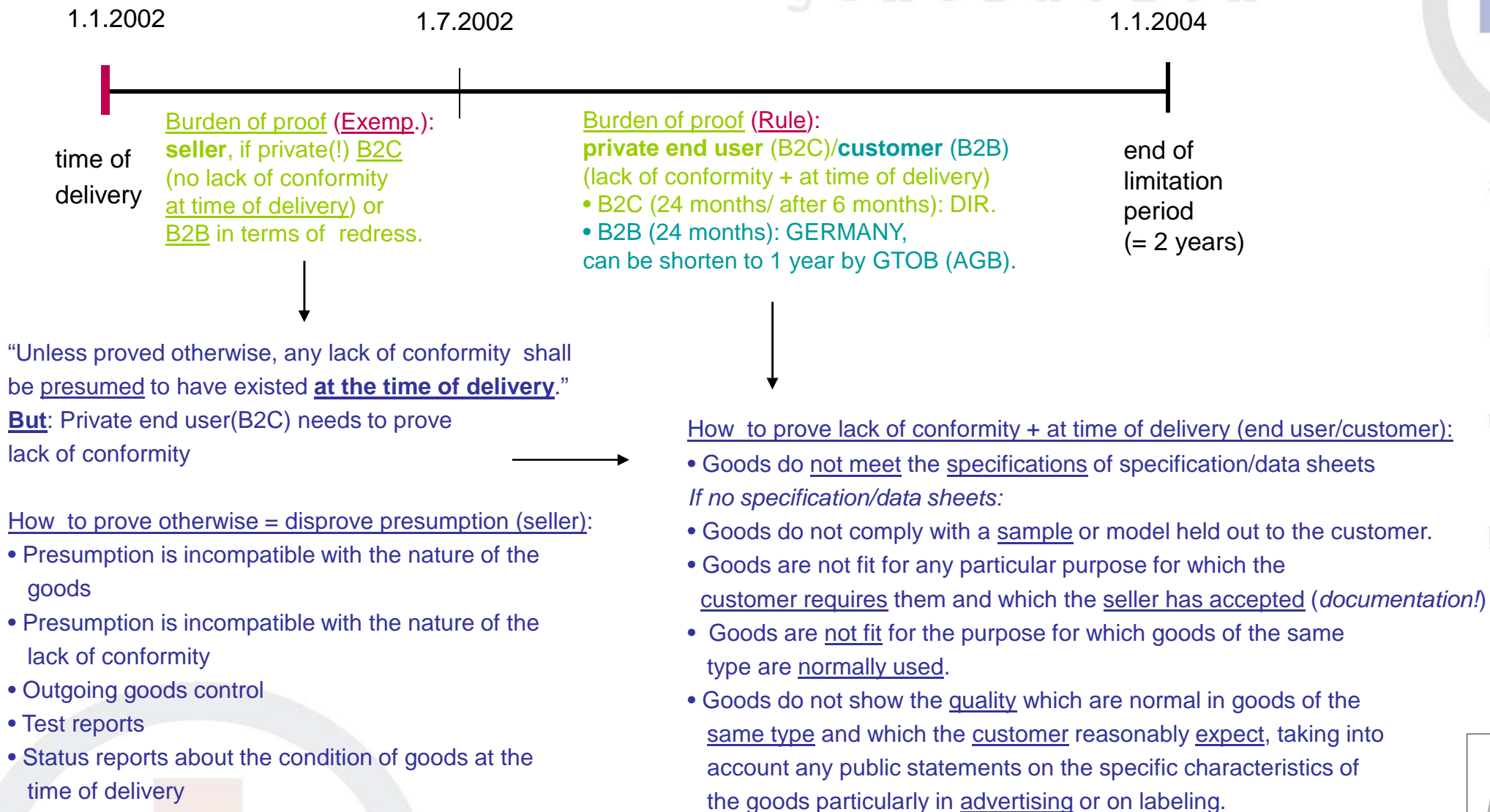
1.2 Legal Guarantee: Diagram



LEGAL GUARANTEE:

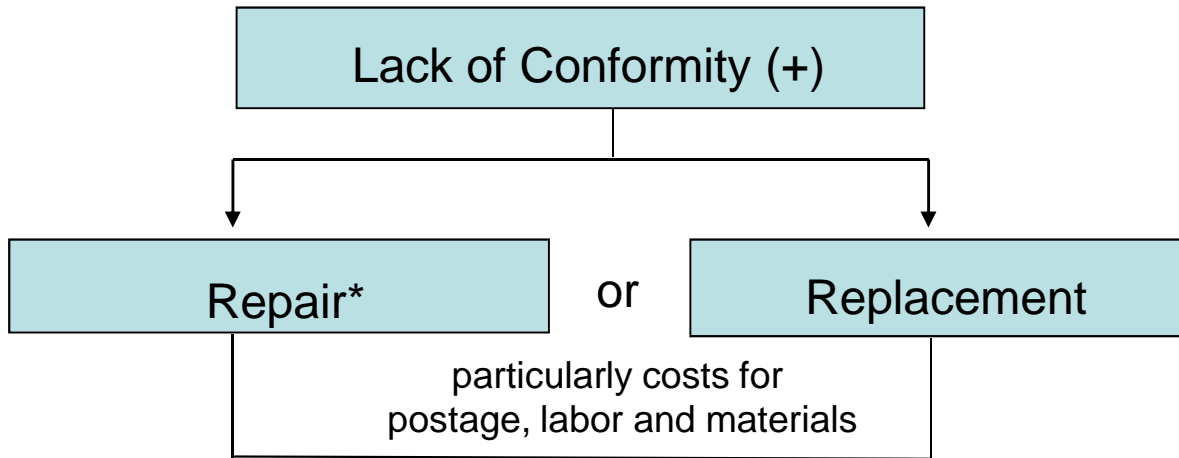
- Seller liable for lack of conformity only at the time of delivery (\neq Commercial Guarantee: guarantee for durability)
- Conformity can be defined by the seller (e.g. specification sheet) + statements in public advertising relevant
- No guarantee for normal attrition, natural aging, incorrect use.

1.3 Burden of Proof (Legal Guarantee): Diagram



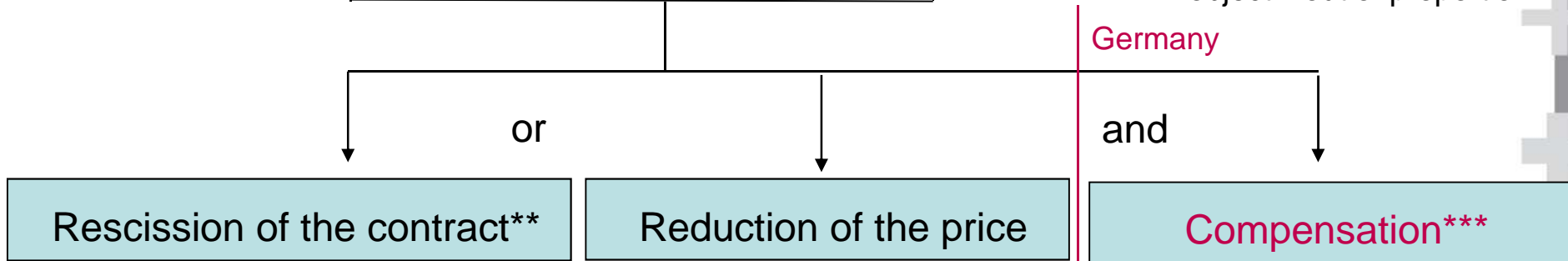
1.4 Right of the consumer/customer: Diagram

1st step



Seller: Possibility to object if out of proportion

2nd step
comes valid
(if 1st step
failed)



- * 2 attempts reasonable
- ** Not if the lack of conformity is minor
- *** First time beside it (!!)

2.1 Implementation into national law

Example Germany:

- No implementation 1:1, but more stringent provisions (§§ 241 - 853 BGB)
- Also applicable to “Business to Business” (B2B)
- Shall enter into force 1st January 2002

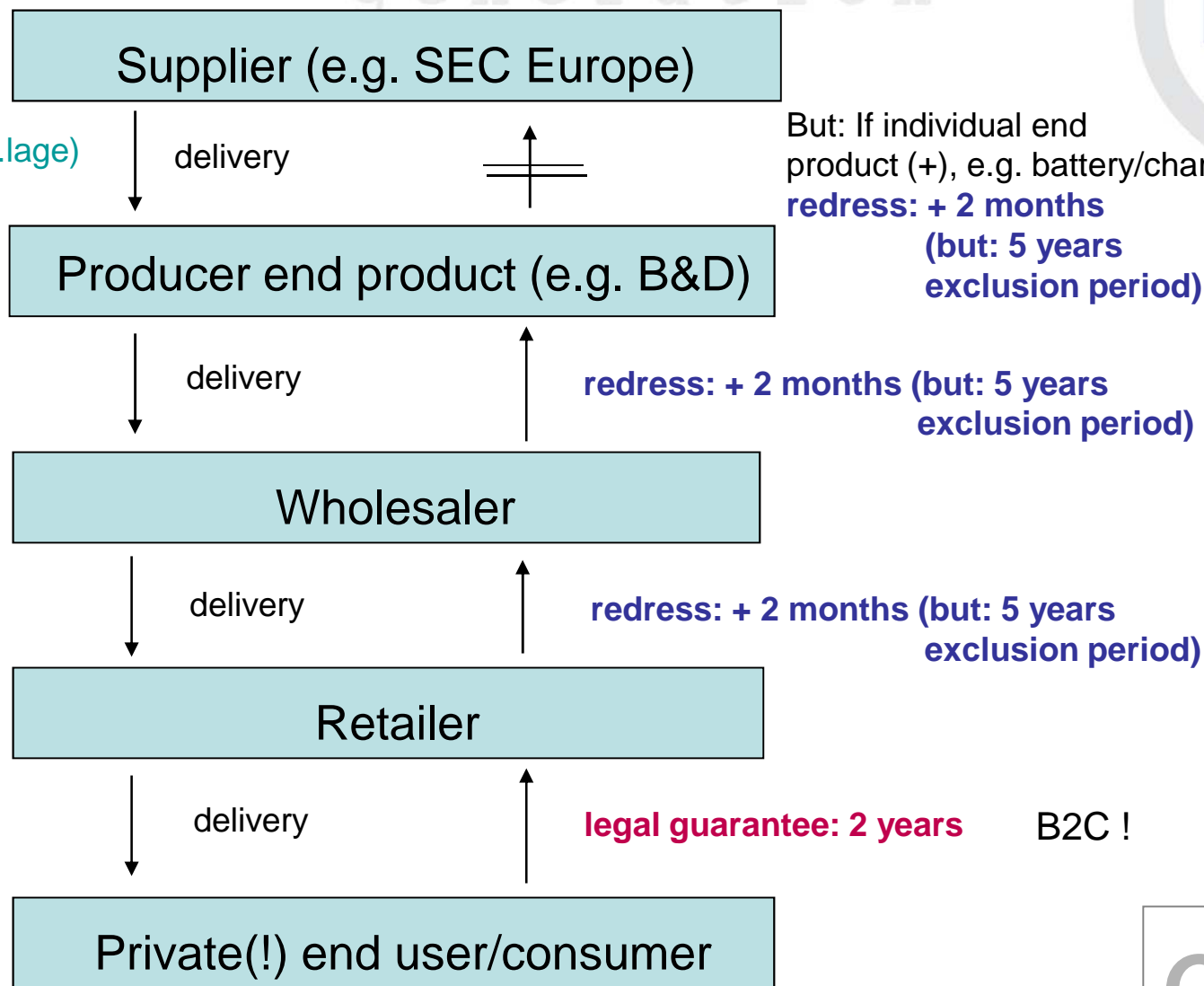
2.3 Right of redress (Legal guarantee): Diagram

Example Germany:

REDRESS:

- Own basis for a claim (eigene Anspr.grd.lage)
- redress in the contractual chain
- only if B2C in contractual chain
- no direct claim of private consumer against producer
- down to producer of end product, not further to supplier (exemption: consumer cells)
- Burden of proof (first 6 months: seller) valid in each contractual chain (period starts with delivery to end user/consumer)
- limitation period: 2 years
- but: limitation not before 2 months after remedy
- but: 5 years exclusion period after delivery (=contract relationship older than 5 years) (e.g. in terms of long stock period)*

*Ausschluss 5 Jahre nach Belieferung an unseren Kunden; Geltendmachung durch unseren Kunden innerhalb von 2 Monaten und innerhalb der 5-Jahres-Frist!



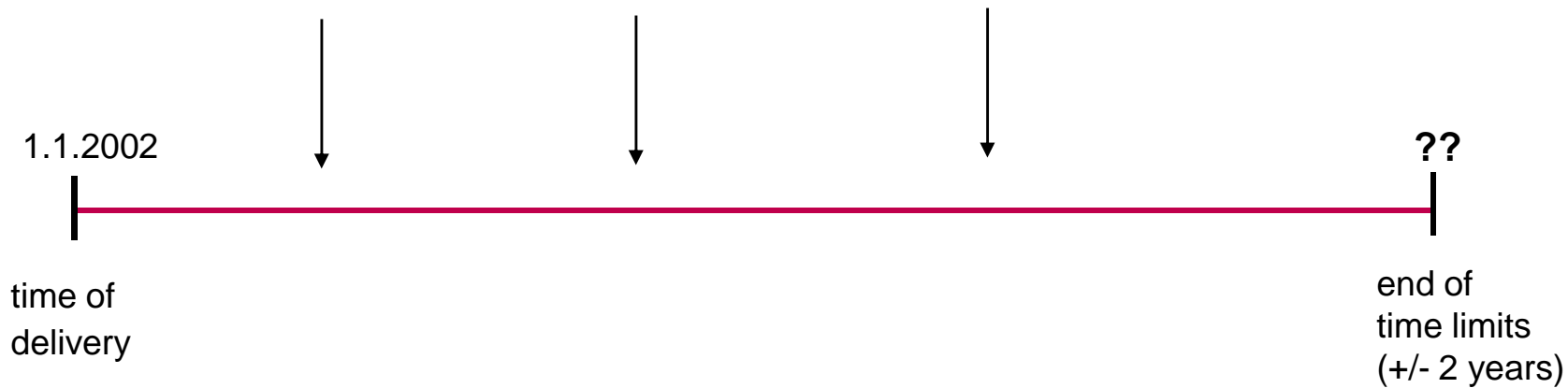
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2.4 Commercial Guarantee: Diagram

Example Germany:

Commercial Guarantee:

Any lack of conformity at the time of delivery is irrelevant, **but that the product meets the specifications for the whole guarantee period**



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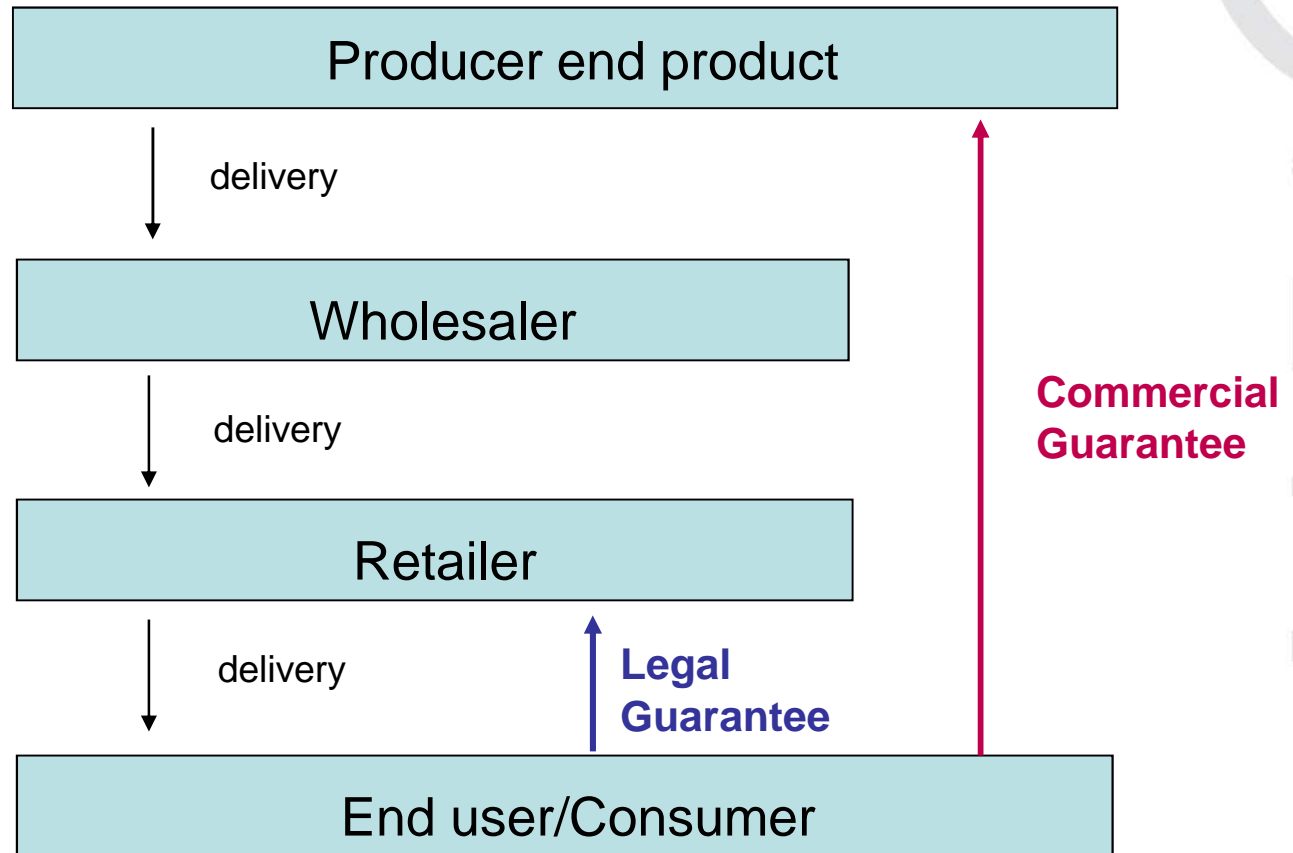
2.5 Commercial Guarantees: Diagram

Example Germany:

COMMERCIAL GUARANTEE:

- not regulated by the Directive
- additional voluntary service of the producer respectively the trade
- content can be defined individually nearly without restriction
- time limits may be less (or more) than 2 years
- only new demand: clear reference that legal guarantees are not affected by the commercial guarantees
- in Germany “durability guarantee” (Haltbarkeitsgarantie): any lack of conformity at the time of delivery is irrelevant, but that the **product meets the specifications (statement and/or advertising) for the whole guarantee period.**

The statement: “One year (commercial) guarantee” is NOT sufficient->specification is necessary (specification sheet etc.).

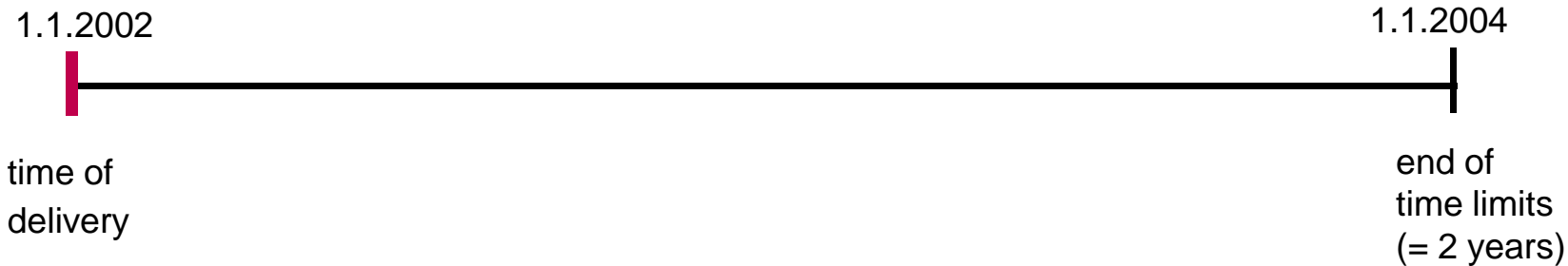


2.6 Legal vs. Commercial Guarantee: Diagram

Example Germany:

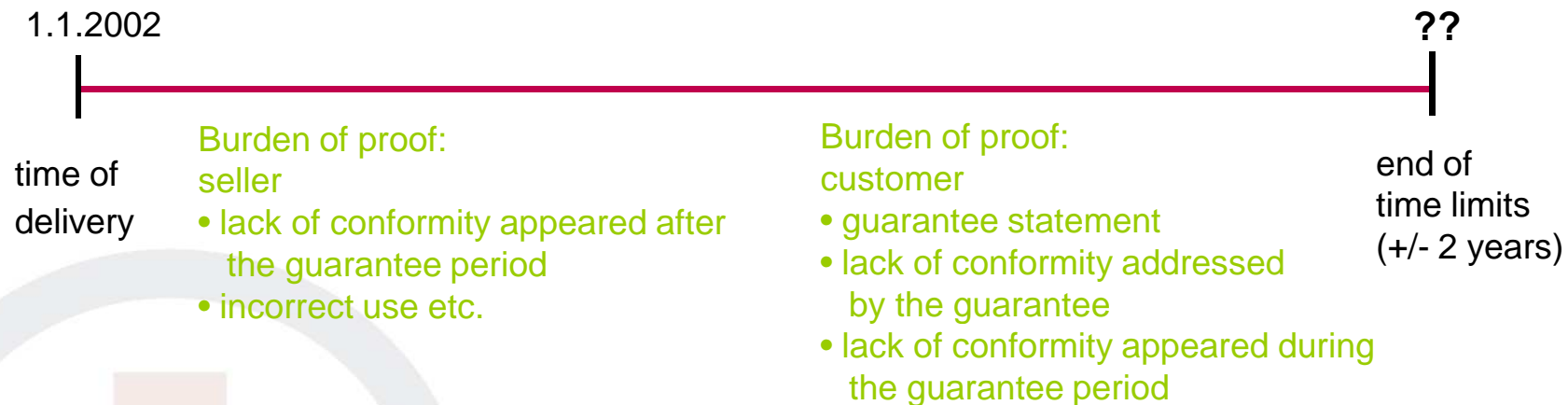
Legal Guarantee:

Lack of conformity decisive only at the time of delivery



Commercial Guarantee:

Any lack of conformity at the time of delivery is irrelevant, but that the product meets the specifications for the whole guarantee period



3 Implementation in other EC countries

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- Austria: 1:1 (1st January 2002)
- Germany: No implementation 1:1,
but more stringent provisions
(1st January 2002)
- Other EC countries: Implementation awaited end 2002

4.1 What Sanyo needs to do (Q&A)

Q. What legal period Sanyo needs to guarantee (legal guarantee)?

A. As a rule: 2 years. B2B: period can be shorten to 1 year by general terms of business (AGB). B2C: period can be shorten in terms of second-hand goods.
(+ Commercial guarantee: +/- 2 years if requested = voluntary)

Q. What Sanyo needs to guarantee (legal guarantee)?

A. That goods are in conformity with the contract at the time of delivery concerning e.g. production failures and public advertising (TV etc.).
+ consumer expectation based on e.g. specification & data sheets etc.
No guarantee for normal attrition, natural aging, incorrect use.
No guarantee for durability (=commercial guarantee)

4.2 What Sanyo needs to do (Q&A)

- Q. What Sanyo needs to expect in terms of legal guarantee/redress:**
- a. individual cell?**
 - b. cell assembled as a pack by the customer?**
 - c. pack assembled by Sanyo?**
 - d. charger?**

A. a./d. legal guarantee: 1y/2y (+), 1y because B2B (not B2C!)
redress: (+), but 5 years exclusion period

b./c. legal guarantee: 1y/2y (+)
redress: (-), because redress down to the producer of the end product, not further to the supplier

Attention: Legal guarantee/redress independently from the brand label !!

4.3 What Sanyo needs to do (Q&A)

Q. How can Sanyo prove that there was no lack of conformity at the time of delivery?

- A. Customer (not Sanyo) needs to prove lack of conformity at the time of delivery within the 2 years period (= Rule).
Exemption: Private end user claims within the first 6 months, burden of prove: Sanyo (presumption: lack of conformity at time of delivery)

How to disprove presumption (Sanyo):

1. Presumption is incompatible with the nature of the goods
2. Presumption is incompatible with the nature of the lack of conformity -> *Specification sheets, data sheets*
3. Outgoing goods control
4. Test reports
5. Status reports about the condition of goods at the time of delivery

4.4 What Sanyo needs to do (Q&A)

Q. How does the customer prove the lack of conformity, if he never received any specification sheet, data sheet etc.?

- A. 1. Goods do not comply with a sample or model held out to the customer.
2. Goods are not fit for any particular purpose for which the customer requires them and which SANYO has accepted (*centralized administration of the customer at Sanyo is needed !!*).
3. Goods are not fit for the purpose for which goods of the same type are normally used.
4. Goods do not show the quality which are normal in goods of the same type and which the customer reasonably expect, taking into account any public statements on the specific characteristics of the goods particularly in advertising or on labeling.

-> *Sanyo could exculpate in way as said before!*

4.5 What Sanyo needs to do (Q&A)

Q. When does the guarantee period starts? Time of delivery from Sanyo or time of delivery at the customer's place?

A. Depends on the contract.

1. Sanyo shall send (Nippon) the goods to the customer:
Period starts at the time of delivery at customer's place
2. Sanyo shall send (Nippon) the goods to *another* place on customer's request:
Period starts at the time of delivery at the determined place
3. The customer shall pick up the goods at Sanyo
Period starts at the time of pick up at Sanyo.

4.6 What Sanyo needs to do (Q&A)

Q. What shall the purchasing department do?

- A. *Rescission of old contracts?
- *New contracts not before 1.1.2002.

Q. What shall the marketing department do?

- A. *Detailed description of our products (e.g. specification sheets).
- *Check if our advertising contains “exaggerated” statements.
- *Centralized documentation of the customers requirements and what Sanyo has accepted.

Q. What shall the QC department do?

- A. *Outgoing goods control, *test reports, *status reports about the condition of goods at the time of delivery.

Q. What shall be done in legal terms?

- A. *Check if our old contracts are applicable to the new law (e.g. legal and or commercial guarantee periods), *if necessary rescission of contracts. *(+ Green terms of delivery by the ZVEI)

4.7 What Sanyo needs to do (Q&A)

Q. How to define the word “guarantee”?

A. 1. Legal Guarantee

a. Germany: “Es gelten die gesetzlichen Gewährleistungsfristen.”
(NICHT “Garantiefristen”)

“The legal guarantee time limits shall be valid” (NOT “commercial guarantee time limits”)

b. In all other Member States: to be determined

2. Commercial Guarantee

a. Germany: Haltbarkeitsgarantie (to be negotiated individually)

“durability guarantee”

NOT sufficient: “One year guarantee” -> specification is necessary

b. In all other Member States: to be determined

5 The end

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Thank you !