



Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Denmark

EUROPEAN COMMISSION

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1. Denmark

1.1 Regulatory background

Directive 1999/44/EC on Consumer Sales was transposed into national law mainly through the revising law Nr 213 22/04/2002 amending the Sale of Goods Act "*Bekendtgørelse af lov om køb*", more commonly known as "*Købeloven*" (literally "The purchase law"), in Danish, finalised as the amended act Nr 237 28/03/2003¹.

The aforementioned act, however, lacks a section on guarantees. The Directive's section on them was implemented through the revising law nr 342 02/06/1999 instead incorporated into the Marketing Practices Act, "*Bekendtgørelse af lov om markedsføring*", more commonly known as" (literally "The marketing law"), as amended and released as Nr 699 17/07/2000. The Act has subsequently been updated repeatedly, the current one in effect is act Nr 1216 25/09/2013².

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC into Danish Law is complete. Table 7 in the next pages shows how each article has been accommodated in the national legislation. Due to the existing Danish legislation, deriving from an original act created through a pan-Scandinavian initiative dating back to 1906³, several departures from the original provisions are present and additional aspects are covered. Each point is subsequently commented on below.

Definitions

The Danish law is completely void of definitions as outlined in Art. 1.2. in the Directive. Several historical definitions are however present even though the ones included in the Directive were never transposed.

The Danish act mainly defines contracts and sales, rather than individuals or goods. In § 4 (2) the act does, however, define what constitutes a tradesman or 'merchant', i.e. "*handlende*" in Danish, which broadly corresponds to the Directive's concept of a seller. A merchant is defined as anyone making it his or her business to sell goods acquired for such purpose as to run a stock brokerage or a bank, insurance business, commission agency business, publishing business, pharmacy, restaurant, bar/tavern, craftsmanship or industry. Furthermore, undertaking to construct buildings or other construction work or transportation of persons, goods or communication, falls under the same category. A specification as to who is not a merchant is also provided. That is, any person who without assistance other than from a spouse, his or her children under 15 or his or her domestic servants, runs a bar/tavern, craftsmanship, transportation or limited trade for which no particular permission is required, is not to be considered as a merchant.

As per § 2 it is defined that "placing an order on goods", i.e. "*bestilling af genstande*", which are to be manufactured or produced, is "to be considered a sale". The act goes on to exempt property and buildings from this, but specifies that barter or exchange is in scope.

¹ An unofficial English translation of this law is available at:
<http://www.sprog.asb.dk/sn/Danish%20Sale%20of%20Goods%20Act.pdf>

²The section on guarantees has seen no significant change since first included in 2000. For clarity reasons only the current act nr 1216 25/09/2013 is referenced in the report. Accessed on 25th November at <https://www.retsinformation.dk/forms/r0710.aspx?id=158302>

³Den Store Danske (31 January 2009). "Købeloven". Gyldendal. Available at:
http://www.denstoredanske.dk/Samfund,_jura_og_politik/Jura/Obligationsret/K%C3%B8beloven

In § 3 it is defined that a specific quantity of a specified bulk is considered a sale of generic goods in the same manner as a type of goods.

Commercial sale, "*handelskøb*", is defined in § 4 (1) as a sale between merchants (as per above) in the ordinary course of business. Under § 4 a. consumer sale, "*forbrugerskøb*", is in turn defined as a sale between a buyer (consumer) and a merchant acting in the course of his business and where the buyer is not acting in the course of his profession. It is furthermore up to the seller to prove when the sale is not a consumer sale.

Remedies and reclamations

The relevant section of the Danish Sale of Goods Act Nr 237 28/03/2003, dealing with the potential remedies available to Danish consumers, is § 78. In regards to the transposition, Art. 3.1 concerning liability and Art. 3.4 concerning the use of the term "free of charge" were not transposed. Also, Art. 5.1 regarding the time period of the Directive was not transposed as such, as the Danish law already had a paragraph, § 83, dealing with the matter. The existing paragraph was, however, altered by prolonging the time period from the existing one year in the Danish act to two years, as per the Directive. The Danish act made use of the provision in Art. 5.2, but uses the term "timely notice" / "within a reasonable time frame" and furthermore specifies that "any notice given within a period of two months, after the buyer discovered the lack of conformity, shall be a timely notice".

According to § 82 the consumer may always, without being limited by the aforementioned, refer a non-conformity of the good if the seller has acted recklessly or contrary to good faith and fair dealing.

If the product is replaced, the legal guarantee runs for a further 2 years. If it is repaired, the repair is covered for 3 years (the normal statutory limitation period)⁴.

1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and its transposition into the Danish legislative system. 11 articles were not transposed and several more were not transposed as such or were incorporated into the existing text. These cases are described in the table ("Comments").

⁴ECC-net, country fiche for Denmark, available at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_DK.pdf

Table 1: Transposition of Directive 1999/44/EC in the Danish legislation

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose		Not transposed
	1.2.a	Def. Consumer goods	Nr 237 28/03/2003 § 4 a. (1)	Not transposed Consumer sale mentioning consumer is however defined; “for the purposes of this Act, a consumer sale means a contract of sale between a buyer (consumer) and a merchant acting in the course of business when the buyer is primarily acting for purposes that are not related to his trade, business or profession. It is for the seller to prove that the contract is not a consumer sale.”
	1.2.b	Def. Consumer	Nr 237 28/03/2003 § 3	Not transposed Sale of generic goods however defined; “for the purposes of this Act, a sale of generic goods does not only mean the sale of a specific quantity of a specified type of goods but also the sale of a specific quantity of a specified bulk.”
	1.2.c	Def. Seller	Nr 237 28/03/2003 § 4 (2)	Not transposed An older section on what constitutes a ‘merchant’ however exists, i.e. “a merchant means any person who makes it his business to sell goods bought for such purpose, to carry on stock broking or banking, insurance business, commission agency business, publishing business, pharmacy, restaurant keeping, a trade, a craft or industrial production, to undertake the construction of buildings or other construction work or to convey persons, goods or communications.”
	1.2.d	Def. Producer	Nr 237 28/03/2003 § 2 (1)	Not transposed Partly covered under manufacturing contract, i.e. “A contract for the supply of goods to be manufactured or produced is to be considered a sale for the purposes of this Act. In a non-consumer sale, this shall only apply if the party who undertakes the manufacture or production supplies the substantial part of materials necessary.”
	1.2.e	Def. Guarantee		Not transposed
	1.2.f	Def. Repair		
	1.3	Exclusion second hand	Nr 237 28/03/2003 § 77 (2)	<i>Direct transposition</i> - Exclusion of second-hand goods sold at a public auction which the consumer can attend
	1.4	Contracts of sale types	Nr 237 28/03/2003 § 2	<i>Direct transposition</i> - Contracts for the supply of consumer goods shall be deemed contracts of sale
Conformity with the contract	2.1	Conformity requirement	Nr 237 28/03/2003 § 75 a.	The nature, quantity, quality and other properties of the goods must conform with the contract and, in relation to the contract, the buyer must be given the information required for installing, using, keeping and maintaining the goods.
	2.2	Good conformity	Nr 237 28/03/2003 § 75 a. (2)	<i>Direct transposition</i> - Stating that goods will be in conformity with the contract if they comply with a set of conditions (e.g. compliant with the description given by the seller; fit for purpose; quality and performance similar to goods of the same type)

	2.3	Lack of conformity	Nr 237 28/03/2003 § 76 (3)	<i>Direct transposition</i> - Disregarding lack of conformity if the consumer was aware of the fault, or if the lack of conformity had its origin in materials supplied by the consumer
	2.4	Seller statements	Nr 237 28/03/2003 § 76 (1-2)	<i>Direct transposition</i> - The seller shall not be bound by public statements in case she/he was not aware of the statement; the statement had been corrected; or the statement did not influence the decision of the consumer to purchase the good
	2.5	Installation		Not transposed
Rights of the consumer	3.1	Liability		Not transposed
	3.2	Remedies	Nr 237 28/03/2003 § 78 (1)	<i>Direct transposition</i> - Stating that the consumer has the right to have non-conforming goods brought into conformity free of charge, or to receive an appropriate discount in price, or to contract rescission
	3.3	Conditions	Nr 237 28/03/2003 § 78 (2)	<i>Direct transposition</i> - Repair or replacement offered first and free of charge, unless implying disproportionate costs for the seller. Repair or replacement to be completed within a reasonable time taking into account the value of the good; the significance of the lack of conformity, or whether the remedy can be completed without inconvenience to the consumer
	3.4	Free of charge		Not transposed, the Danish law uses the term "without costs".
	3.5	Reduction of the price	Nr 237 28/03/2003 § 78 (3)	(3) "If the seller offers to remedy the lack of conformity or to deliver substitute goods, the buyer may not require an appropriate reduction of the price or declare the contract avoided."
	3.6	Contract rescission	Nr 237 28/03/2003 § 78 (4)	(4) "The seller shall comply with any requirement or offer to remedy the lack of conformity or deliver substitute goods within a reasonable time and without expense and significant inconvenience to the buyer, see section 79 of this Act. Failing this, the buyer may require an appropriate reduction of the price, declare the contract avoided, require delivery of substitute goods or, provided this can be done without disproportionate expense, cause the lack of conformity to be remedied at the expense of the seller."
Right of redress	4	Final seller liability		Not transposed
Time limits	5.1	Time period	Nr 237 28/03/2003 § 83 (1)	Not transposed as such, but incorporated into the existing § 83.
	5.2	Defect confirmation	Nr 237 28/03/2003 § 81	"Any notice given within a period of two months after the buyer discovered the lack of conformity shall be a timely notice."
	5.3	Reversed burden	Nr 237 28/03/2003 § 77 a (3)	<i>Direct transposition</i> - Any lack of conformity detected within six months of delivery of the goods is presumed to have existed at the time of delivery unless incompatible with the nature of the goods or the lack of conformity
Guarantees	6.1	Legally binding	Nr 1216 25/09/1999 § 12	<i>Direct transposition</i> - Stating that the guarantee will be legally binding on the offerer of the guarantee under guarantee statement and conditions
	6.2	State rights and contents	Nr 1216 25/09/1999 § 12	<i>Direct transposition</i> - The guarantee shall state that the consumer has legal rights under applicable national legislation, make clear that those rights are not affected by the guarantee; give the guarantee details and process for claiming, plus name, address of guarantor plus scope and duration.

	6.3	Written contract	Nr 1216 25/09/1999 § 12	<i>Direct transposition</i> - On request by the consumer, the guarantee shall be made available in writing or another accessible durable medium
	6.4	Language of guarantees	Nr 1216 25/09/1999 § 12	Written guarantees are to be in Danish
	6.5	Respect 6.2-4		Not transposed
Binding nature	7.1	Right restrictions	Nr 237 28/03/2003 § 77	<i>Direct transposition</i> - Stating that previously agreed conditions between seller and consumer which are agreed before a lack of conformity is known will not be binding if they reduce the consumer rights under this Directive. In the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter liability period for the seller (not less than one year).
	7.1	Reduced period (2nd hand)	Nr 237 28/03/2003 § 77	<i>Direct transposition</i> - In the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter liability period for the seller (not less than one year).
	7.2	Measures of protection	Nr 237 28/03/2003 § 87	"If a contract provides that the law of a state outside the European Economic Area shall apply to the contract, the consumer may rely on mandatory provisions of the law regulating lack of conformity in a state within the European Economic Area if, without the choice of law agreement, the contract would have been governed by the law of that state."
National law and minimum protection	8.1	Supplementary rights		
	8.2	National rules retain		
Information	9	Inform of the rights		
Modification	10	Directive 98/27/EC		
Transposition	11.1	Date		
	11.2	Provisions		
Review	12	Jul-06		
Entry into force	13	Day of publication		
Address	14	To Member States		
Recitals	15	Period-of-use deduction		
	18	Suspension 2-year period		

* The mention of "direct" means a direct transposition, disregarding the fact that the sentences can be placed differently or paraphrased relative to the Directive formulation

Legend		Articles at the discretion of the Member State (not mandatory)
		Rules on procedures to transpose

 *Recitals –at the discretion of the Member State*

1.1.3 Additional rights

The additional rights available to the Danish Consumer and User is contained in the Danish Sale of Goods Act Nr 237 28/03/2003. The chapter "*Forbrugerkøb*" (consumer purchase) is wholly devoted to purchases done by consumers. The Directive was mainly incorporated into this chapter where applicable, other Directives, such as e.g. 2011/83/EU on consumer rights, are also in part transposed. Most of the other chapters also apply, but this is the only one dealing exclusively with consumer purchases, whereas the others often also apply for commercial sales (business-to-business). The Danish act also states in § 72 that if the price of the good is not visible, the consumer is to pay a price which is reasonable given to the type of good, its condition and the circumstances.

Rights when the good is delayed

The consumer has per § 21 a right to compensation for damage caused by the seller's delay or to declare the contract avoided completely, unless this delay was prompted by the buyer or an accidental event for which the buyer bears the risk. The contract cannot be nullified if late delivery could have been considered immaterial to the buyer, unless delivery was specified as a condition in the contract.

Furthermore, in § 23, it is stated that in case of sale of specific goods, where these are not delivered by the agreed time, the seller shall be liable to pay damages, unless it is evident that the delay was caused by events beyond the seller's control. In the case of sale of generic goods the seller has a more limited possibility to avoid paying damages (§ 24).

As mentioned in the table, a Danish consumer has per 79 § (2) the right to withhold payment if the delivery of the good is delayed, as long as the damage of this delay is to be considered as material.

Extra conformity provisions

The conformity of the goods is furthermore specified in § 42 - § 54.

In accordance with § 47, if the buyer has examined the goods prior to signing the contract, or without reason failed to examine the goods after being requested to do so by the seller, the buyer cannot rely on any lack of conformity later on, if he clearly should have noticed this non-conformity by examination. This does, however, not apply if the seller has acted fraudulently.

In § 48, if auctioned goods are acquired the buyer may not claim any lack of conformity unless the goods are not in line with their description, or if the seller has acted fraudulently. This does not apply when a merchant sells his goods by means of auction.

It is furthermore specified in § 50 that lack of conformity also applies when the seller has delivered a lesser amount of goods than promised, as this does not accurately fulfil the contract. In case of this event, the buyer may not request substitute goods, but may require subsequent delivery of what is missing.

Obligations of the buyer and rights of the seller

A section of the Danish Sale of Goods Act, § 28 - § 37, is devoted to the buyer's obligations and another section § 39 - § 41, to his inability to pay.

It involves the possibility for the seller to nullify the contract if payment is outstanding (§ 28) and the seller's right to damages (§ 30). As part of this section, the seller is also obliged to duly inform the buyer if he intends to nullify the contract (§ 31).

If the buyer is, without it being their own fault, unable to pick up the goods at the agreed time, § 33 stipulates that the seller has to take the appropriate steps to preserve the goods

(though at the expense of the buyer). If this would cause the seller unreasonable inconvenience or unreasonable expenses, § 34 gives the seller the right to sell the goods in question to a third party at the expense of the original buyer. Prior to such a sale, the seller has to duly notify the original buyer thereof. The seller may, in accordance with § 36, use the goods in preservation as security for damages claimed.

If the buyer were to have problems paying, such as in the event of personal bankruptcy or in case of a composition (arrangement with creditors), § 39 outlines that the seller may retain the goods, or in case the goods have already been dispatched, prevent them from being handed over to the buyer. As a further escalation, the seller may nullify the contract.

1.2 Enforcement and redress

In case of a problem with a consumer good, the consumer is to file an initial complaint to the seller. If the seller refuses to accommodate the request, the consumer – and a consumer only – can turn to the government body *Forbrugerklagenævnet* – “the Consumer Complaint Board”. It is the main board dealing with consumer matters, but some sectors also have their own specialised boards set up. *Forbrugerklagenævnet* has an impartial chairman acting as judge for the board consisting of an equal amount of representatives from business and consumer organisations, and is connected to the Danish Competition and Consumer Authority – the latter acting as its secretariat. This body is the government's complaint board for matters pertaining to consumer goods, services or work output which can be considered as a good. For goods and services, the value has to surpass DKK 500 and be below DKK 24,000 – for car purchases the maximum amount can be DKK 82,000. Treating the complaint will cost the consumer DKK 160 – which will be fully reimbursed if the outcome of the treatment is in the consumer's favour. Other restrictions are also in place: the seller has to, for example, be operating a business of some sort. The complaint is to be filed at the earliest convenience (the definition of which lacking a clear limit and is to be determined on a case to case basis). Nonetheless, two months is always within the right time frame.^{5 6} *Forbrugerklagenævnet* also runs a hotline, giving free of charge council on consumer issues.

The rulings of the Consumer Complaint Board are not legally binding, but usually followed by businesses. When its ruling is not adhered, the board can bring the issue to the courts and act as a representative of the consumer.⁷

For disputes where the value is higher than the scope of the Consumer Complaint Board, and up to about DKK 1,000,000, the matter is typically dealt with through the lower regional court system, though at a higher cost for the consumer. For major issues with a financial value beyond that, the cases are brought to the High Court or the Maritime and Commercial Court.⁸

Forbrugerombudsmændene, the Consumer Ombudsman, is another agency linked to, yet still independent from, the Competition and Consumer Authority. *Forbrugerombudsmændene* is primarily tasked with overseeing and enforcing the marketing act. As with the Consumer Complaint Board, the decisions of *Forbrugerombudsmændene* are

⁵Forbrug (12 October 2009). “Klagebetingelser”. Available at: http://www.forbrug.dk/?SC_itemid=fd025099-8f16-4e8f-9969-213d2d39875d

⁶Konkurrence- og Forbrugerstyrelsen (Undated). “Forbrugerklagenævnet”. Available at: <http://www.kfst.dk/Forbrugerforhold/Klageforhold/Forbrugerklagenævnet>

⁷Schmidt, C. & Boisen, A. C. (19 September 2006). “Country report Denmark – Benchmarking of existing national e-business practices”. ECC. Available at: <http://www.pedz.uni-mannheim.de/daten/edz-h/gdb/06/denmark.pdf>

⁸Schmidt, C. & Boisen, A. C. (19 September 2006). “Country report Denmark – Benchmarking of existing national e-business practices”. ECC. Available at: <http://www.pedz.uni-mannheim.de/daten/edz-h/gdb/06/denmark.pdf>

not legally binding, yet typically heeded. The Ombudsman may issue injunctions when awaiting a court order.⁹

Cases

The Danish Competition and Consumer Authority has several rulings on consumer issues published on the website www.forbrug.dk. Most of the cases pertaining to this topic are from 2007 or earlier. The cases described below involve non-conformity of a good purchased in a foreign country and the non-conformity of a used car sold without a guarantee.

Box 1: Court case on a camera, 2007¹⁰

A Danish consumer bought a camera online through a German e-company. The purchase came with a one year guarantee, and the good was to be replaced or repaired free of charge if found non-conforming, when the consumer requested rectification through an “authorised” retailer. Two months after purchase the camera broke, and the consumer turned to the Danish branch of the company. The branch assessed that the defect was not covered by the guarantee and that the consumer were to finance the cost of repair himself. The consumer filed a complaint to *Forbrugerklagenævnet* and had the camera repaired (while stating that he did not intend to bear the costs). Another defect emerged after the one year guaranteed had expired and before the above issue had been sorted. The consumer had the camera delivered via another photo store and this time the producer repaired it free of charge, though the producer refused to reimburse the consumer the DKK 250 incurred for sending the good. This amount was also added to the claim.

Forbrugerklagenævnet ruled that the initial fault was due to a non-conformity of the good. Since the good was considered as having been acquired in Germany, German law applied. The body also noted that the complaint was in line with reverse burden paragraph of Directive 1999/44/EC (art. 5.3.), i.e. it was discovered and reported within six months of the purchase. *Forbrugerklagenævnet* found that given the guarantee, the consumer could not be asked to pay for the repair. For the initial repair, the company was thus to reimburse the consumer of DKK 1,325. The second repair, not covered by the guarantee, was deemed as having been carried out in goodwill, and thus the company was not required to reimburse the consumer of the extra cost of DKK 250 incurred. *Forbrugerklagenævnet* also ordered the producer to pay for the treatment costs incurred by the body.

Box 2: Court case on used car, 2002

A consumer on Bornholm bought a used Chrysler Grand Voyager Van for DKK 41,500 from a businessman on Jutland. While taking the car from Jutland the consumer noticed that oil was leaking, after a quick stop the battery also died. The consumer had the battery changed at his own expense. The consumer subsequently had the car checked at a mechanic where it was revealed that the car had a defective converter and that it would not be sensible to have the gear changed. Furthermore, a 15 cm cut was found on the cylinder block, causing a leak.

The consumer demanded to nullify the purchase, since the car were supposed to have a new engine and gear. The seller had the cylinder block changed, but insisted that the consumer bore the costs for spare parts and the gear. The consumer rejected this but still had to freight the car to Bornholm. The consumer insisted on nullification, but the seller rejected this demand as the car was specifically sold used and without

⁹Schmidt, C. & Boisen, A. C. (19 September 2006). “Country report Denmark – Benchmarking of existing national e-business practices”. ECC. Available at: <http://www.pedz.uni-mannheim.de/daten/edzh/gdb/06/denmark.pdf>

¹⁰Konkurrence- og Forbrugerstyrelsen (16 February 2007). “Europæisk garanti”. Available at: <http://www.forbrug.dk/Afgoerelsesdatabase/Forbrugeromraadet/foto-ure-optik-og-smykker/kameraeuropaerisklov?tc=B95FA76B2CBD4F14AEE9EEA420AF2DC3>

inspection. The contract furthermore stated that the car was sold without a guarantee. The consumer brought the issue to Forbrugerklagenævnet, which pointed out that a lack of guarantee only implies that the one complaining cannot ask for additional rights further to those stipulated in law. The lack of guarantee does not, however, infringe on the consumer's regular rights, such as the right of conformity of the sold good. The body found that there were so many issues with the car that it was clearly non-conforming and had the contract nullified. The seller was also ordered, in accordance with Købeloven Nr 213 22/04/2002, to reimburse all of the expenses the consumer had to bear.

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