



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

Country fiche: Sweden

EUROPEAN COMMISSION

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1. Sweden

1.1 Regulatory background

This section describes the transposition of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees in Swedish legislation. The Directive was transposed into Swedish legislation through government bill 2001/02:134¹, which was later adopted by the Swedish Parliament and entailed subsequent amendments to: the Consumer Sales Act (1990:932)², the Consumer Services Act (1985:716) and the Marketing Act (2008:486).³

The amendment to the Consumer Sales Act meant the introduction of a new rule whereby defects which appear within six months after the delivery of the goods shall be deemed to have existed at the time of the delivery unless otherwise displayed or if it is incompatible with the type of the good or the defect. This is a requirement which is stipulated in Directive 1999/44/EC and means that the burden of proof falls on the consumer after the six month time period. Further amendments entailed that upon purchase the buyer is to be covered by property law protection against the seller's creditors. This is particularly important if the seller would, for example, end up in insolvency. To receive such a protection, it is no longer required that the consumer has received the goods in his possession.⁴

In the case of both the Consumer Sales Act as well as the Consumer Services Act, amendments were imposed on the provision on the claim period in order to be in conformity with the requirement of article 5.2 in Directive 1999/44/EC: the new dispositions meant that complaints completed within two months after the consumer has detected a defect shall be regarded as made in a "timely manner". Moreover, further amendments on both Acts entailed that the manufacture of "loose items"⁵ exclusively will have their regulation in the Consumer Sales Act.

Amendments to the Marketing Act entailed a new provision under which a warranty must contain some specified information presented in a document or in any other durable medium.⁶

1.1.1 Transposition of Directive 1999/44/EC

The state of the transposition of Directive 1999/44/EC in the Swedish legislation can be considered completed as the amendments to the above Acts entered into force 1 July 2002.⁷ Table 29 in the forthcoming pages shows how each article has been accommodated in Swedish legislation. There are some departures from the original

¹ Accessed on 26th November at http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/ndringar-i-konsumentkoplagen_GP03134/?text=true

² The Consumer Sales Act (Konsumentköplag) 1990:932. Accessed 26th November at: <https://lagen.nu/1990:932>

³ The Marketing Act (Marknadsföringslag) 2008:486. Accessed 26th November at: <https://lagen.nu/2008:486> English version accessed on 26th November at http://www.wipo.int/wipolex/en/text.jsp?file_id=236789

⁴ The Consumer Sales Act (Konsumentköplag) 1990:932. Accessed 26th November at: <https://lagen.nu/1990:932>

⁵ According to government bill 2001/02:136 p.22-23, "loose items", as defined in the Consumer Sales Act (1990:932), is regarded to be the equivalent wording of the term "consumer goods" as written in article 1.2 in Directive 1999/44/EC.

⁶ The Marketing Act (Marknadsföringslag) 2008:486. Accessed 26th November at: <https://lagen.nu/2008:486> English version accessed on 26th November at http://www.wipo.int/wipolex/en/text.jsp?file_id=236789

⁷ Website of the Swedish Parliament, 'Betänkande 2001/02:LU33 Ändringar i konsumentköplagen'. Available at: <http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Arenden/200102/LU33/>

provisions at the EU level: this refers to the definitions, the regulation for the remedies and the claiming periods that the Swedish law establishes.

Definitions

All definitions contained in Article 1 of Directive 1999/44/EC have been transposed into Swedish law. However, the concept of “producer” does not have a verbatim equivalent in Swedish law. Instead, there is a similar equivalence that the Swedish government considers to be in conformity with the definition in Directive 1999/44/EC and thus has not suggested any amendments in the Swedish legislation. In the Consumer Sales Act (1990:932), the concept of “producer” is defined as “someone other than the seller in previous sales link”⁸ or “trader in the previous sales link”⁹.

“Consumer” is defined as “a natural person acting primarily for purposes which are outside business or sales link” and “seller” is defined as “a natural or legal person who is acting for purposes relating to their own business operations”.¹⁰ Both of these concepts were adopted by Swedish legislation in order to be in conformity to Directive 1999/44/EC.

The Swedish government makes the judgement that the concept of “consumer goods” contained in the Directive shall not be adopted into Swedish legislation because it would lead to a deterioration in prevailing consumer protection, which is against EU Treaty. In the Swedish definition of “consumer goods” contained in the Consumer Sales Act (1990:932) §1, the concept is extended to also include water and liquids while Directive 1999/44/EC specifically exempts those.

Remedies

The remedies are more extensively legislated in the case of Sweden relative to the provisions of Directive 1999/44/EC. In accordance with the Directive, the Swedish legislation also retains the hierarchy between remedies. Paragraph 22 in the Consumer Sales Act¹¹ contains the catalogue of consumer rights in case of remedy.

Paragraph 26 in the Consumer Sales Act specifies the right to have a good repaired or replaced. The consumer can demand that the seller repairs or replaces a good if it can be done without inducing unreasonable cost or inconvenience for the seller. In determining if having the good repaired or replaced would cause unreasonable costs for the seller, the significance of the defect and the value the good if without defect is taken into consideration.

In the Consumer Sales Act §28, the consumer is entitled to reimbursement for the cost of repairing the defect to the extent this cost is not unreasonably high or covered by the consumer obtaining a price reduction. In §29 of the same Act, the consumer may cancel the purchase (and be refunded if having already paid) if the defect is of significant importance to the consumer. This goes beyond the Directive which specifies that the consumer may not cancel an agreement if the defect is small. Hence, according to Swedish legislation, the consumer may decide whether a defect has a significant

⁸ The Consumer Sales Act (Konsumentköplag) 1990:932. Accessed 26th November at: <https://lagen.nu/1990:932>

⁹ The Consumer Sales Act (Konsumentköplag) 1990:932. Accessed 26th November at: <https://lagen.nu/1990:932/>.

¹⁰ The Consumer Sales Act (Konsumentköplag) 1990:932. Accessed 26th November at: <https://lagen.nu/1990:932>

¹¹ The Consumer Sales Act (Konsumentköplag) 1990:932. Accessed 26th November at: <https://lagen.nu/1990:932>

importance to himself, whereas the Directive focuses on the severity of the defect from a “neutral” point of view.¹²

Also, although the specific article on final seller liability was not transposed by the Swedish Government, the Swedish consumers can pursue other parties in the supply chain if the final seller is insolvent, has ceased trading, or cannot be located¹³.

Claiming periods

In conformity with the Directive, §23 in the Consumer Sales Act specifies that a consumer has to inform a seller within a reasonable time frame. Any notice given within a period of two months after the consumer has discovered the defect is deemed to be reasonable.

Paragraph 20a in the Consumer Sales Act stipulates that a defect detected within six months after the goods were delivered shall be deemed to have existed at the time of delivery, unless otherwise shown or if it is incompatible with the good or the defect.

Recital 17 in Directive 1999/44/EC leaves to the discretion of Member States to decide on an upper limit for the duration of statutory rights. In Sweden, however, the consumer is entitled to the right to claim for non-conformity for maximum three years. The Directive stipulates that a minimum period of two years shall count from the time of *delivery* of a good. However, in the Consumer Sales Act §23, the minimum period of three years counts from the time the consumer has *received* the good.

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 Swedish legislative system. All 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”).

¹² See the reference to the minor defect in the country fiche for Sweden by ECC net, accessed on 26th November at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_SE.pdf

¹³ ECC net, accessed on 26th November at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/country_fact_sheets/Country_fiche_SE.pdf

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

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Consumer Sales Act (1990:932), §1	Expanded explanation on the nature of the transaction between a buyer and a seller, and what includes in the objectives of the Act.
	1.2.a	Def. Consumer goods	Consumer Sales Act (1990:932), §1	Direct definition also included in: Marketing Act (2008:486) §3 and Consumer Services Act (1985:716) §1a
	1.2.b	Def. Consumer	Consumer Sales Act (1990:932) §1	Government has not included the definition contained in the Directive as Swedish legislation goes beyond the definition and includes also water and liquids. Please see government bill 2001/02:134, p.35-40 for further elaboration.
	1.2.c	Def. Seller	Consumer Sales Act (1990:932), §1	Shall be regarded as the counterpart of “consumer” in Swedish legislation – see government proposition (1990:932), p.41-43 for more information. Similar definitions are also included in: Marketing Act (2008:486) §3 and Consumer Services Act (1985:716) §1a.
	1.2.d	Def. Producer	Consumer Sales Act (1990:932), §19 & §46	The Swedish government deems unnecessary to define this term in accordance with the definition contained in EU Directive 1999/44/EC. Please consult government bill 2001/02:134, p.43-44 for in-depth analysis.
	1.2.e	Def. Guarantee	Consumer Sales Act (1990:932) §21	It discusses the consequence of guarantee etc. however, the government deems unnecessary to further define this term. Please consult government bill 2001/02:134, p.43-44 for in-depth analysis.
	1.2.f	Def. Repair		
	1.3	Exclusion second hand	Consumer Sales Act (1990:932) §17 &	Provision not transposed
	1.4	Contracts of sale types	Consumer Sales Act (1990:932) §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	Consumer Sales Act (1990:932) §16	“The good is to, in terms of type, quantity, quality, other attributes and packaging, conform with what is stated in the contract”.
	2.2	Good conformity	Consumer Sales Act (1990:932), §16	Additionally, §16 stipulates that the good shall be regarded defective also if it in any other respect deviates from what the consumer reasonably could expect.
	2.3	Lack of conformity	Sales Act (1990:931), §16	Not a direct provision but an equivalent.
	2.4	Seller statements	Consumer Sales Act (1990:932) §19	<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	Consumer Sales Act (1985:716), §16 a	Not a direct provision but an equivalent.
Rights of the consumer	3.1	Liability	Consumer Sales Act (1990:932), §20	<i>Direct transposition</i> - Establishes that the seller is liable for any lack of conformity which exists at the time the good is delivered

	3.2	Remedies	Consumer Sales Act (1990:932), §22	Direct transposition. In addition the Swedish law mentions the right to withhold payment.
	3.3	Conditions	Consumer Sales Act (1990:932), §26	<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	Consumer Sales Act (1990:932), §26	<i>Direct transposition</i> - "Free of charge" referring to the necessary costs incurred to bring the goods into conformity, including postage
	3.5	Reduction of the price	Consumer Sales Act (1990:932), §28	<i>Direct transposition</i> - Right to price reduction or contract rescission if the consumer is not entitled to the other remedies, or if the seller has not completed them within a reasonable time or without significant inconvenience to the consumer
	3.6	Contract rescission	Consumer Sales Act (1990:932), §29	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	No legislation	The government deems unnecessary to include this article into Swedish legislation
Time limits	5.1	Time period	Consumer Sales Act (1990:932), §23	<i>Direct transposition</i> - The seller shall be held liable if the lack of conformity becomes apparent within two years from delivery of the good
	5.2	Defect confirmation	Consumer Sales Act (1990:932), §23	<i>Direct transposition</i> - In order to claim, the consumer must inform the seller of the lack of conformity within a period of two months (also obligations by Member States and the Commission in the execution and monitoring of this)
	5.3	Reversed burden	Consumer Sales Act (1990:932), §20 a	<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	Consumer Sales Act (1990:932), §21	<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	Marketing Act (2008:486) §22	<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	Marketing Act (2008:486) §22Art. 21.(1)	<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	Marketing Act (2008:486) §22-	The government deems unnecessary to enact further legislation as it makes the judgement that it is covered by §22 in Marketing Act, which stipulates, like the Directive, that the guarantees should be explained in "plain intelligible language".

	6.5	Respect 6.2-4	Consumer Sales Act (1990:932), §21 Art. 21.(2)	The government makes the judgement that it is a natural consequence that whoever issues a guarantee also respects its issuance.
Binding nature	7.1	Right restrictions	Consumer Sales Act (1990:932), §3 Art. 22.	<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.
	7.1	Reduced period (2nd hand)	Consumer Sales Act (1990:932), §3 Art. 22.	<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	Consumer Sales Act (1990:932), §48 Art. 25.(2)	<i>Direct transposition</i> - Consumers are not to be deprived of the protection afforded by this legislation if the contract opts for the law of a non-member 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	Consumer Sales Act (1990:932), §23	
	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

	<i>Rules on procedures to transpose</i>
	<i>Recitals –at the discretion of the Member State</i>

1.1.3 Additional rights

The additional rights available to Swedish consumers are mainly contained in the Consumer Sales Act (1990:932) and the Marketing Act (2008:486). While the former Act regulates the relation between consumer and sellers, the latter focuses on commercial practices and advertising as well as on constraining aggressive marketing practices.

Right of information

The following list displays §22a in the Marketing Act (2008:486) which relates to the requirement of the information provided to consumers and users to be clear and comprehensive:

- The name and telephone number and the company's street address and email address.
- The principal characteristics of the extent appropriate to the product and how the information is provided.
- The price of the product, including taxes and duties or if the price cannot be given in advance, how the price is calculated.
- The cost of delivery or postage and other subsequent costs.
- Terms of payment and delivery or performance in some other way and the time of delivery or performance.
- The right of the consumer to make a complaint under the law and how complaints can be made.
- Warranties or similar obligations as well as the assistance and service that comes after the sale.
- The term of the contract.
- The conditions for terminating the agreement, if it is valid until further notice or renewed automatically
- The functions of digital content, including technical precautions, and the hardware and software required to use the digital content.

The right of information does not apply if the information is indicated by the context. Other exemptions include “everyday contracts” (e.g. purchase of groceries and regular clothing items) that are “performed immediately”, meaning that that the item is paid for at once and that the consumer takes the item with them at the time of the purchase.¹⁴

Right of withdrawal

A Swedish consumer has the right of withdrawal if a seller significantly delays the delivery of a product vis-à-vis the consumer's needs. The consumer may also withdraw if, prior to entering the contract, the seller has been informed that the delivery of the good must be on a certain day at the latest and that this time of delivery is decisive for the consumer to enter into the agreement.¹⁵

For distance and off-premises contracts, the maximum time period for the right of withdrawal is 14 days and it starts when the consumer receives the good. The consumer must notify the seller regarding the withdrawal within those 14 days. Prior to an agreement, the seller must inform the consumer how and under which conditions there is

¹⁴ The Marketing Act (Marknadsföringslag) 2008:486. Accessed 26th November at: <https://lagen.nu/2008:486>
English version accessed on 26th November at http://www.wipo.int/wipolex/en/text.jsp?file_id=236789

¹⁵ The Consumer Services Act (Konsumenttjänstlag) 1985:716. Accessed 26th November at: <http://www.notisum.se/rnp/sls/lag/19850716.HTM>

a right of withdrawal, how the right of withdrawal is applied and that there is a standard form for the application of the right of withdrawal which the consumer can partake of.¹⁶

1.2 Enforcement and redress

In case of a problem with a consumer good, the Swedish Consumer Agency directs consumers to first address their claim to the seller. If no settlement has been reached, the consumer can complain at the National Board for Consumer Disputes. If a settlement is not reached there too, the consumer can take the case to the Court of Justice.

Consumer Arbitration system

The National Board for Consumer Disputes (ARN) is a public authority that functions similar to a court. Their principal task is to impartially try disputes between consumers and sellers, and to submit recommendations on how disputes should be resolved. It received 11 396 complaints in 2014, Up from 11 301 in 2013, which in turn was a decrease from 11 531 in 2012.¹⁷ Albeit not binding, the Board's recommendations are followed by a majority of companies. The arbitration process, which is free of charge, usually takes about six months from when the claim has been made to arriving to a decision. The Board's inquiry is normally limited to contracts that are entered into in Sweden. The Board asks the seller to provide an opinion on the consumer's claim and similarly, the consumer has an opportunity to comment on the seller's opinion. Both parties have the right to submit complementary evidence in written form, such as certificates or contracts of some sort.¹⁸ In accordance with the Marketing Act (2008:486) §22, the complaint shall be made in writing¹⁹.

A claim to ARN must be made within six months of the first time the seller rejects a complaint in part or in whole, or if the seller does not respond to the complaint at all. In addition, it also depends on the value of the good, with the limit of:²⁰

- 500 SEK: for Shoes, Textiles (Clothing/Household) and General Goods²¹.
- 1,000 SEK: Electronics, Motor Vehicles, Travel, Textiles (Furniture) or Laundry Services.
- 2,000 SEK: Banking, Housing, Boating or Insurance Policies.

All submitted information will be handled according to Swedish law and will be publically accessible upon demand. Consumers that have come into conflict with a seller in an EU country can turn to their European Consumer Centre for advice and assistance.²²

There are 17 arbitration cases in regards to §21 in the Consumer Sales Act, which deals with guarantees for consumer goods in Sweden.²³

¹⁶ Lag (2005:59) om distansavtal och avtal utanför affärslokaler, §2, §10 & §12. Accessed 26th November at: https://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Distans--och-hemforsaljningsla_sfs-2005-59/.

¹⁷ The National Board for Consumers Disputes, 'Annual Report 2014'. Available at: <http://www.arn.se/globalassets/extern/arsredovisningar/allmanna-reklamationsnamndens-arsredovising-2014.pdf>

¹⁸ The National Board for Consumer Disputes, 'What is ARN?'. Available at: <http://www.arn.se/other-languages/english-what-is-arn/>. Last viewed: 27 March 2015.

¹⁹ Available at: https://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs_sfs-2008-486/.

²⁰ The National Board for Consumer Disputes, 'What is ARN?'. Available at: <http://www.arn.se/other-languages/english-what-is-arn/>. Last viewed: 27 March 2015.

²¹ General goods are defined as "goods and services that do not belong to any other category, e.g. sporting goods, timepieces, optics, removal assignments".

²² The National Board for Consumer Disputes, 'What is ARN?'. Available at: <http://www.arn.se/other-languages/english-what-is-arn/>. Last viewed: 27 March 2015.

²³ Please see §21 at: <https://lagen.nu/1990:932>.

Court settlements

If a claim is not settled by the recommendation of ARN, the consumer and/or the seller also have the right to claim through a court.

Cases

There have been several arbitration cases and a lesser number of court cases dealing with conflicts in regards to guarantees for consumer goods in Sweden. Court case NJA 2013 referenced sections §20, §20a and §21²⁴ of the Consumer Sales Act (1990:932) in regards to burden of proof and evidence requirements. The court case was settled at the Swedish Supreme Court on 13 June 2013; the burden of proof fell on the seller and not on the consumer, as no one could determine if the defect happened before or after the time of delivery.²⁵ This ruling was important for future court cases as it limited the ambiguity involved in the legislation and in particular, §20 in the Consumer Sales Act, which involved 15 arbitration cases and one Supreme Court case.

Box 1: Court case on defect on good at the time of delivery, Ekstrand vs. A.S.²⁶

A week after a purchased door had been delivered to the consumer (A.S.), the consumer detected that while carrying the door to the house for installation, that the door had been damaged.

Ekstrand & Sons Aktiebolag (Ekstrand) is engaged in the manufacture and sale of doors and windows. In June 2007, A.S. ordered two exterior doors from Ekstrand. The doors were delivered on 5th October 2007 by the shipping company DHL. A.S. exhibited a power of attorney to the effect that DHL was able to deliver the goods without her quittance and signature. On 14 October, A.S. reported that one of the doors were damaged in such way that it was a hole in the lower part of the door with a diameter of approximately 3-4 cm and a depth of 1 cm.

This case became of an issue of burden of proof and standard of proof. The principal matter in this case was: when did the defect happen?

The court's judgement was that it could not be proven in a clear way that the damage was caused after the time of the delivery. Consequently, the district court judged that A.S. shall pay 14,200 SEK for the door and compensation for the delay.

A.S. opposed the verdict and the case went to the Court of Appeal which subsequently changed the verdict. Instead, Ekstrand had to deliver a new door to A.S. for a payment of 14,200 SEK, which was the original price. The reason for this verdict was that Ekstrand had to rely on secondary information to confirm how and when the delivery had occurred. As such, this secondary information does not exclude that the damage could have happened during delivery.

Ekstrand opposed the verdict and the case went to the Supreme Court, which confirmed the verdict of the Court of Appeal. The seller in this case, Ekstrand, had to rely on secondary information as DHL was in charge of delivering the doors whereas A.S. information was regarded as primary as A.S. detected the damage when transporting the door to the house of installation.

²⁴ Dealing respectively with the concepts of liability, reversed burden of proof, legally binding nature and definition of a guarantee

²⁵ NJA 2013, p.524. Available at: <https://lagen.nu/dom/nja/2013s524>.

²⁶ NJA 2013, p.524. Available at: <https://lagen.nu/dom/nja/2013s524>.

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