**template for the cases database**

*Case name (date): (anonymized)*

*Keywords:*

*Facts (The very last sentence/paragraph of this section should introduce the legal question raised by the consumer’s request):*

*Legal analysis (both domestic legislation and EU legislation can be quoted. As consumer law vastly stems from EU directives, regulations and cases, all of these should be referred to when possible):*

*Legal solution:*

*Solution suggested by the Clinic (this section should present the proposal made by the clinic to the consumer, which may or not correspond to the theoretical legal solution. For instance, as stated in the example below, the consumer probably was entitled to ask the manufacturer for the repairing of the furniture, but due to a lack of evidence, the clinic suggested that he went mediation instead):*

*Specific remarks:*

Example of a “clinic data” in Luxembourg:

**The “X case” (Furniture case)**

**KEYWORDS:**

*Sale contract-furniture-seller-manufacturer-default of conformity-burden of proof-consumer*

**FACTS:**

In that case, a Luxembourgish consumer bought a wooden piece of furniture (value 3600 euros) form a Luxembourgish seller and a German manufacturer on the 15th march of 2016. Later on, the consumer complained that shiny stains have appeared with time.

He gave notice of it to the Luxembourgish seller who contacted the German manufacturer. The latter agreed to make reparations on the condition that the consumer would pay the transportation fees.

The consumer refused and the manufacturer argues that time lapsed and that he will not proceed with the consumer request anymore.

It is to be noted that the furniture was delivered more than 6 months after the 1st December 2016

The case is still discussed – last e-mail form consumer received in August attaching the lawyers’ seller challenging the non-conformity of the case.

*The consumer would like the manufacturer to repair the piece of furniture free of charge, and if not, a replacement.*

**LEGAL ANALYSIS:**

In that case, a conformity issue was at stake (besides, in Luxembourgish law, there are specific provisions in the Civil code). The problem was whether the consumer could obtain the seller or manufacturer to bring the good he bought from them into conformity.

* **Legal provisions with specific reference to EU directive when applying:**

**N**ational provisions implementing Directive 99/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

* **European cases referred to:**

***C-65/09 - Gebr. Weber and Putz, June 11th 2011***: According to the ECJ “*Putz and Weber*” case, in the event of the replacement of defective consumer goods, the seller must remove the goods from where they have been installed in good faith by the consumer and install the replacement goods there, or bear the necessary cost of those operations. Reimbursement of the cost may, however, be limited to an amount proportionate to the value of goods in conformity and the significance of the lack of conformity.

**LEGAL SOLUTION:**

Remedies under Directive 99/44/CE (as transposed in Luxembourg)

As the furniture was delivered more than 6 months after the 1st December 2016, there was no more presumption benefiting to the consumer. He would have to prove the stain was a lack of conformity.

**SUGGESTED SOLUTION:**

Difficulties of proof on the consumer (non-conformity issue above the 6 months’ presumption period of time).

Argument on our side: not the kind of stain that one person would make. Consumer ready to proceed the case further.

Suggestion to contact the Luxembourgish Consumer Ombudsman.

**SPECIFIC REMARKS:**

Evidence is the essence of conformity.