



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

Country fiche: Norway

EUROPEAN COMMISSION

Produced by Consumers, Health, Agriculture and Food Executive Agency (Chafea) on behalf of:

Directorate-General for Justice and Consumers
Directorate E — Consumers
Unit E.1 Consumer markets

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Luxembourg: Publications Office of the European Union, 2015

PDF	ISBN 978-92-79-53721-9	doi: 10.2838/2669	DS-02-15-960-EN-N

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1. Norway

1.1 Regulatory background

This section describes the transposition of Directive 1999/44/EC on consumer sales in the Norwegian legislative system as part of the country's EEA agreement with the European Union. The Directive was primarily transposed with the Consumer Sales Act "Lov om forbrukerkjøp", more commonly known as "Forbrukerkjøpsloven" (LOV-2002-06-21-34), replacing the previous Sales Act "Lov om kjøp", known as "Kjøpsloven" (LOV-1988-05-13-27). A more comprehensive coverage was, however, incorporated into the Marketing Control Act, "Lov om kontroll med markedsføring og avtalevilkår mv", more commonly known as "Markedsføringsloven" (LOV-2009-01-09-2).

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC in the Norwegian legislation can be considered to be complete as the Consumer Sales Act entered into force 1 July 2002.¹ Upon transposition of the Directive, Norway carried on several provisions from its historical law, resulting in some digressions and additional rights. The Norwegian Consumer Sales Act thus has a wider scope and goes beyond the requirements of the Directive².

Definitions

All definitions but one contained in Article 1 of Directive 1999/44/EC have been transposed either in the Consumer Sales Act or in the Marketing Control Act (LOV-2009-01-09-2). The definition of "producer" was, however, not transposed.

Remedies

The Norwegian legislation retains the hierarchy between remedies as written in § 16 and § 29 of the Consumer Sales Act, transposing articles 3 and 5 in Directive 1999/44/EC. According to § 26 of the Consumer Sales Act, if there is a defect not caused by the consumer or conditions on the consumer side, the consumer is entitled to³:

- Withhold payment
- Choose between rectification and replacement
- Demand a price reduction
- Demand termination of contract
- Demand compensation

According to § 26, the consumer's right to compensation shall not lapse due to the consumer making other claims, or because other claims are rejected.

As stipulated in § 29 of the Consumer Sales Act: "the consumer may choose to demand that the seller provides repair of the defect or redeliver a similar good". However, this law does not apply if the implementation of the demand is impossible or causes the seller unreasonable costs. The paragraph states that in determining whether the costs are unreasonable; "particular emphasis shall be laid on the value of the defective good, the

¹ Consumer Sales Act (LOV-2002-06-21-34). Available at: <https://lovdata.no/dokument/NL/lov/2002-06-21-34>.

²Nordengren, Rune (31 October 2002). "Forbrukerkjøpsloven – en oversikt". *Jusstorget*. Available at: <http://www.jusstorget.no/article.asp?Key=2&FagKey=49&ArtKey=244>

³ The law does not specify a strict hierarchy

defect's significance and whether other remedies can be implemented without significant inconvenience to the consumer". According to the same law, if the consumer does not demand repair or replacement under the law, the seller may still offer repair or redelivery if this happens without delay. If the seller offers to repair or replace under the law, the consumer cannot demand a price reduction or terminate the contract.⁴

Claiming periods

In accordance with § 27 of the Consumer Sales Act, the statutory rights last for two years from the time of delivery and complaints must occur no later than two years after the consumer was delivered the good. In the same paragraph, it is specified that "if the good or part of the typical use is supposed to last considerably longer, the complaint deadline is five years". In accordance with the same law, this does not apply if the seller by guarantee or other agreement has assumed responsibility for defects for a longer time. If the consumer does not complain in time, the right to complain is lost. However, this does not apply if the seller has acted with gross negligence or dishonestly.⁵

The Consumer Sales Act's § 18 specifies that unless otherwise proven, a defect detected within six months after the transfer of risk⁶, should be presumed to have existed at the time of transfer of risk. This does not apply if the presumption is incompatible with the good or the nature of the defect.⁷

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 Norwegian legislative system. Most articles have been transposed, and some of them contain an extension of the scope provided by the European legislation. This is briefly described in the table ("Comment").

⁴ Consumer Sales Act (LOV-2002-06-21-34) §29. Available at: <https://lovdata.no/dokument/NL/lov/2002-06-21-34>.

⁵ Ibid. §27.

⁶ The transfer of the good is often considered as 'transfer of the risk' (and liability) in Norwegian and Nordic consumer law.

⁷ Consumer Sales Act (LOV-2002-06-21-34) §18. Available at: <https://lovdata.no/dokument/NL/lov/2002-06-21-34>.

Table 1: Transposition of Directive 1999/44/EC in the Norwegian legislation				
Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Consumer Sales Act (LOV-2002-06-21-34) § 1	"This Act applies to consumer purchases, unless otherwise provided by law."
	1.2.a	Def. Consumer goods	Consumer Sales Act (LOV-2002-06-21-34) § 1 & Marketing Control Act (LOV-2009-01-09-2) § 5	Consumer is defined as "a natural person who is not primarily acting in business" in both Acts.
	1.2.b	Def. Consumer	Marketing Control Act (LOV-2009-01-09-2) § 5	Defined as: "good, service, immovable property, rights and obligations".
	1.2.c	Def. Seller	Marketing Control Act (LOV-2009-01-09-2) § 5	Seller is defined as "a natural or legal person who is acting for commercial purposes, and anyone acting in the name of or on behalf of that person".
	1.2.d	Def. Producer		Not transposed
	1.2.e	Def. Guarantee	Consumer Sales Act (LOV-2002-06-21-34) § 18 a & Marketing Control Act (LOV-2009-01-09-2) § 5 Art. 2. f)	"A guarantee is a legally binding for the guarantor under the conditions stipulated in the guarantee statement and in associated advertisement. It does not limit the consumers' rights as stipulated in §3. Any obligation assumed by a seller to the consumer in connection with the sale of goods, services, or other benefits that provide consumer rights in addition to the rights the consumer otherwise has."
	1.2.f	Def. Repair		
	1.3	Exclusion second hand		Not transposed
	1.4	Contracts of sale types	Consumer Sales Act (LOV-2002-06-21-34) § 2Art. 4.	The Act applies to: "1) ordering of goods that shall be manufactured, 2) water delivery, 3) purchase of receivables or rights and 4) agreement with a grid company concerning transmission of electrical energy."Direct transposition - Contracts for the supply of consumer goods shall be deemed contracts of sale
Conformity with the contract	2.1	Conformity requirement	Consumer Sales Act (LOV-2002-06-21-34) § 15Art. 5.(1)	"The good shall be in accordance with the requirements of the nature, quantity, quality, other properties and packaging following the agreement."
	2.2	Good conformity	Consumer Sales Act (LOV-2002-06-21-34) § 15 Art. 5.(2)	Parts a), b) and c) were directly transposed. Part d) was partly transposed, lacking the public statement phrase. The Norwegian law has, in addition, three other provisions stating that the goods are to; be contained or packaged in the customary or other proper manner adequate to preserve and protect the goods; be in conformity with public law requirements imposed by the legislation or official resolutions pursuant to statute at the time the contract is concluded, unless the buyer intends to use the goods for a purpose rendering the demand meaningless; be free from a third party's rights in the goods, such as ownership or pawn rights.
	2.3	Lack of conformity	Consumer Sales Act (LOV-2002-06-21-34) § 16Art. 6.	The consumer may not assert as a deficiency on a good the consumer knew or should have known prior to purchase, and in cases when the material is provided by the consumer to the seller.

	2.4	Seller statements		Not transposed
	2.5	Installation		Not transposed
Rights of the consumer	3.1	Liability		Not transposed
	3.2	Remedies	Consumer Sales Act (LOV-2002-06-21-34) § 26Art. 10.	The consumer can: a) withhold payment, b) choose between repair and replacement, c) demand a price reduction, d) demand termination of contract, e) demand compensation.
	3.3	Conditions	Consumer Sales Act (LOV-2002-06-21-34) § 29 & § 30Art. 11.	Paraphrasing: "Repair of the defect or redelivery. It does not apply if the implementation is impossible or causes seller unreasonable costs. In determining whether the costs are unreasonable, particular emphasis shall be on the value of the defective good, the defects significance and whether other remedies can be implemented without significant inconvenience to the consumer."
	3.4	Free of charge	Consumer Sales Act (LOV-2002-06-21-34) § 30Art. 12.	"Repair shall be made without charge and without significance inconvenience to the consumer within a reasonable time and without the risk that the consumer does not have its expenses reimbursed by the seller."
	3.5	Reduction of the price	Consumer Sales Act (LOV-2002-06-21-34) § 31Art. 13.	Not transposed as such, meaning basically the same
	3.6	Contract rescission	Consumer Sales Act (LOV-2002-06-21-34) § 32Art. 14.	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	Consumer Sales Act (LOV-2002-06-21-34) §35Art. 15.	The claim cannot be bigger than the defect which the seller directs towards the producer. The person or persons liable against whom the final seller may pursue remedies are the producer or the business operator.
Time limits	5.1	Time period	Consumer Sales Act (LOV-2002-06-21-34) §27Art. 16, Art. 16 ¹ , Art. 16 ²	Complaints must occur no later than two years after the consumer took possession of the good. If the good or a part of the good should last considerable longer, the deadline is extended to five years.
	5.2	Defect confirmation	Consumer Sales Act (LOV-2002-06-21-34) §27Art. 17.	The deadline can never be less than two months from the time the consumer has discovered the defect.
	5.3	Reversed burden	Consumer Sales Act (LOV-2002-06-21-34) § 18 Art. 18.	Six months after delivery of good shall be deemed to have existed at the time of delivery.
Guarantees	6.1	Legally binding	Consumer Sales Act (LOV-2002-06-21-34) § 18 aArt. 19.	A guarantee is a legally binding for the guarantor under the conditions stipulated in the guarantee statement and in associated advertisement. It does not limit the consumers' rights.
	6.2	State rights and contents	Marketing Control Act (LOV-2009-01-09-2) § 23	The consumers' rights under the applicable legislation will be in addition to the guarantee and that these rights are not affected by the guarantee.
	6.3	Written contract	Marketing Control Act (LOV-2009-01-09-2) § 23	Guarantee shall be written in a clearly and an easily manner and specify: content, consumer rights, what is required to apply the guarantee, the maximum time limit for claims and which parts of the good the warranty is applicable, among others.

	6.4	Language of guarantees	Marketing Control Act (LOV-2009-01-09-2) § 23	If the consumer requests it, the consumer can receive the guarantee readable and stored on paper or other durable medium.
	6.5	Respect 6.2-4	Marketing Control Act (LOV-2009-01-09-2) § 23	If prior to agreement the marketing is directed towards Norwegian consumers, guarantee conditions shall be written in Norwegian.
Binding nature	7.1	Right restrictions	Consumer Sales Act (LOV-2014-06-20-27) § 3	Paraphrasing: "It is not permissible to reach an agreement or its conditions which are unfavourable to the consumer than what is stipulated in this Act."
	7.1	Reduced period (2nd hand)		Not transposed
	7.2	Measures of protection	Consumer Sales Act (LOV-2002-06-21-34) § 3 Art. 25.(1)	Paraphrasing: "It is not permissible that the legislation of a state outside of EEA shall be applied on a purchase agreement which has close ties to the EEA State's authority if the consumer by this receives a worse protection than under this Act."
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	Consumer Sales Act (LOV-2014-06-20-27) §62	
	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

 Articles at the discretion of the Member State (not mandatory)

Legend

-  *Rules on procedures to transpose*
-  *Recitals –at the discretion of the Member State*

1.1.3 Additional rights

The additional rights covered in the Norwegian Consumer Sales Act (LOV-2002-06-21-34) are laid out below.

Rights when a good is delayed

In case delivery is delayed by the seller, the buyer has per § 19 of the Consumer Sales Act the right to (a) withhold payment, (b) demand performance, (c) cancel the contract or (d) claim damages.

These rights are all more or less conditioned. The right to withhold payment (a) is per § 20 to be made to cover demands or obligations as a result of the delay, but the payment withheld cannot clearly exceed the amount needed to secure said demands/obligations.

The right to performance (b), while maintaining the contract, does not apply if the delay is due to an impediment the seller cannot overcome, or if overcoming this impediment involves a considerable inconvenience. It also does not apply if the cost for the seller is substantially disproportionate to the buyer's interest in having the good delivered. The right to performance is furthermore lost if the buyer waits an unreasonably long time before announcing the intention to make use of this right.

Following a delay and following a demand by the consumer to perform the delivery at a specified future time, cancellation (c) is possible if the seller fails to deliver this second time. However, this does not apply if the seller refused to deliver the good, if delivery within the specified time is a condition for entering the contract or if the buyer has notified the seller prior to entering into the contract that delivery within the specified time frame is imperative. In these cases the buyer can instantaneously cancel the contract.

As per § 24, the consumer can claim damages (d) for losses suffered following a delay by the seller. This is conditioned on the delay being the fault of the seller alone, and not due to unforeseeable events beyond the latter's control.

The consumer can furthermore claim additional damages if the seller does not alert the buyer of a delay within a reasonable time period. These claims have to relate to losses which could have been avoided had the consumer been alerted earlier.

Additional rights for non-conforming goods

As per § 28, the consumer has the right to withhold payment to cover demands or obligations relating to the non-conformity, but the payment withheld cannot clearly exceed the amount needed to secure the aforesaid demands/obligations. Following § 33, a consumer can claim for losses suffered due to the non-conformity of the good. Electricity is also covered by this and the same restrictions as per § 24 mentioned above are applicable.

Various provisions

Chapter 8 and its two paragraphs 41 and 42 deals with cancellation prior to delivery and return of goods post-delivery. In § 41 it is stated that the seller has no right to payment when the contract is cancelled by the buyer before delivery. Similarly, the buyer is not freed from payment when returning the good post-delivery.

The Consumer Sales Act, in § 17, makes use of the phrasing of the Directive art. 1.3, but in a different sense. Whereas the Directive states that Member States may exclude second hand goods from the expression consumer goods, when sold at an auction and the buyer attended in person, the Norwegian legislation provides that same rules as to non-conformity for new goods (§ 16 a. & b.) apply for used goods, "as appropriate".

Several various provisions are found in the end of the law, in chapter 12. Insolvency of either party is covered in § 56, with a reference to the provisions of chapter 7 of the Right of Settlement Act (LOV-1984-06-08-59). A breach of contract in part only by the seller is covered in § 57, stipulating that the rules previously laid out in chapter 5 and 6 apply for this part.

If the seller will deliver goods in instalments and there is a breach in regards to one instalment, the buyer may as per § 58 cancel the instalment in question. If it is furthermore likely that the same breach will occur for the following instalments, the buyer may cancel these as well if done within a reasonable time frame. Likewise, if the consumer is to pay these instalments in part as delivered and does not live up to his end of the bargain, the seller has per § 59 the right to cancel a delivery which has not been paid. If this breach of contract is likely to continue for the rest of the instalments, the seller has the right to cancel the subsequent instalments as well, if notified within a reasonable time frame.

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. When the two parties cannot reach a mutual understanding, the consumer can turn to the consumer council *Forbrukerrådet* described above, or to one out of several complaint boards. Consumer goods and guarantees are handled by the council, whereas e.g. transportation, finance, housing, electricity, etc. are handled by the specific complaints boards such as e.g. *Transportklagenemnda* and *Elklagenemnda*, the latter two being the centres for transportation and electricity respectively. The process is as follows:

- The consumer must first have complained to the seller, and have given the seller a reasonable amount of time to respond.
- A copy of the complaint is submitted to the counterpart (i.e. the seller if the complaint is being brought by a consumer).
- The consumer council will act as a neutral mediator based on applicable laws and regulations, with the disputing parties kept informed with copies of all correspondence.

Interestingly, if there is a notice of trial, litigation or collection proceedings for one of the parties, the Consumer Council may intervene to stop these proceedings while their hearing progresses. Valid complaints are accepted in paper form only and are to be sent to the secretariat. Complaints for goods of any value are accepted and the average processing time is 75 days (but this depends on complexity). The services are financed by the government and are free of charge for the consumer.⁸ The rulings of *Forbrukerrådet* are not legally binding, but are often heeded. If this ruling is not deemed sufficient, either party can bring the case to *Forbrukertvistutvalget*.

Consumer Ombudsman

Regarding market level enforcement⁹, the *Forbrukerombudet*¹⁰, (Consumer Ombudsman), is an independent administrative body with the responsibility of supervising commercial practices and exerting influence on traders to observe the regulatory framework. In this respect, the *Forbrukerombudet* carries out supervision of the Marketing Control Act as well as with certain parts of the regulatory framework governing advertising in broadcasting.

⁸Forbrukerrådet (1 May 2015). "Behandle klagen hos Forbrukerrådet ". Available at: <http://www.forbrukerradet.no/forside/kontakt-oss/klage-til-forbrukerr%C3%A5det>

⁹European Commission, National Consumer Organisations, Country Profiles, Norway (undated document) http://ec.europa.eu/consumers/eu_consumer_policy/consumer_consultative_group/national_consumer_organisations/docs/national-consumer-organisations_no_listing.pdf

¹⁰Website of the Consumer Ombudsmen, accessed 26th November 2015, <http://www.forbrukerombudet.no/>

The *Forbrukerombudet* and the Market Council have authority to issue decisions banning unlawful marketing and unfair contract terms in standard contracts when deemed necessary in the interests of consumers.

Consumer Arbitration system

Forbrukertvistutvalget is the Norwegian Consumer Disputes Commission whose objective is “to provide fast, costless and reliable decisions in consumer disputes”. Unlike issues dealt with in the consumer council, the rulings here are legally binding. Matters can be brought to the commission only after having been treated in the aforementioned council, still free of charge for the consumer.¹¹ The consumer disputes commission is, in essence, comparable to a court, and its chairman is required to have a law-degree. The other members of the commission represent the interests of consumers and businesses. If either party of a dispute so wishes, they can try to take the ruling of the commission to the regular court system.

Cases

Several rulings of *Forbrukertvistutvalget* are available online. The case described in box 1 deals with the sale of a used car.

Box 1: Commission ruling on lack of conformity of goods¹²

Case 14/1478 on a used car claimed to be non-conforming

The buyer acquired a used 2002 VW Polo 1.4 that had gone 65 000 km upon purchase for NOK 65 000. It was sold by the sole proprietorship fully tied to the personal social security number of the seller. The car came with a used car guarantee valid for three months. Shortly after usage commenced, the car started presenting issues. It was sent for repair repeatedly. For some issues which surfaced in February, the seller offered to cover the expenses only in part, seeing as the guarantee period based on the time of purchase had expired. The buyer rejected this offer and demanded full compensation. As an agreement could not be reached, the case was brought to the consumer council. The council was unable to reach an agreement, leading to the buyer bringing the case to the consumer disputes commission.

Since the seller operated within its sole proprietorship, the Consumer Purchase Act applied. The guarantee was valid from the day of handover, not purchase, and the car was registered with the buyer in November, meaning the guarantee period started then and was valid most of February. Still, the buyer did not base the case on the guarantee, so the commission evaluated the case based on the Consumer Purchase Act. Even if sold used and in “its current state”, the good can still be non-conforming. Based on all the different issues presented, which the seller did not dispute nor made clear beforehand, the commission ruled that the car was non-conforming and ordered the seller to cover all expenses.

¹¹Forbrukerrådet (1 May 2015). “Behandle klagen hos Forbrukerrådet “. Available at: <http://www.forbrukerradet.no/forside/kontakt-oss/klage-til-forbrukerr%C3%A5det>

¹²Forbrukertvistutvalget (2014). “Benedicte Staum Hogstad - Turid M. Ljosland (Bruktbilcompagniet)”. Available at: http://innsyn.e-kommune.no/innsyn_ftu/wfdocument.aspx?journalpostid=2015005176&dokid=185433&versjon=1&variant=P&

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