European Commission

CONSUMER MARKET STUDY ON THE FUNCTIONING OF LEGAL AND COMMERCIAL GUARANTEES FOR CONSUMERS IN THE EU

Executive Summary

December 2015

1) Objectives, scope and main tasks

In September 2014, Ipsos, London Economics and Deloitte were commissioned to conduct a study on legal and commercial guarantees[1] in order to:

- Explore to what extent sellers are aware of, and comply with, the requirements of relevant EU and national legislation;
- Study the way in which legal and commercial guarantees are communicated to consumers;
- Examine to what extent consumers are aware of their rights and are willing to make use of them;
- Study the prevalence and nature of problems that consumers encounter when seeking redress; and
- Provide a better understanding of the way consumers perceive legal and commercial guarantees and their impact on purchasing decisions.

Several tasks were carried out between September 2014 and August 2015:

- A literature review covering various aspects of guarantees, including the commercial motivations to offer them, the behavioural reactions of consumers to guarantees, as well as an overview of the European Directives.
- A regulatory review which included a description of the state of play of the implementation of the Consumer Sales Directive[2] in the 28 EU Member States, and identification and description of any extensions of scope of the Directive under national rules.
- A consumer survey in the 28 EU Member States, Norway and Iceland. The survey was administered using an online methodology in 26 of the 28 Member States, Norway and Iceland. In Cyprus and Malta, the survey was conducted using a computer aided telephone interviewing (CATI) method. Consultations with retailers, manufacturers, consumer bodies, ECC-net, ADR bodies and enforcement authorities. The consultations were implemented using questionnaires distributed directly to the stakeholder groups across each of the 30 countries included in the study.

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[1] Funded by the European Union in the frame of the EU Consumer Programme (2014-2020).
[2] Directive 1999/44/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, O.J. L 171/12.

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Justice and Consumers

- An online behavioural experiment in eight countries: the Czech Republic, France, Germany, Italy, Poland, Romania, Sweden and the UK. The experiment consisted of (a) a choice experiment where respondents chose to purchase a commercial guarantee or not, (b) a willingness-to-pay experiment, and (3) a comprehension test where respondents were required to correctly answer questions about the features of legal guarantees (comprehension). The experiment was run in conjunction with the consumer survey; in total, 8,027 respondents completed the experiment.
- A mystery shopping exercise in eight Member States[3] with as aim to replicate, as closely as possible, real consumers' experiences when it comes to seeking and comparing information regarding legal and commercial guarantees, and executing their rights stemming from the provisions of the legal guarantee.
- A price collection exercise which recorded commercial guarantee prices for four different consumer good categories: brown goods, grey goods, white goods and cars.

2) Information provision about legal and commercial guarantees

Information provision on the free of charge, two-year legal guarantee – Across the EU28, 40% of consumers disagreed that, in general, sellers in their country inform consumers about the legal guarantee period for products; this figure ranged from 26% in Latvia and Slovakia to 55% in Ireland. 55% of online mystery shoppers reported that the website they visited contained information stating that the legal guarantee is a free of charge, two-year guarantee. Among in-store mystery shoppers (who enquired about a product before purchasing), 42% found information displayed with the product and/or were spontaneously informed by a sales person that the legal guarantee is free of charge and for a period of two years.

Information provision on commercial guarantees – When shopping online or in-store for a commercial guarantee, the price, length and coverage of the guarantee were the most commonly displayed features. When asked how much information consumers had received about the terms and conditions of the commercial guarantee purchased most recently, 33% answered they had received not very much information and 8% nothing at all. 35% of consumers did not recall having received information about the legal guarantee when they last purchased a product with a commercial guarantee; this figure varied between 17% in Slovakia and 72% in Cyprus and Malta.

Difficulty experienced in obtaining clear information about guarantees – A plurality of consumers in the EU expressed difficulty in finding clear, transparent and not misleading information about guarantees. One in two consumers disagreed that sellers, in general, provided clear and transparent information about the legal guarantee; this figure varied between 30% in Latvia and 61% in Hungary. Similarly, 51% of consumers disagreed that sellers, in general, provided clear and transparent information about commercial guarantees, with the proportion disagreeing at country level ranging from 32% in Estonia to 61% in Croatia and France. In-store mystery shoppers in this study tended to be more positive in their evaluations of information provision than consumers in general.

3) Consumer knowledge and understanding of legal guarantees

Knowledge of the legal guarantee duration – Self-reported awareness of the legal guarantee was 67% at EU28 level; however, only about half as many consumers (35%) were also aware of the legal guarantee period in their country.[4] In about half of the Member States, consumers who thought that the legal guarantee period was one year outnumbered those who correctly stated it was two years. A lack of awareness of the two-year guarantee period is a potential source of consumer detriment. The consumer survey found that, for problems with products that had occurred more than one year after the purchasing date, respondents were less likely to have contacted the seller or manufacturer (78% vs. 88% for problems that had happened within the first six months).

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[3] These countries are: the Czech Republic, France, Germany, Italy, Poland, Romania, Sweden and the UK.

[4] Six years in most of the UK (five years in Scotland) and Ireland, three years in Sweden and two years in the remaining countries. In Finland, Iceland, the Netherlands and Norway, the legal guarantee period exceeds two years; however, this extension is linked to the expected lifespan of the product.

Knowledge about legal guarantee provisions – Consumers were well-informed about legal guarantee provisions with regards to the coverage of spare parts and requirements about original packaging: 69% answered correctly when asked whether, during the two-year legal guarantee period, a seller has to repair or replace the battery of a new mobile phone because the legal guarantee also covers spare parts and 59% correctly indicated that, when a newly bought camera breaks down during the legal guarantee period, the seller cannot refuse to repair it for free when they no longer have the original packaging.

What does the "reversed burden of proof" mean for consumers? – When respondents in the experiment were presented with two legal guarantees that differed in terms of when the burden of proof transferred from the seller to the buyer in case of manufacturer and/or material fault, only 37% of respondents were able to correctly answer the question. Although this study found that a minority of sellers insists on consumers proving the seller's liability within the entire two-year legal guarantee period, the burden of proof was identified as a potential source of consumer detriment:

- The burden of proof is a potential barrier for consumers to take action when a problem occurs with a product. For 14% of problems for which no action was taken, consumers indicated that they had not taken any action because they were asked to prove that they themselves had not caused the problem.
- Consumers' statutory rights are breached when sellers ask them to prove non-conformity in the first six months after purchasing a product. For 15% of problems that had occurred within the first six months, survey respondents were asked to prove that the problem was not due to their own fault. Among mystery shoppers reporting that their camera stopped working within six months after the purchasing date, 20% were told by the seller that they would need to prove that the problem was not due to their own fault.

4) The commercial guarantee market

Commercial guarantees have become an integral part of marketing; three-quarters of products checked during the mystery shopping exercise were offered with a commercial guarantee. Looking at purchase behaviour for paid-for commercial guarantees, the consumer survey found that 22% of EU28 respondents had bought such a guarantee in the three years preceding the survey. Consumers in Latvia were the least likely to have purchased a paid-for commercial guarantee, while consumers in Italy and Portugal were the most likely to have done so (7% vs. 32%-33%).

Price of the guarantee – 27% of consumers – who had bought a commercial guarantee – had done so because it was offered at a reasonable cost; 45% of consumers – who had not bought commercial guarantees – might do so if the guarantee is offered at a lower price. The price collection exercise revealed that the product price, the number of remedies and the duration of the guarantee were linked to a higher guarantee price. However, there was a stronger link between the duration of the guarantee and the guarantee price, than there is between the product price and the guarantee price. Paid-for commercial guarantees for white goods appeared to be more expensive than guarantees for brown or grey goods.

Duration of the guarantee – 57% of commercial guarantees for brown, white and grey goods covered in the price collection exercise had a duration of more than two years. Respondents in the behavioural experiment, however, were less likely to accept commercial guarantee offers of longer duration (three or five years vs. two years), and they were willing to pay less per year for commercial guarantees of long duration in the case of washing machines.

Competition and choice – 46% of survey respondents, who had bought a paid-for commercial guarantee in the past three years, indicated that they had been offered only one guarantee. This means that consumers may not be able to 'shop around' for paid-for commercial guarantees and not being able to contrast different commercial guarantees lessens the ability of consumers to objectively weigh the merits of different products in this area.

5) Consumer choice and comparison

Buying commercial guarantees to have "a longer guarantee period" – The consumer survey showed that paid-for commercial guarantees were mainly bought to have a longer guarantee coverage period (mentioned by 45% of respondents who had bought a commercial guarantee), because they give "peace of mind" (31%) or because the cost of repairing the product would be too high (26%). Given that many consumers are unaware of the two-year legal guarantee period, some consumers will buy a commercial guarantee "to have a longer guarantee" period although its duration does not exceed the legal guarantee duration. Explicit information provision about the length of the legal guarantee before "purchase" of a commercial guarantee in the behavioural experiment helped respondents to correctly assess when not to purchase a commercial guarantee.

Judging the relative value of a commercial guarantee – When asked to select a commercial guarantee in the behavioural experiment, on average, 44% of respondents selected the guarantee with the "fairest price" for washing machines and 48% for mobile phones. In terms of presentation of the commercial guarantee, the following conclusions are formulated:

- When testing commercial guarantee complexity, respondents tended to improve their choices in the experiment (between round 1 and 2) when faced with a two-feature contract compared to a four-feature contract, particularly in the case of washing machines.
- Graphical versus textual presentation of key features of a commercial guarantee did not have a statistically significant impact on respondents' choices in the behavioural experiment. While an impact was not observed in the behavioural experiment, the presentation may still be of importance as can be seen from respondents' poor performance in understanding the burden of proof in the legal guarantee comprehension exercise.

6) Consumer problems

Incidence of problems – Across the EU28, 38% of consumers had experienced a problem with a product for which they felt they had a genuine cause to complain; equal shares reported that this problem had occurred within the first six months, between 6 and 12 months or between one and two years after purchasing the product. 28% of problems were linked to a faulty product, 25% were due to the product not living up to expectations or not performing as expected, 24% to a product that did not work or that had stopped working and 13% to a damaged product.

Problem areas identified by the study with regards to sellers' compliance

This study showed that consumers tend to execute their rights when a good is not in conformity; for 84% of problems reported in the consumer survey, respondents had taken action (e.g. they took the product back to the seller or manufacturer). Although a large majority of these problems resulted in a free repair, free replacement, or a full or partial refund, some problem areas were identified by the study:

- **Redirection of the consumer to the manufacturer**
  In many Member States, a significant proportion of consumers thought that addressing a problem was the sole responsibility of the manufacturer (from 3% in Slovakia to 34% in Italy). Moreover, for 12% of problems, respondents in the consumer survey answered that they had only contacted the manufacturer. When mystery shoppers informed a seller about a problem with a product, 18% were redirected to the manufacturer; this occurred most frequently for problems that had occurred more than one year after the purchasing date (37%-39%).
- **Applying a non-compliant hierarchy of remedies**
  77% of consumers agreed that the "hierarchy of remedies" as included in the Consumer Sales Directive is reasonable; they accepted that is reasonable for a seller to offer a repair or replacement, but not a refund, when a problem with a product occurs for the first time. However, 43% of sellers (in the mystery shopping exercise) informed consumers that they would only qualify for a repair and that a replacement or refund would only be offered if the repair was not possible within a reasonable time or without inconvenience – i.e. they appeared to apply a two-tier system where only a repair is offered immediately.

7) Effectiveness of complaint handling

Of all the problems for which survey respondents had contacted the seller, 75% resulted in a free repair of the product, a free replacement or a full or partial refund; this figure varied between 57% in Malta and 84% in Slovakia. Problems that had occurred more than one year after the purchasing date were the least frequently provided with a remedy (free repair, replacement or refund): 68% compared to 79% for problems that had occurred in the first six months.

For 4% of problems, respondents answered that the product did not work after (multiple) repair(s); for 3% of problems, respondents reported that they ended up paying for the repair. The later a problem occurred, the more likely it was that respondents had been told by the seller that their problem was not covered by the legal guarantee (from 3% to 8%) or that the legal guarantee had expired (from 1% to 4%).

The strength of the legal guarantee depends not only on the legal framework establishing that guarantee, but also on the procedures that allow consumers to ensure that they will have adequate redress when the seller does not respect their rights. There appears to be a large degree of variation in the structure and functioning of Alternative Dispute Resolution (ADR) procedures from country to country in the EU. EU legislation on consumer ADR (Directive on consumer ADR) has harmonised the legal framework for consumer ADR, inter alia by establishing binding quality requirements for consumer ADR.

8) Cross-border enforcement of consumer guarantees rights

Given that the Consumer Sales Directive dates back to 1999, its transposition across Member States is quite mature. While there may have been some gaps in the first transposition, these were apparently closed when the Consumer Rights Directive was introduced in 2011. Additionally, extensions of consumer rights are the most prevalent trend across the EU with several Member States either giving an extension to guarantee durations (i.e. Sweden, Finland, Ireland, the Netherlands and the UK) or to the burden of proof obligations on the retailer (i.e. France, Poland and Portugal). Other countries did not introduce the hierarchy of rights or delayed the period when the hierarchy is introduced (i.e. Latvia, where the consumer can choose a remedy in the first six months, and thereafter a hierarchy applies).

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