

COMMERCIAL WARRANTIES

ARE THEY WORTH THE MONEY?



**Legal guarantees
and commercial
warranties on
consumer goods
in the EU, Iceland
and Norway**



Co-funded by
the European Union

**Help and advice
for consumers
in Europe**



The information provided in this extract is based on the full report so it is not complete in all points but rather a summary based on the information provided by each ECC.



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Whereas the legal guarantee is mandatory under EU consumer law, the commercial warranty is a voluntary service offered by the seller or the producer, sometimes even by a third party. It is important to note that a commercial warranty cannot affect the consumer's rights under the EU legal guarantee. Rather it should upgrade them, for example, by having a longer duration, covering situations not covered by the legal guarantee, or offering additional services such as repair at home.

Objective of the joint project

The main objective of this report was to compare the legal guarantee and commercial warranty schemes in the EU Member States, Iceland and Norway and to analyse whether commercial warranties really keep their promises and are worth the additional cost. As well as compiling a comprehensive legal study, ECCs carried out checks online and on sellers' premises and studied accounts from consumers to get an insight into how well consumers are protected by EU law and/or commercial warranties when they discover that goods they have purchased do not conform to their expectations or have defects. From 29 October to 14 November 2014, the ECC-Net conducted a total of 342 checks in 25 European countries for three product categories (photo camera, TV, washing machine) for a total of 79 product references from 9 brands. 104 websites were screened and 127 shops contacted (covering 151 trading names, some of which were present in several EU Member States). During these checks the ECCs looked into:

- The after-sales service of 72 shops,
- The possibility of easy access to an independent expert opinion,
- The importance of commercial warranties in the sales' process online and in shops,
- Whether and how consumers are informed about the legal guarantee and commercial warranties and if there are any geographical restrictions,
- The names given to commercial warranties in the Member States,
- The duration of commercial warranties,
- The costs involved online and in shops.

The checks were supplemented by a survey led by ECC Belgium from 15 July to 5 October 2014, to which 543 consumers responded.

Legal guarantee

The legal guarantee to which every European consumer is entitled was introduced by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. This is a minimum harmonisation directive which takes into account pre-existing rules in several Member States providing a higher level of protection for consumers with regard to the non-conformity of goods. Understanding these national differences is important when it comes to cross-border trade as sellers tend to apply the legislation of their country, unless they target specific countries through online sales or other distance-selling means and have developed country specific after sales services.

The main differences in the application of Directive 1999/44/EC in the various EU Member States, Iceland and Norway concern:

- **Direct liability of the seller:** On many occasions the seller redirected the consumer to the producer, even for application of the legal guarantee.
- **Duration of the legal guarantee:** The Directive provides for a 2-year legal guarantee of conformity, from the date of delivery of the item to the consumer. The majority of countries have implemented this but seven countries apply a longer duration and 4 of them take into account the expected lifespan of the product. In 14 countries, the time limit can be reduced for second-hand products but not to less than 1 year.
- **Deadline for the consumer to notify the seller of a defect or non-conformity:** The Directive foresees the possibility for Member States to impose a notification deadline which cannot be shorter than 2 months. 12 countries have transposed the 2-month deadline while 18 countries have not adopted a firm time limit. In 15 of these 18 countries, the consumer should act within reasonable time of noticing the lack of conformity.
- **Burden of proof of the existence of a defect:** In principle, in any legal dispute, the party who claims application of a right must prove its case. Exceptionally, this burden of proof can be reversed. All Member States introduced this reversal of burden of proof in favour of the consumer in their national law. 5 went further by extending the normal 6-month duration of the reversal.
- **Duration of the legal guarantee after repair or replacement:** in 12 countries, the 2-year legal guarantee is suspended during repair or replacement and resumes as soon as the consumer receives the repaired or replacement item.

■ Possibility for the seller to claim compensation for the time during which the consumer had use of the item before it was found to be faulty: Quite often a defect does not occur right away but only after the consumer has used the item for some time. If the item is replaced, the consumer receives a new item which is to his/her advantage. Even though the Directive provides for the remedy to be free of charge, the seller may consider that this entitles him/her to compensation. This issue is not covered by the Directive and Member States are therefore free to impose national rules. In 8 countries, the seller is allowed to ask the consumer for compensation for the time he/she had use of an item that later turned out to be defective.

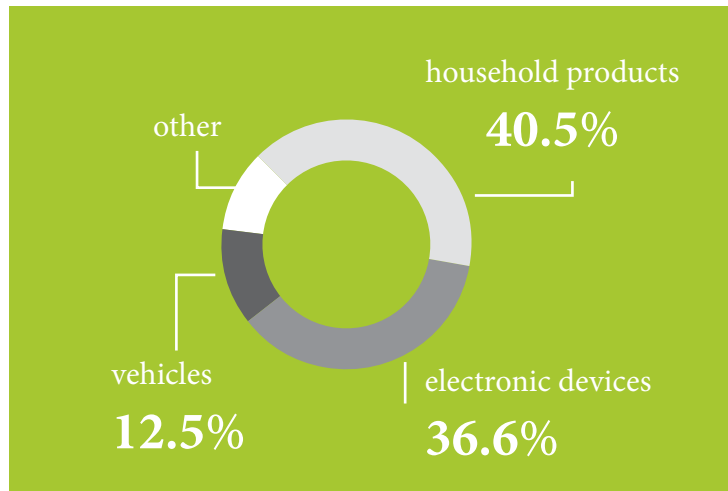
The report also looks at other guarantees foreseen by national law coexisting with the legal guarantee of conformity, such as the legal guarantees against hidden defects.



Commercial warranty

Commercial warranties have become an integral part of marketing. Both Directive 1999/44/EC and Directive 2011/83/EU on consumer rights include specific rules related to commercial warranties. During check n° 3 on the importance of commercial warranties in the sales process online and in shops conducted by the ECC-Net, it became clear that the majority of items in the product categories checked are offered for sale with a commercial warranty. In about 60% of the online offers checked, a reference to a commercial guarantee was made.

The survey led by ECC Belgium found that 56% of respondents had purchased a commercial warranty. The products for which they had been purchased most often were...



Information obligation

The seller has several obligations with regard to the timing of provision of information, the form to be respected and the content of the commercial warranty.

- 22 countries normally require a written warranty document for off- and on-premises contracts. A durable format is accepted at the consumer's request in 20 countries.
- In 15 Member States, it is a legal requirement that the commercial warranty be explained in plain, simple, clear, comprehensive and understandable terms.
- The use of the national language is requested in 9 countries at least.

During check n° 4 the ECCs investigated whether and how consumers are informed about the legal guarantee and commercial warranties and found that information was often unclear or incomplete, especially on the legal guarantee.

■ ¾ of online checks and 2/3 of checks on premises revealed unsatisfactory provision of information on the legal guarantee.

■ Only in 50 of 202 cases (24.57%) was a reference to the legal guarantee included in the product description. Online, in 21.14% of cases, the information was directly accessible at the specific product page and not hidden in the terms and conditions. In the shops, in 30.38% of cases was a reference to the legal guarantee visibly included in the product description.

The ECCs therefore had to look more deeply into the information available and question the sales agents in order to get more information.

■ When searching for the provider of the advertised commercial warranty, in only 60.16% of cases online was it possible to find this out.

■ In 66.67% of cases, consumers were not clearly informed about how to return a defective item to the seller.

■ In 33 of 79 checks in shops (41.77%), the duration of the legal guarantee was given or could be determined by the ECC. In 25 cases, correct information (2 years or 3 years) was provided. In one case the duration was indicated incorrectly as "maybe 12 months", and in another as 5 years.

Duration of commercial warranties in the Member States

The duration of commercial warranties in the Member States is usually between 1 and 5 years, and in most cases 2 years, as with the legal guarantee. More expensive items usually have a longer warranty which often applies to specific parts of the product.

During the study led by ECC Belgium, several consumers commented that they suspect planned obsolescence of consumer goods as in most cases, defects appeared after the end of the commercial warranty period. They thus felt that the producer/seller offered a risk-free warranty.

Costs involved

Commercial warranties vary between countries. In some Member States it is more common for them to be offered against payment than in others. In some, they must be offered free of charge. For warranties offered against payment, costs vary considerably, as do the benefits, especially given their duration and depreciation in value.

Only in 25 check online were warranties offered free of charge.

free of charge
56,41%



against
payment
32,05 %

Information or misinformation

Commercial warranties have become a marketing tool especially for white goods and audio-visual equipment. However, many consumers express confusion with regard to the guarantees and warranties to which they are entitled.

The ECC-Net regularly handles complaints from consumers who request application of the legal guarantee of conformity, but are refused by the seller on the grounds that the time limit has expired. When looking into the cases more closely, it becomes obvious that the seller is referring to a commercial warranty, not the legal guarantee.

Cases have also been reported in which consumers have been informed that no guarantee exists for the item purchased. Sellers often give consumers the impression that only the commercial warranty applies to their purchase.

Some traders add to consumer's confusion between a commercial warranty and the legal guarantee by stating that an item is covered only by a producer warranty of 1 year, as the legislation does not require that a producer warranty give coverage for 2 years. If a commercial warranty puts the consumer in a better position than the legal guarantee, such as by providing a longer reversal of burden of proof period, it might be of interest to the consumer to claim under the warranty, rather than the legal guarantee. However, warranties are not always more beneficial to the consumer.

Also, the seller is responsible for applying the legal guarantee, whereas under a commercial warranty he/she is often able to redirect the consumer elsewhere, such as to a repair centre or the producer, without giving any further assistance.

Pros and cons of commercial warranties

Directive 1999/44/EC and its national transposition laws provide protection to consumers in cases of defects in or non-conformity of goods which they purchase. However, the duration of the legal guarantee is limited and it is not always easy to prove the existence of a defect.

Commercial warranties can therefore have benefits for consumers. The ECC-Net, based on its case-handling experience and the checks performed online and offline, has drawn up a list of the main advantages of commercial warranties.



A commercial warranty can be beneficial if

- Its duration is longer than that of the legal guarantee.
- Consumers do not have to prove the existence of a defect, particularly after the first six months.
- Consumers get a replacement item during repair.
- Complaint procedures are clear and simple.
- Consumers do not need to organise shipping of the defective items.
- It provides for a repairer to come to the consumer's home.
- All costs for analysing the item, repair or replacement are borne by the guarantor.
- The item can be replaced with no attempt to repair.
- All issues are covered, including water damage, accidental breakage and oxidation.
- Consumers can usually contact any representative of the producer or reseller (if it is a producer warranty) for application of the warranty.
- It is an accessory to the item, and can be included in any re-sale.
- It offers a "cooling off" period. If the consumer is not satisfied with the product, bigger brands often offer a total refund or a voucher to the value of the purchase price.

But not every commercial warranty keeps its promises

During the study led by ECC Belgium, the 34.7% of respondents who were not satisfied with the application of their commercial warranty gave reasons including numerous exclusions, inefficiency (long delays, no answer from the seller, etc.), overlaps with other contracts (protection via a credit card, for example), and cost-benefit calculations.



Disadvantages of commercial warranties

- In some cases, consumers request application of the producer's commercial warranty, but after having examined the item, and sometimes even after a repair, the producer refuses. The consumer then has to request application of the legal guarantee. In such cases, this is often refused by the seller as an intervention on the item has already been performed. Alternatively, the seller, who in any case has sent the item back to the producer for repair, refuses application of the legal guarantee because the producer has already refused to apply the warranty.
- The prescription period under the legal guarantee might expire while the consumer is trying to obtain application of the commercial warranty, as this might not cause a suspension of the legal guarantee period.
- Commercial warranties often contain a geographical limitation and therefore might not be useful for cross-border purchases.
- The contents of a commercial warranty might not be the same in different Member States, making it difficult for a consumer to obtain application of a foreign commercial warranty in his/her home country if the warranty offered in that country is more restrictive.
- The remedies the guarantor is ready to provide might be limited: repair only, no replacement, numerous repairs prior to replacement/refund, etc.
- If a repair is impossible, the guarantor might only reimburse the residual value of the item and maybe only as a voucher.
- In some cases, excessive evidence is requested from the consumer before the commercial warranty is applied (e.g. proof of physical injury if a phone was broken during an attempted theft, proof of a manufacturing defect), or the consumer has to meet specific conditions, such as provision of an expert opinion regarding a defect at his/her own expense.

Commercial warranties might also overlap with other insurance policies a consumer might have.



Special focus

Geographical restrictions
on territorial coverage of
commercial warranties

Consumers have reported cases to the ECC-Net in which they felt discriminated against on geographical grounds, either because they purchased an item in another country or because the commercial warranty conditions of their home country were not as beneficial as those in another Member State.

Usually the situation is as follows: a seller based in one EU Member State offers goods for sale along with the possibility to have them delivered to another Member State. At purchase he/she proposes a commercial warranty on the item.

The warranty might have geographical restrictions limiting its application to the country of the seller, or specific cross-border conditions (shorter warranty period in the consumer's home country than in the country of sale, etc.).

Article 20 of Directive 2006/123/EC on services in the Internal Market prohibits discrimination based on nationality or place of residence unless justified by objective reasons. So each situation must be analysed on a case-by-case basis.

However, a seller offering a commercial warranty in a cross-border context should be well aware of the specificities of the warranty. If it is limited to the country of sale, the consumer should be made aware of this. The ECCs asked during check n° 4 in shops (total number of checks 79) if there were any geographical restrictions to commercial warranty cover. It seems that only a fifth of the sellers are aware of geographical restrictions of the warranties they supply. 7 sellers responded that there are geographical restrictions and that the commercial warranty is only valid in the country of sale or in countries where the producer has a representative. 8 sellers claimed that there are no geographical restrictions.



CHECK LISTS

In order to find their way around commercial warranties and reach a deal which benefits them, consumers can use the check list provided by the ECC-Net before subscribing, especially for warranties involving costs.

COUNTRY FACT SHEETS

For a general overview regarding legal guarantees and commercial warranties, the ECC-Net summarise the situation in each of the participating countries in a country fiche.



The ECCs offer individual support to consumers. They help consumers to reach amicable solutions to cross-border disputes with traders in the 30 countries of the network, either by contacting the trader involved directly or by transferring cases to Alternative Dispute Resolution schemes.

If extrajudicial solutions are impossible, the ECCs give advice on further action, for example, the European small claims procedure or payment order.

This network of 30 centres provides information about national and EU laws, ensures consumer protection aspects are taken into account in national and EU legislative processes, and initiates and ensures professional cooperation with other EU networks and traders in order to better protect consumer interests.

The European Consumer Centre France has led this project in close cooperation with the ECCs of Belgium, Denmark and Germany which formed the working group for this project. All 30 ECCs participated in the compilation of this report.

The views and interpretations reflected in this report are not those of the European Commission or the national funding bodies. They are solely those of the working group based on conclusions in the reports cited and on the data and questionnaire answers submitted to the working group by all project participants.

This document is intended to present the legislation and situation regarding legal guarantees and commercial warranties in the various European countries at the moment of publication and in the most user-friendly manner possible. It has no legal value and the working group will not be held liable for any loss or cost incurred by reason of any person using or relying on the information in this publication.