

Policy Department Economic and Scientific Policy

Consumer experience of legal guarantees

Transposition and implementation of the two year guarantee contained in the Sales Directive

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EXECUTIVE SUMMARY

Understanding how consumers use protection rights provided by EU legislation is essential for the monitoring of how legal tools work in practice, and therefore how and whether these tools need to be improved to be more responsive to consumer needs.

Problems with goods that are defective, or do not conform to the description of the contract, are one of the main reasons for consumer complaints, and also cause large financial and other detriment, both for individual consumers and for the economy as a whole.

The Consumer Sales Directive (1999/44/EC) gives EU consumers the right to demand that sellers repair, replace, reduce the price or have the contract cancelled (and money refunded) when the goods they buy are defective, do not fit for purpose, or do not comply with the original description. These rights apply if the fault becomes apparent within two years from delivery of the goods. They are commonly known as two-year warranty rights, or legal guarantee.

This study was tasked to investigate the level of consumer awareness of their warranty rights, to what extent consumers exercise these rights, as well as their experiences when using them, as implemented in their countries. The study focuses in particular on Article 3 and 5 of the Directive, on time limits and on the remedies available to consumers. It looks at the available evidence Europe-wide, and examines through original qualitative research experiences in three Member States – Italy, Poland and the United Kingdom.

Overall the study found a large degree of similarity between consumer awareness and consumer experiences when claiming their legal guarantee rights in the three Member States examined. There were also differences, particularly in the degree of expectations for various remedies available and trader behaviour. The study also found that empirical research on consumer experiences of legal guarantees is very inadequate, making it difficult to provide an evidence base for better regulation in this area.

The main conclusions of this study include:

- ❑ Consumer awareness of their rights is generally low. Consumers know they have rights when they buy faulty goods; however they do not know exactly what the rights are, both in terms of specifics of time limits, remedies they are entitled to, or whom they can claim against. They confuse legal guarantee rights with commercial guarantees provided by manufacturers and are also highly influenced by retailers' voluntary customer service policies. Consumers may over-estimate, as well as under-estimate their rights. There were also some apparent differences between consumers in the three countries examined, for example UK consumers had higher expectations and knowledge of the right to reject goods as a remedy of first instance;
- ❑ There are varied experiences of trader behaviour. In all three countries examined consumers take back goods to the seller, but are reluctant to pursue a complaint if the seller does not solve the problem, particularly for low value goods, due to the stress involved. Reaction and attitudes of traders vary widely in the three countries examined: in Italy consumers are directed (often in person) to producer repair centres where the remedy is decided. In Poland sellers drive consumers to claim on commercial guarantees; replacements are offered only after multiple repairs have failed. UK research suggests a variety of experiences for consumers, though often without a satisfactory, or expected outcome. There seems to be a wider choice of remedies on offer, including replacement and refund;

- ❑ There is strong evidence from the research that in practice the choice of remedies for faulty goods is up to the traders, so consumers do not have an effective choice of remedies as the law requires;
- ❑ There is little statistical evidence on consumer action regarding guarantee rights. Apart from one question in the Eurobarometer survey and ECC advice centres network cross-border data on cases, there is no EU-wide comparable research data, and only one of the countries examined, the UK, had comprehensive survey data on consumer action and its results when returning faulty goods;
- ❑ The proposal for a new Directive on consumer rights, published by the Commission, includes significant reform of the Consumer Sales Directive. Based on the evidence of our research, there are gaps that will need to be addressed to make policy dealing with remedies for faulty goods deliver better outcomes for consumers.

Recommendation to improve consumer intelligence

- ⇒ *More detailed pan-EU comparative research data* is needed, such as market studies, tracking specific consumer experiences, ‘mystery shopping’ and so on. This to include not only numbers of consumers who take action, but more meaningful breakdowns to help the legislative and enforcement process, such as economic detriment, sectors affected, remedies achieved and general trade compliance. Such studies can be carried out through the Consumer Scoreboard.

Recommendations to help improve consumer awareness

- ⇒ *Put obligations on sellers to inform buyers of their legal rights*, just as they do for commercial guarantees. This could be achieved by developing simple easily remembered messages to be included e.g. on receipts, or point of sale, or on packaging;
- ⇒ *Write plain-language legislation that is easy to understand and interpret*, therefore more actionable for consumers.

Recommendations to improve consumer rights delivery

- ⇒ *Define the terms ‘reasonable time’ for repairs and ‘significant inconvenience’ in the legislation*, for the provision of repair or replacement of the goods, by specifying a maximum period, as well as the maximum number of repairs that should be carried out before a product is replaced;
- ⇒ *Introduce a right to refund for faulty goods as a first tier remedy*, or make all remedies available in the first instance, without a two-tier system. This would drive up trader standards and voluntary services, as well as improve consumer confidence and expectations;
- ⇒ *Make contracts that include both service and goods* (e.g. navigation systems or broadband bundles) part of the legal guarantee provisions, as the two depend on each other;
- ⇒ *Vary legal guarantee terms according to product categories*, as products vary considerably in their useful life expectancy and for some, such as home construction materials, may not show latent faults for considerable time;
- ⇒ *Consider extending responsibility for lack of conformity to producers, as well as sellers*. This would be particularly valuable when consumers buy expensive items and live far away from the point of sale, so that they cannot easily claim the legal guarantee against the seller (for instance, in cross-border purchases). In these cases, it might be easier for the consumer to contact the service point or representative of the producer.

1. INTRODUCTION AND BACKGROUND

Understanding how, and whether, consumers are able to use their rights under EU-wide consumer protection legislation is an essential pre-requisite for the monitoring on how legal tools work in practice, and therefore how, and whether, these tools need to be improved to be more responsive to consumer needs. Consumers who are confident to claim their rights drive the markets to work more effectively.

This was one of the main conclusions of the Commission's communication on the single market review. As the Consumer Markets Scoreboard¹ launched last year states: "... more attention needs to be paid to the final outcomes affecting EU citizens, and not just to the legal tools. Policies need to be more evidence based and outcome-oriented".

1.1 Consumer detriment due to faulty goods

Problems with goods that are defective, or do not conform to the description in the contract, are one of the main reasons for consumer complaints, and also cause large financial and other detriment, both for individual consumers and for the economy as a whole.

For example, recent research in the UK estimates that a third of all country's consumers experience problems with defective goods and substandard services, amounting to a total estimated financial loss to the country's population of £6.6 billion per year (8.4 billion Euro at the time of the study). Although the greatest proportion of this is generated by problems in the professional and financial sectors (46%), loss related to faulty goods is still a large proportion and amounts to many millions of Euros. Such problems also cause wasted time, anger, stress and additional expense; consumers in lower social grades experience greater effects, both in terms of ability to spend on other items, and in terms of stress².

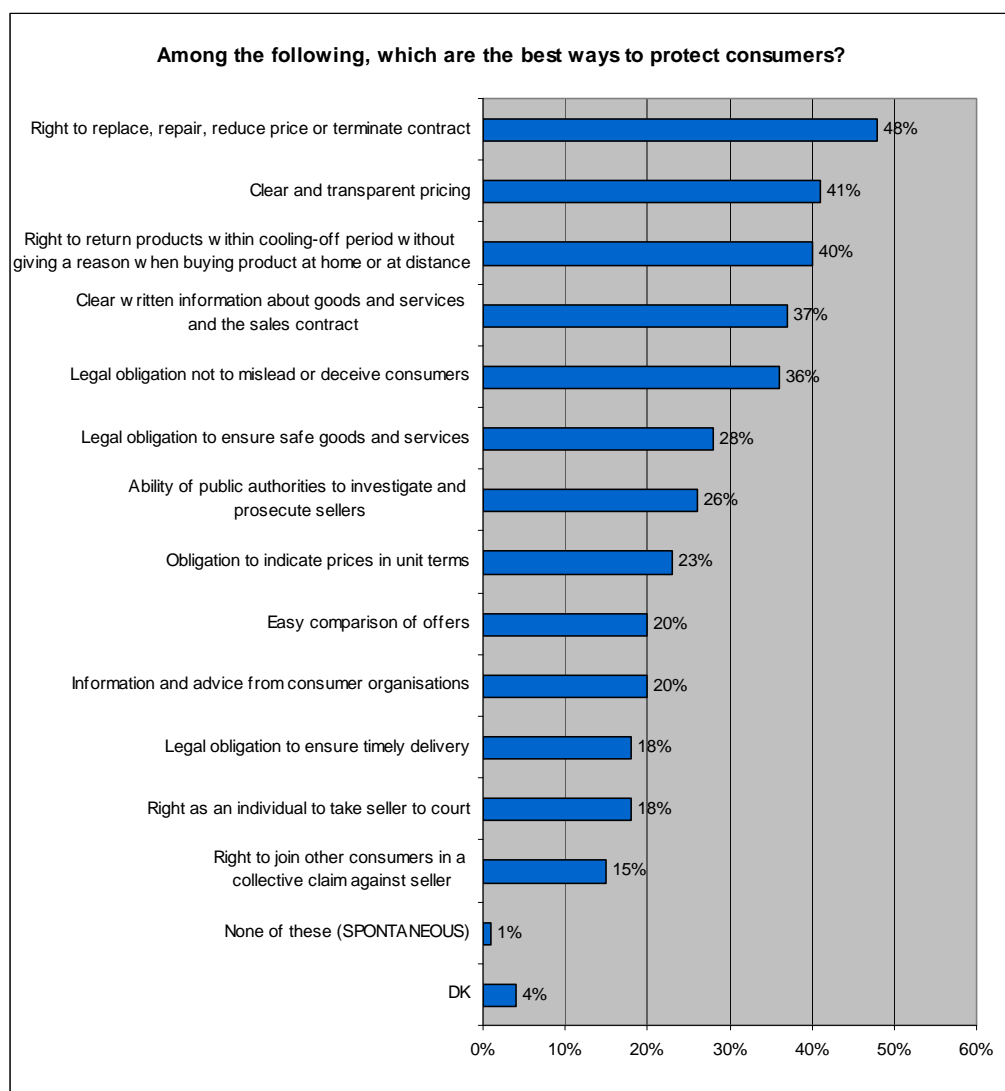
EU-wide, consumers consider their right to 'cure, or remedy, the problem' effectively when a faulty product is bought as the best way to be protected³. Support for such measures has increased by 13% since the last Eurobarometer survey in 2006. The results of the survey are presented in the following graph.

¹ The Consumer Markets Scoreboard, Health & Consumer Protection Directorate-General, European Commission, 2008, page 7.

² Consumer Detriment: Assessing the frequency and impact of consumer problems with goods and services, Office of Fair Trading, April 2008, http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft992.pdf. The report found that total detriment due to problems with 'House fittings and appliances' was 24% of the total, household appliances 5% and personal goods and services 1%; time spent rectifying the problem, welfare effects and psychological effects proportionally increase with financial detriment levels. Section 4, page 22 and section 5, page 46.

³ Special Eurobarometer 298, Consumer Protection in the Internal Market, 2008, QC 19, page 76.

EU consumer's preferences concerning ways of consumer protection



Source: Special Eurobarometer 298 on Consumer Protection in the Internal Market, Oct 2008

1.2 Focus of this study

In 1999 the Commission has adopted Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (the Consumer Sales Directive, or CSD). Under the provisions of this Directive, in cases of non-conformity of the goods with the contract of sale, consumers are entitled to have the goods 'brought into conformity'⁴, through replacement, repair, price reduction or rescission of the contract, free of charge and within a period of two years. This is variously known as two-year warranty right, or a legal guarantee (see section 1.3 for more details).

This study focuses on Articles 3 and 5 of the CSD, specifically on the two-year warranty, and the remedies available to consumers. Its overall objective is to evaluate to what extent consumers currently exercise the rights provided in the Directive, drawing on the experiences from a selection of three Member States – Italy, Poland and the United Kingdom.

⁴ Art 3(2).

Specifically, the study aims to address the following questions:

- Is it possible to assess the level of consumers' awareness of the warranty right provided by the Directive, as implemented in their own countries? Are they able to distinguish between this and other voluntary guarantees which may be provided by traders and/or producers. And how do consumers perceive this right?
- Are consumers able to distinguish between the warranty, or guarantee, provided by the law, commercial guarantees which may be offered by producers, and other customer service policies, which may be offered by retailers on a voluntary basis?
- In cases of lack of conformity of goods to their contract, is it possible to estimate how many consumers attempt to exercise their rights under the CSD? And how are they able to claim against manufacturers or other agents in the distribution system?
- How do sellers react when consumers attempt to exercise their warranty rights?
- Do consumers have effective choice between the different remedies offered by the Directive? And what would be the remedy favoured by consumers and traders?

Answers to these questions are significant when considering the proposal for a new Directive on consumer contracts, published by the Commission in October 2008⁵, which includes reform of the CSD. The proposed Directive is a maximum harmonisation measure, which would mean that Member States would not be able to require through national legislation improved rights in any area within the scope of the directive. This could result in reductions to existing consumer rights regarding faulty goods in a number of Member States that have “made use of the minimum harmonisation clause and have introduced variations to the benefit of consumers”.⁶ It is therefore important to consider the available evidence concerning the current situation in this particular area, which is at the core of the business-to-consumer relation.

A note on terminology

As found in the course of research for this study, there is a lot of confusion in terminology when describing legal (or statutory) rights under the sales of goods legislation and product guarantees (or warranties) that may be offered voluntarily by traders or producers. For clarity throughout the study the former are described as legal guarantees, while the latter are described as commercial guarantees.

1.3 Implementation of the Consumer Sales Directive in three Member States examined

Goods covered by the Consumer Sales Directive (CSD) are defined as any tangible movable item. Water and gas, if not for sale in a limited volume, and electricity, are not considered as goods⁷.

Goods bought by the consumer must comply with the description given by the seller, be fit for purpose and show the quality and performance that a consumer can reasonably expect. This is defined as ‘conformity with the contract of sale’⁸. Installation of the goods – for example of a washing machine or a boiler – also comes under the provision of the Directive, if this forms part of the original contract of sale and under the responsibility of the seller.

⁵ COM (2008) 614/3.

⁶ Communication from the Commission on the implementation of Directive 1999/44/EC, COM(2007) 210.

⁷ Art 1(2b).

⁸ Art 2(1, 2).

The same applies when things go wrong due to incorrect instructions for installation by the consumer (for example a piece of flat-packed furniture)⁹.

For the purposes of this study, the key provisions on consumer rights and remedies are contained within the Articles 3 and 5 of the CSD¹⁰ (see box below).

Key provisions of the Consumer Sales Directive

Article 3: Rights of the consumer

1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered.

2. In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, in accordance with paragraph 3, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods, in accordance with paragraphs 5 and 6.

3. In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case free of charge, unless this is impossible or disproportionate.

A remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account:

- The value the goods would have if there were no lack of conformity,
- The significance of the lack of conformity, and
- Whether the alternative remedy could be completed without significant inconvenience to the consumer.

Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

4. The terms "free of charge" in paragraphs 2 and 3 refer to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.

5. The consumer may require an appropriate reduction of the price or have the contract rescinded:

- If the consumer is entitled to neither repair nor replacement, or
- If the seller has not completed the remedy within a reasonable time, or
- If the seller has not completed the remedy without significant inconvenience to the consumer.

6. The consumer is not entitled to have the contract rescinded if the lack of conformity is minor.

Article 5: Time limits

1. The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. If, under national legislation, the rights laid down in Article 3(2) are subject to a limitation period, that period shall not expire within a period of two years from the time of delivery.

2. Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity. [...]

3. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.

Article 3 on the rights of the consumer states the remedies, which must be available when there is lack of conformity in the goods. There are two tiers of remedies: In the first place, the consumer 'may require' the seller to repair or to replace the goods.

⁹ Art 2(5).

¹⁰ Directive 1999/44/EC of the European Parliament and of the Council of 24 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

If repair or replacement are not possible, or cannot be provided within ‘a reasonable time’ or without ‘significant inconvenience’ to a consumer, then the consumer can ask for price reduction or rescission of the contract (unless the defect is minor). All this must be completely free of charge to the consumer¹¹.

Article 5 on time limits states that a seller is to be held liable for a lack of conformity within two years of delivery of the good; any fault that becomes apparent within the first six months from delivery of the goods is presumed to have existed at the time of delivery¹². Thereafter it is up to the consumer to prove that the fault was ‘latent’, or present in the product at the time of purchase. There is also an option for Member States to put an obligation on the consumer to inform the seller about the product fault within 2 months of its discovery¹³.

Of the three countries under consideration, Italy and Poland have adopted the provisions in Articles 3 and 5 of the CSD with some minor variations. In the UK both the choice of remedies available to consumers and the time limits on seller’s liability go further than the minimum prescribed by the Directive¹⁴.

In Poland, the Act of 27 July 2002 is more or less a translation of the CSD, and accordingly amendments were made to the existing Civil Code. This previously provided consumers with the right to withdraw from the contract and get re-imbursement in case of a faulty good¹⁵. This “right to reject”¹⁶ no longer applies.

The situation is similar in Italy, where the remedies prescribed by Article 3 of the CSD were adopted within the new consumer code in 2005. Under the previous Civil Code provisions, Italian consumers could choose rejection of the contract and refund of all costs incurred, provided they notified the vendor within 8 days of discovery of any defect¹⁷. These rights no longer apply under the new consumer code.

Both in Italy and in Poland, consumers have to notify the lack of conformity to the retailer within two months after discovering it. If the retailer rejects the complaint, Poland’s legislation also sets out that a consumer can enforce his/her rights only within one year after discovery.

In the United Kingdom most provisions under Articles 3 and 5 of the CSD are set out in the Sale and Supply of Goods to Consumers Regulations of 2002. However, these were adopted in addition to already existing laws¹⁸. This means that UK consumers can choose from the beginning either to reject the goods within a ‘reasonable time’ (which is not defined), or to ask for one of the tiered remedies as described under Article 3 of the CSD.

In addition, the UK does not set a time limit of two years on a seller’s liability or uses the option of notification within two months. Consumers can invoke previously existing legislation, which sets a time limit of 6 years (5 for Scotland), for starting a legal action.

¹¹ Art 3, (1) – (6).

¹² Art 5 (1) and 5 (3). However 5(3) does not apply where this would be incompatible with the nature of the good or the nature of the lack of conformity.

¹³ Art 5(2).

¹⁴ For the implementation of the Directive in all Member States, see EC Consumer Law Compendium – comparative analysis, Part 2, H, Consumer Sales Directive (99/44), Dr Christian Twigg-Flesner, February 2008, http://ec.europa.eu/consumers/rights/docs/consumer_law_compendium_comparative_analysis_en_final.pdf.

¹⁵ Information provided in interviews with consumer advisors.

¹⁶ Consumer Remedies for Faulty Goods, Law Commission and the Scottish Law Commission, a Joint Consultation Paper, Nov 2008. Section 6.5 defines the “right to reject” as ‘...the consumer’s right to terminate the sales contract and receive a reimbursement of the price, as a remedy of first instance, in appropriate cases’. http://www.lawcom.gov.uk/consumer_remedies.htm.

¹⁷ COM (93)509, Green Paper on Guarantees for Consumer Goods and After-Sales Service. This reviews existing legislation in all the ‘old’ member states. <http://aei.pitt.edu/932/>, accessed 29 Dec 2008.

¹⁸ Sale of Goods Act 1979 (SoGA), Sale and Supply of Goods Act 1994.

A further complexity for consumers in the UK is that the ‘presumption of non-conformity’ during the first 6 months only applies to the ‘new’ remedies introduced to implement Article 3 of the CSD. For the previously existing right to reject a faulty good this presumption does not exist. So in this case the consumer must prove from day one that the fault was latent in the product at the time of delivery.

In all three legislations, as prescribed by the Directive¹⁹, manufacturers’ (or commercial) guarantees offered to consumers free of charge for various time limits are both legally binding and cannot replace the rights under the sales of goods legislation (or the seller’s or ‘legal’ guarantee). They must state clearly that legal rights are not affected and be written in simple plain language.

In conclusion, of the three countries covered by this study, two – Italy and Poland – have implemented the minimum provisions in the CSD, while repelling legislation previously in force, including the right for consumers to terminate a contract and get their money back as a remedy of first choice (the right to reject). The UK added CSD provisions to existing legislation. In practice this means consumers in the UK have more rights than their counterparts in Poland and Italy, but the law is also very complex, which may have an impact on consumer understanding and awareness. This issue is explored in more detail in section 2 (below).

1.4 Research for this study

In order to answer the questions posed for the study, we examined in detail the experience and available research in three Member States – **Italy**, **Poland** and the **United Kingdom**, thus covering three large countries, in northern and southern Europe and a New Member State. Detailed interviews with organisations, independent and public, which give advice to consumers, as well as retail stakeholders, took place in November 2008. Those interviewed were asked to give their expert opinions on all questions posed by this study. Altogether, 13 stakeholders were interviewed – the list is in Annex I. The questionnaires used for the interviews with consumer organisations, retail stakeholders and ECC are available in Annex II.

In addition, focus groups with consumers were conducted by market research companies on basis of structured questions prepared by Civic Consulting, one in each country, in October 2008. Each group consisted of 8 to 10 consumers of mixed age, gender and professional class; they all bought a product(s) that turned out to be either faulty or different from what they expected, and went back to the seller to claim their guarantee rights. The groups were also composed both of consumers who were successful in their claim, and of those who did not obtain a satisfactory remedy. The purpose of the groups was to get a better understanding of consumers’ behaviour and level of awareness, as well as garner more detailed and specific experiences on what happens when things go wrong with purchased goods. Participants were also asked to recommend ways to increase awareness and resolve complaints more effectively, in exploratory discussions. The focus group reports are available in Annexes III.

A further search around the rest of the EU revealed that virtually no empirical research has been carried out on consumers’ use and experiences when buying faulty goods, and national statistics are equally sparse. We therefore also examined other secondary evidence, in particular available general surveys on consumers’ knowledge of their rights, and any research relating to trader knowledge and practices.

¹⁹ Article 6 of Directive EC/99/44.

2. AWARENESS OF LEGAL GUARANTEE RIGHTS

In the absence of empirical research specifically on guarantees, consumer perceptions of their rights generally can be a useful indicator, as knowledge and understanding of these rights is the first essential step to consumer confidence and ability to exercise them.

According to the latest pan-EU survey²⁰, just over half (51%) of Europeans believe that their consumer rights are protected and respected by existing consumer protection measures. And well over a third (39%) consider that they are not well protected. Confidence levels have gone down since the last survey in 2006. The largest countries, France and Germany, show significant drops in confidence ratings, and the outlook is particularly negative in the New Member States, where only 39% of citizens feel well protected.

Of course, the respondents' views to this survey would have been influenced by the general climate of compliance and enforcement in their country, as well as by awareness of legal rights. If people feel that traders on the whole do a good job, and that the authorities are ready and well resourced to deal with any failings, then they would probably not be so concerned about their own lack of awareness of the specifics of the law.

2.1 Italian consumers

Italian consumers are amongst the most pessimistic in the EU concerning consumer protection, and this pessimism has increased in the last two years. Only 39% of them feel adequately protected by existing consumer protection measures, below the EU average of 51%²¹.

In terms of perceptions and views on guarantee rights specifically, an important finding from Civic Consulting research carried out in Italy, was the degree of consensus of opinion between the three stakeholders interviewed²², as well as their harmony with views expressed by the participants in the focus group.

The introduction of the Consumer Code in 2005 has increased consumer awareness for their rights, including guarantee rights. Italian consumers tend to know that they have rights when they buy faulty goods, in particular they know about the two-year limit of the legal guarantee. There was public promotion and advertising on state TV, and information campaigns by consumer groups. This is reflected in statements of the participants of the Italian focus group:

*"Yes, I know that by law it is 2 years, at the time it was mentioned on the TV news...but, if am not wrong, they also did adverts about it, sort of institutional advertising...the TV news programmes talked about it as well...in any case it is printed inside everything that you buy..."*²³.

At the same time, the retailers' stakeholder interviewed considered the information campaign by the Ministry responsible for consumer protection to be ineffective, because consumers interpreted the legal guarantee as a right to have the item replaced for any reason, not just when faulty²⁴.

²⁰ Special Eurobarometer 298 on Consumer protection in the internal market, section 3.1, published in October 2008.

²¹ As above.

²² Interviews were held with a national retail stakeholder and one of the national consumer organisations, which give advice and take legal action on behalf of consumers, as well as the European Consumer Centre (ECC).

²³ Milan focus group participant, Oct 2008.

²⁴ Interview with retail stakeholder.

Judging from the available evidence, it appears that beyond the knowledge of the overall time limit for the guarantee, consumers do not know the details of the law. They are not generally aware of the presumption of liability of the seller in the first 6 months after delivery; they are not aware that they have a choice of remedies; or that repairs must be carried out within 'reasonable time'.

There is equally confusion among consumers regarding the liability of the seller and the producer, partly because of seller practices (see also section 4.1 below). Some consumers think that 6 months is not the time limit for the burden of proof on the seller, but the time limit for the legal guarantee itself and the end of responsibility of the seller, after which they have to go directly to the producer²⁵. However, participants in the focus group considered sellers' liability as a 'moral' right:

*"After all, it was him [the seller] I gave my money to, it will be up to him to claim it back from the manufacturer, why do I have to get involved? My money was good when I gave it to him!"*²⁶.

Moreover, consumers tend to be only interested in finding out about their rights when things go wrong. They assimilate the information if it is well communicated, but busy lives and the perception of the law as something complex and unpleasant puts them off from being proactive unless they have to. This is emphasised by the lawyer of a consumer organisation:

*"When the item is valuable, consumers ask and get informed about their rights. Always after the problem occurs anyway"*²⁷.

Participants of the focus group were aware of the distinction between a legal and a commercial guarantee, but they perceived the commercial guarantee as an extension, beyond the two-year time limit, of the legal guarantee, offered for an additional payment. According to the European Consumer Centre, insurance contracts against breakdown/fault of a product could create a lot of confusion among consumers, as they are offered as extensions of guarantee (to 4 or 5 years)

*"They are sold with the name of 'extensions of the guarantee' and this might create confusion"*²⁸.

Most importantly, focus group participants' knowledge and behaviour was shaped by retailers' own voluntary policies. Large retailers and specialised stores offer no-quibbles replacement of faulty goods within 7 days of purchase on presentation of a receipt. Consumers do not know if this is part of the legal requirement, but they consider it a right – based also on the retailer's own marketing:

*"You see it written in large letters on the placards inside...we now all know that this is how it is, even the people at the check-out or the assistants tell you..."*²⁹.

A final issue identified by one of the experts interviewed and the focus group participants (once told about the provision) was the definition of 'reasonable time' within which the seller is obliged to repair or replace a faulty good³⁰. This was considered to be too vague, with little case law, and of little help to consumers and enforcers alike:

²⁵ Interview with ECC Italia, Nov 2008.

²⁶ Milan focus group participant, Oct 2008.

²⁷ Interview with consumer organisation, Nov 2008.

²⁸ Interview with the ECC Italia, Nov 2008.

²⁹ Milan focus group participant, Oct 2008.

³⁰ Article 3(3) of the Directive 1999/44/EC, transposed into the Italian Consumer Code.

“...but what does reasonable [time] mean? If no specific length of time is laid down, what is not reasonable for a person who wants back what he purchased, is instead reasonable for them and so if you want to obtain satisfaction you have to institute legal proceedings and we all know what this means!!”³¹.

Trader awareness

Views diverge on whether traders are equally unaware of the rights of their customers when they are sold faulty or non-conforming goods, or whether they often try to deliberately mislead consumers. According to the consumer organisation interviewed, most retailers do know the law, and lack of information cannot be excused three years after the implementation of the new law. The retail stakeholder interviewed admits that there is little communication about legal guarantee rights to the consumers. However, according to the retailer stakeholder, there is a big confusion regarding guarantee rights, not only on consumers' side but also on the sellers' side. This is reportedly especially true of small retailers who may give wrong or misleading information not in 'bad faith', but through simple lack of awareness. Many are still unaware of the new legal provisions, and apply the old Civil Code legislation which has been in force since 1942. For example, many sellers still think that the time limit of their liability is 7 days, as it was previously, and small traders in particular do not understand why they should be held liable if there is a manufacturer guarantee.

2.2 Polish consumers

Polish consumer confidence is also below EU average – 45% of them feel their rights are adequately protected and respected. However, their confidence is increasing – by 6 percentage points since 2006³².

As for Italy, we found wide agreement amongst consumer ombudsmen and organisations interviewed regarding consumer perceptions of their rights, as well as issues encountered when attempting to exercise them. Opinions expressed by participants in the Polish focus group also reinforced these views.

Overall consumer awareness of guarantee rights is considered low, as Poland is still a relatively young market and the rules have been introduced relatively recently. Consumers may know that there is a law granting them rights for two years, but they do not know exactly what this means, what action to take and who to claim against. A common belief, for example, is that non-defective products can be returned within a few days to the seller for a refund, as this was possible under previous Polish legislation. People also very often confuse the legal guarantee with the commercial guarantee, despite the fact that in Polish law legal guarantees are defined as 'inconsistency with the agreement'; this confusion is reinforced by a common trader practice to make use of existing commercial guarantees (see section 4.2 below), which are often "less advantageous" than the legal guarantee. Often consumers who do not have a commercial guarantee for a product are convinced that they cannot make a complaint³³.

“Consumers (mostly the older ones) are deeply convinced that their only right to make a complaint is based on producer's warranty. They are surprised when hearing about the other right to make a complaint on the basis of a seller's guarantee”

“In my opinion [consumer awareness] is still too low, consumers learn about their rights only when they come across a problem, and only then they come to our office.”

³¹ Milan focus group participant, Oct 2008.

³² Eurobarometer 298, section 3.1.

³³ Interviews with consumer ombudsmen and consumer organisations, Nov 2008.

Some of the participants in the focus group have heard about the legal guarantee, which they often referred to as 'European Union guarantee'. They came across this information mainly due to campaigns on public TV. They said they look for additional information and legal advice only when a problem occurs and particularly when bigger amounts of money are at stake. They tend to seek information from friends and family who may have had similar experiences, or get specialist legal advice. They are daunted by the specialist jargon used to describe legal rights, in particular information available on the Internet is described by the respondents as unintelligible.

For less expensive items focus group participants relied on information provided by sellers, but if the claim is turned down they often decide not to proceed:

*"When we complain about something cheaper, you never know if it'll work out. But if something substantial is concerned then you stand up for yourself"*³⁴.

The experience of consumer advisers is supported by two quantitative market surveys, commissioned by the Association of Polish Consumers (APC) and by the Office for Competition and Consumer Protection (OCCP).³⁵

According to the ACP survey, the problems most often identified by Polish consumers regarding defective products are:

- Uncertainty as to what they can demand when making a complaint (repair, replacement, refund) – 38.8%
- Uncertainty as to the entity to which they should make a complaint (seller, producer, distributor) – 29.3%
- Uncertainty as to time limits for making a complaint – 24%
- Uncertainty as to how long they have to wait for examination of the complaint – 22%

The OCCP survey shows that 63% of Polish consumers mistakenly believe that the seller has the obligation to accept giving a refund for a product that is not defective, but no longer wanted; 65% mistakenly believe that every product has a manufacturer's guarantee, and a quarter believe that the seller can refuse to accept a complaint (in fact under Polish law sellers are obliged to consider a complaint and respond within 14 days).

Trader awareness

Lack of knowledge is not only a problem for consumers, very often the sellers themselves are not aware of their obligations regarding products that are defective or do not conform to the contract. This is emphasised by a representative of the Association of Polish Consumers:

*"Low awareness among sellers is as much of a problem as low awareness among consumers"*³⁶.

Those sellers who are more familiar with consumer sales regulations, may unlawfully restrict their responsibility to the 6 months period after selling the product (the 6 months reversal of proof rule)³⁷.

Participants in the focus group described interactions with shop assistants, the most common recipients of complaints, as stressful. They are often under the impression that information provided by them is not reliable, or even misleading.

³⁴ Warsaw focus group participant, Oct 2008.

³⁵ Survey results as reported by the Association for Polish Consumers. Both surveys were carried out in 2007.

³⁶ Interview with the Association of Polish Consumers, Nov 2008.

³⁷ Interview with the Association of Polish Consumers and the ECC Poland, Nov 2008.

The retailers' association representative however, stressed that sellers on the whole do try to help consumers with the execution of the legal guarantee, as they know they may be exposed to redress proceedings (trade inspectorates, OCCP, courts). There may be a difference between companies – for example big international retailers based in Poland are reported to be very cautious and to have expert customer services in the shops to help consumers with information and help for any claim they may have³⁸.

2.3 UK consumers

On the evidence of the Eurobarometer survey, UK consumers are more confident in their rights than the EU average, though this optimism has decreased somewhat since the 2006 research³⁹. Despite this, our detailed interviews with participants in a focus group, as well as interviews with expert advisers reveal a similar picture of lack of knowledge of legal guarantee rights by UK consumers as in the other countries examined.

Participants in the focus group were confident that they had rights, and knew how to go about finding out more should they need to. This is illustrated by the following extract from discussion (capital letters indicate the participants):

“Moderator: ...many of you have said you know your rights, do you feel on solid ground in knowing your rights or not in this sort of thing?”

F Probably.

M I don't.

F Not the specifics, however.

F If I had a problem that I couldn't resolve and feel wasn't resolved, I'd absolutely take the next step and phone somebody up and I wouldn't know who to phone but again Google, I would Google consumer rights.

M Your forums around sometimes, yes.

F And see what comes up and then I'd take that next step.

F Yes, I can't stand the fact that people get, you know, not the service that they should... ”⁴⁰.

However, participants were also influenced in their attitudes and knowledge by shop customer service policies, commercial guarantees and brand reputations (both of retailers and manufacturers). In particular, time limits for getting redress on faulty goods were being confused with commercial guarantee terms.

“...I didn't want to buy something that's going to break down every five minutes, I wanted something that, a manufacturer's kind of confident in...and they're willing to kind of back that up with a full long term guarantee because let's face it if something breaks in a year, that's not very well manufactured, is it?”.

“Right, I think there's cover from memory, I think the Sale of Goods Act covers you for the first year after you purchase something ” ⁴¹.

³⁸ Interview with POHID, the Polish Organisation of Commerce and Distribution, Nov 2008.

³⁹ Special Eurobarometer 298, 66% of UK consumers feel adequately protected by existing measures to protect consumers; this is 3% less than in the 2006 Eurobarometer 252 surveys. Percentages for consumer confidence in the Office of Fair Trading research are similar.

⁴⁰ UK focus group participants, Oct 2008.

⁴¹ UK focus group participants, Oct 2008.

One noticeable difference with the identically-structured focus groups in Italy and Poland, was the UK participants mentions and expectations regarding remedies, in particular refunds for returned goods, whether defective or not (a reflection on many retailers' voluntary policies):

"Like [name of known retailer] never give your money back...Which I don't know legally how they can do that".

"But with a receipt, oh my God, it would be very annoying not to get money back...I'm not sure if it's legal or not and it annoys me because I think under the, you know, Goods Act whatever you should be able to get your money back" ⁴².

This picture was confirmed by experts from the consumer advice bodies – UK consumers generally know that they have rights that come along with the products that they buy, but they might be less aware of what exactly those rights are and when to exercise them. Consumers also tend to confuse their statutory rights with a shops' return policies. Equally, UK consumers may not distinguish between statutory rights and guarantees that manufacturers provide voluntarily – the terminology is also confusing as guarantees are associated with manufacturers' commercial offers, while 'statutory' or 'legal' rights are just words that are mentioned but rarely explained to buyers. Confusion may also arise due to the additional rights consumers have for distance and Internet sales – consumers think 'cooling off' periods apply to goods bought in shops as well⁴³.

Trader awareness

As regards trader practices and awareness, according the British Retail Consortium, retailers are well aware that they have obligations to the consumers, which are quite distinct from manufacturers' obligations:

"Big retailers know for sure, maybe small ones no, but...there was a highly developed sales of goods law long before the EU Directive in the UK, and retailers would certainly been aware of those obligations, which remain, because EU rights are simply placed on top of those".

The main confusion lies in the way in which the EU law is been added into UK law, so retailers as well as consumers may not be aware of the distinctions; this is particularly relevant in the case of the 6 months reversal of the burden of proof, which applies to the EU, but not UK remedies⁴⁴.

Evidence from other consumer research in the UK

In addition to the evidence collected in the framework of this study, other consumer surveys, both qualitative and quantitative, give a comprehensive picture of attitudes and behaviours regarding consumer legal rights in the UK.

The Scottish Consumer Council (now part of Consumer Focus Scotland) carried out a study in 2003 to find out how well informed Scottish consumers were of their rights⁴⁵. The study found that Scottish consumers feel as well informed about their consumer rights as those in England and Wales. Two-thirds of those surveyed said they felt well or very well informed, with a remaining one third who said they did not feel well informed. Generally those with lower incomes, under 35 and over 55 years of age and those without formal qualifications felt less well informed.

⁴² UK focus group participants, Oct 2008.

⁴³ Interviews with representatives from Consumer Direct and ECC UK, Nov 2008.

⁴⁴ Interview with British Retail Consortium, Nov 2008.

⁴⁵ Scottish Consumer Council, *Knowledge of Consumer Rights in Scotland* (2003). Survey commissioned to MORI Scotland.

However, the report also concluded that even those who felt they were well informed were not always as knowledgeable as they believed they were. When asked about a series of specific consumer rights, many respondents gave the wrong answer. In almost all instances at least one-quarter answered the question incorrectly, and fewer than half of respondents know the correct answer to 6 of the 13 questions. Most knew for example about retailer responsibility and that one can return a faulty good even if it has been used; but, of more concern, was the majority's (67%) belief that retailers had the right to repair faulty goods before offering a refund; and over a third thought they were entitled to a refund if they returned goods which they no longer wanted, but were not faulty. The report also concludes that one possible explanation for consumer dissatisfaction when they complain is likely to be over-expectation of their rights, rather than retailer non-compliance with legal obligations⁴⁶.

A second substantial survey study, carried out for the Office of Fair Trading in 2006⁴⁷ focused, amongst other things, on measuring awareness, knowledge and confidence in using consumer rights, as well as measuring knowledge of consumer rights legislation amongst businesses. The survey found that a majority of UK consumers feel protected and confident in using their rights (74% and 78% respectively), even though they do not feel particularly well informed (63% feel informed). Two main reasons why people perceive they are not well protected are lack of knowledge of their rights (38%); and companies trying to get out of their responsibilities (24%). However, results also showed that although confident to argue their case, consumers tend not to complain, "unless they really have to"⁴⁸.

Consumers' knowledge was also tested on various retail scenarios, and the research found a mixed position in terms of knowing their rights. Most consumers knew they were entitled to legal refund, compensation, repair, exchange or replacement when goods are faulty (84%), though a third (31%) thought they were also entitled when they simply changed their mind about the product. Consumers also tend to think (wrongly) that there is a time limit for returning faulty goods, the mean average being around three months for items bought in a high-street shop⁴⁹.

As regards knowledge of consumer rights by consumer-facing businesses, key findings included that business also lacked the necessary awareness and knowledge – for example almost half (48%) could not mention any areas where consumer protection rules applied and almost a quarter of companies (24%) had no "formal" consumer policies in place. This was more commonplace among small companies. As with the consumer research, the widest knowledge (91%) was regarding companies being obliged to refund, replace or repair for returned faulty goods accompanied by proof of purchase. A third of companies (32%) had an exchange/returns policy on display⁵⁰.

The most recent qualitative research on consumer attitudes in the UK was published by the Law Commission as part of the consultation on Consumer Remedies for Faulty Goods, with an aim to simplify the UK legislation in this respect and also feed into the ongoing EU revision of consumer rights laws⁵¹. The report states that the most striking finding of the research was the extent to which participants (of the focus groups) were unaware of their legal rights.

⁴⁶ As above, page 43 and following.

⁴⁷ OFT 857, *Competition & Consumer Rights*, May 2006; available on http://www.oft.gov.uk/advice_and_resources/publications/reports/research/.

⁴⁸ As above, page 4.

⁴⁹ As above, pages 6 and 49.

⁵⁰ As above, pages 10-11 and 91-92.

⁵¹ Law Commission and the Scottish Law Commission *Consumer Remedies for Faulty Goods*, a Joint Consultation Paper, Nov 2008, page 43.

Some mistakenly believed they had a good understanding of the law, whilst others freely admitted their lack of knowledge. Some underestimated their rights, while others overestimated them. For example, on time limits, virtually no one was aware that they must reject goods within a 'reasonable period', and equally it appeared that no one identified the six-month reverse burden of proof for the EU remedies. They believed the right to repair lasted for one year (one-half of participants), or that it depended on the guarantee (one third of participants).

2.4 Awareness in other Member States

Since 2005, the Commission has launched a number of major consumer rights awareness and information campaigns in a number of New Member States, targeted at 25 to 45 year olds. These were based on TV and media advertising and other communication initiatives, including specialised websites⁵². As part of these campaigns, qualitative and quantitative research was carried out to ascertain the general awareness and knowledge of consumers both prior to and after these campaigns.

In all surveys identical questions were asked regarding knowledge of rights when goods are defective – “Do you know your rights as a consumer when an electronic or household device does not work properly?” Generally, awareness levels were roughly similar in all countries surveyed⁵³, and in all countries consumers surveyed stated they would be interested to know more about their rights regarding faulty goods.

For example, a majority of 25-45 year old Hungarians (67%) is aware of consumer rights when a purchased household appliance does not work properly, an increase from the 51% who said they were aware before the information campaign began. And 72% were interested in finding out more⁵⁴. For Cyprus the results were less pronounced, with 55% per cent of consumers aware after the campaign, and 53% before, while 96% said they would like to know more.⁵⁵ Similar results, with a majority of consumers saying they are aware of their rights in this situation, were found in the other countries where the campaign took place. Unlike the UK surveys, this research did not test the actual consumers' knowledge, just their perceptions, though the second survey took place shortly after major TV advertising and other media campaigns.

From these results it seems that strategic marketing campaigns on consumer rights can pay off in terms of increased consumer perceptions of knowing their rights, though it depends on the context. Experience with past public interest campaigns has been that they often need to be repeated and sustained as memories fade.

2.5 Conclusions on consumer rights awareness

Research reveals a number of important similarities regarding consumer rights awareness on legal guarantee rights between the three countries examined in more detail.

Awareness of legal guarantee rights is generally low – consumers know they have rights when they buy goods that are defective or do not conform to the original description. However, they do not know exactly what these rights are, both in terms of specifics of time limits, remedies they are entitled to, or whom they can claim against. Surveys in the UK, which tested actual consumer knowledge, also show that consumers may over-estimate, as well as under-estimate their rights.

⁵² Details available on http://ec.europa.eu/consumers/empowerment/index_en.htm.

⁵³ Slovenia, Cyprus, Hungary, Czech Republic, Slovakia, Malta.

⁵⁴ Flash Eurobarometer 209, Consumer Protection and Consumer Rights, Analytical Report for Hungary, January 2007.

⁵⁵ As above, Analytical Report for Cyprus, December 2007.

The six-month time limit regarding burden of proof causes particular confusion, and may cause consumers to think that this is the time limit of the responsibility of the trader/seller. There is also very little knowledge regarding the 'reasonable time' provision, or there is extensive confusion about its meaning.

Consumers are also heavily influenced in their attitudes and knowledge by shop policies in their countries and common practices by traders, and frequently do not distinguish between their legal rights and commercial guarantees provided by producers voluntarily. Consumers also seemed heavily influenced by brand reputations, both of producers and retailers.

In all three countries consumers are more motivated to find out and pursue their rights when things go wrong, in particular when the defective product is valuable. Equally in all three countries they give up pursuing complaints because of the hassle, stress and inconvenience involved, particularly if the goods are easily and cheaply replaceable.

There were also some apparent differences in consumer awareness and confidence levels, due probably to the differing legal regimes, trader practices and maturity of the market in the three countries. These may not be conclusive, as the evidence available was not equal or entirely comparable between the three countries.

In particular, on time limits, Italian and Polish consumers tended to be aware of the two-year limit on legal guarantees due mainly to prominent public campaigns including TV advertising. In the UK (where the overall time limit is much longer), perceptions on time limits varied widely, and were often confused with the term of the commercial guarantee.

On types of available remedies, expectations and knowledge of the right to reject goods and get a refund feature prominently both in qualitative and quantitative research in the UK (where this remedy is still available as a first choice). It is also mentioned frequently in Poland, where this remedy was part of the old, repealed provisions in the Civil Code. In both countries consumers believe they are entitled to a refund even when the goods are not defective, but they have changed their mind. In the UK, this is most likely due to widespread trader practice, but also to confusion with cooling off periods and rejection rights for goods bought via the Internet, phone or mail order. Italian consumers, on the other hand, considered that offers of no-quibbles replacement of goods within 7 days, a common large shops policy, was part of their legal rights.

Surveys from New Member States where public information campaigns have recently taken place show that a majority of consumers think they know their legal guarantee rights. This may indicate the value of well-constructed public advertising campaigns.

Both participants in the focus groups and experts interviewed suggested measures to improve consumer awareness of their legal guarantee rights. Recommendations made by them included:

- Putting obligations on sellers to inform buyers of their legal rights, just as they do for commercial guarantees. For example by displaying simple messages prominently at the point of sale in shops, or by 'proper' marketing, just as traders do for their own policies and goods;
- Obligations on producers and sellers to print all contracts of sale, where available, in 12-point typeface or above, as well as make them shorter and simpler;
- Write legislation that is easy to understand and interpret, therefore 'more actionable' for consumers;

- Media advertising campaigns signposting the fact that there are rights and where they can be found if needed. Consumers naturally are not interested in the detail of the law until they need it. It is sufficient for them to know that strong rights exist and where to find them.

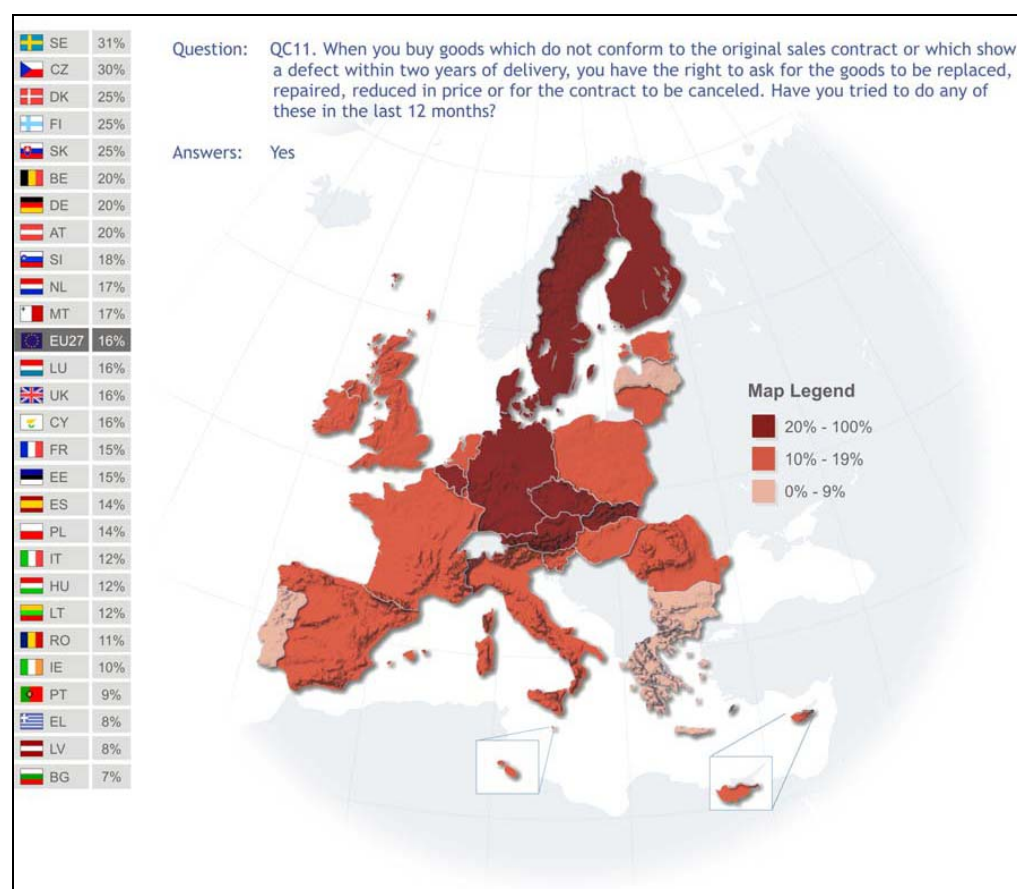
3. STATISTICAL EVIDENCE ON CONSUMER ACTION

3.1 Comparable EU-wide data

The only survey statistic that is comparable between countries on how many consumers claim their rights under the Sales of Goods Directive (1999/44/EC) is contained in the most recent (2008) Eurobarometer survey on consumer protection in the internal market.

According to this, on average 16% of European citizens who bought goods, which did not conform to the original sales contract, or which proved defective within two years of delivery, exercised their right to ask for the remedies available in the directive (repair, replacement, price reduction or contract cancellation). Individual country breakdown is as follows:

Europeans who exercised their warranty rights



Source: Special Eurobarometer 298 on Consumer Protection in the Internal Market, Oct 2008

Surprising is the big discrepancy between the UK figure in this survey (16%) and the much higher consumer action scores identified in UK-only surveys (see section 3.4 below). This is probably due to the difference in the way the questions were put to respondents in the two surveys (the UK only survey question included complaints as well as taking action).

More detailed figures regarding complaints by consumers in cross-border commerce are given in the annual report of the European Consumer Centres⁵⁶. The report shows that complaints related to product/service take up 22.4% of all cases handled by the network in 27 Member States (some 28,000 cases).

⁵⁶ The European Consumer Centres Network, 2007 Annual report.

Nearly half of these complaints (49%) are about defective products or services. This is followed by consumers complaining about “non-conformity” of a product or service with its original trade description (27%). And consumers have also complained about receiving products and/or services that were “damaged” (6% of complaints in this category).

In the following sub-sections, statistics, if any, from the countries examined for the study are provided. Due to the different sources and methodologies applied for data collection the data is not comparable between them or with other countries in the EU.

3.2 Italy

There are no statistics for Italy on how many consumers take action – direct with retailers or other bodies - when things go wrong with goods they buy. As elsewhere, according to those questioned for this study, most consumers go back to the shop in the first instance, or direct to the producer, either sent by the shop or to claim under a commercial guarantee.

According to the latest EU statistics, only 12% of Italian consumers who bought defective or non-conforming goods exercised their rights under the guarantees legislation. This also seems to accord with the conclusions from our own research, which suggests that consumers only take action when goods are valuable and redress is easy.

For cross-border purchases, the ECC Italia dealt with 25 problem cases concerning guarantees in the 6 months to October 2008, so estimate that one in six of the cases they handle is concerned with legal guarantee rights. Similarly, the consumer organisation interviewed, estimates that around 20% of the cases they deal with are concerned with guarantees. However it is difficult to extrapolate any meaningful figures nationally from this, as there are several organisations in Italy that deal with consumer complaints, and only one of them agreed to provide data for the present study.

3.3 Poland

As for Italy, the only available national statistic for Poland on consumer action over sales of goods rights is provided by the latest Eurobarometer (see 3.1 above). According to this, 14% of Polish consumers claimed their rights under legal warranty legislation in the last year, slightly below the EU average.

Otherwise, existing centralised statistics on consumer complaints collected by the Office for Competition and Consumer Protection (OCCP) do not hold such detailed information, as there is no obligation on local consumer ombudsmen (more than 300 of them) to prepare detailed statistics. The total number of complaints, on all subjects and for the whole of Poland, to local ombudsmen amounted to 250,000 in 2007. From these, it can be estimated (based on the experience of consumer advisers we have interviewed), that complaints concerning guarantees account for at least half (approximately 50-60%) of all complaints, i.e. 125,000 to 150,000.

In some cases even more complaints appear to be relevant, as the following examples illustrate: The consumer ombudsman for a Polish county (population 73,000) dealt with 686 consumer cases who attended his office in person, had 178 phone enquiries and 5 emails⁵⁷. Approximately 70% of all complaints made by phone or in person were related to goods (mostly shoes, mobile phones, electronic and household equipment, and computers), while the rest was related to services. He further reports that in 72 cases the ‘entrepreneurs’ were contacted to solve the case, 52 of them related to sale of goods, more than half of which concerned shoes.

⁵⁷ Interview Nov 2008. Figures are for 2007.

An ombudsman in another county (population 175,000) reports 1,030 complaints in the last six months, of which he estimates the vast majority to be related to guarantees⁵⁸.

The Association of Polish Consumers reported⁵⁹ that consultants for its nationwide Infoline received over 10,000 complaints and questions concerning consumer sales, while its Warsaw consumer advice centre received over 1,500 complaints related to consumer sales. Such complaints accounted for approximately 50% of all complaints received.

Finally the Polish Consumer Federation⁶⁰ reports that its lawyers throughout the nationwide advice bureaux deal with some 220,000 enquiries and complaints per year, of which approximately 35% concern sale of consumer goods and associated guarantees.

3.4 UK

For the UK, comprehensive evidence is provided by the recent quantitative research commissioned by the Office of Fair Trading⁶¹. This assesses in detail the relationship between consumer problems, consumer detriment⁶² and consumer consequent behaviour, in complaining and taking action. The report covers both goods and services. Its main findings, relevant to questions in this study, include:

- Around a third of the adult population of England, Scotland and Wales said they had experienced at least one problem with goods and services in the last 12 months for which they had a genuine cause for complaint. The survey identified 5,423 reported problems in total, which when projected across the overall population, leads to an estimated 26.5 million problems within the UK over the last 12 months, of which – estimates suggests – at least 10 million refer to faulty goods⁶³. Of these the highest percentages were related to ‘house fittings and appliances’ (25%) and other household requirements (28%)⁶⁴. The most common causes of having problems are poor service and defective goods⁶⁵.
- In terms of consumer behaviour, respondents complained or did something about the problem in 64% of the cases, though this average includes high percentages for financial services, telecoms and domestic fuel. Problems with small domestic appliances resulted in action in 51% of the cases. Generally, the likelihood that respondents took action increased with the price of the good or service. 80% of respondents took action when the price was more than £1,000, compared to 58% for values under £30⁶⁶.
- The most frequent way of taking action was to take the complaint to the company where the product was obtained (61%). After complaining the next most frequent actions are asking the company for a replacement (21% of problems), or a refund (20% of cases).

Further details of this study are outlined, where relevant, in the next sections.

⁵⁸ Interview Nov 2008.

⁵⁹ Interview Nov 2008.

⁶⁰ Interview Nov 2008.

⁶¹ OFT 992, Consumer Detriment, April 2008.

⁶² For the purposes of this study, detriment is defined as financial loss associated with consumer problems; financial loss includes all costs incurred in the process of solving the problem.

⁶³ For the estimates see Law Commission and the Scottish Law Commission *Consumer Remedies for Faulty Goods*, a Joint Consultation Paper, Nov 2008, section 9.28.

⁶⁴ As above note 61, page 17.

⁶⁵ As above, page 19.

⁶⁶ As above, page 65.

According to the latest Eurobarometer (see 3.1 above), 16% of UK consumers who bought defective or non-conforming goods exercised their warranty rights to repair, replace, price reduction or contract cancellation, a figure which coincides with the EU average. It is difficult however to relate this to the OFT study results, as the questions posed are not comparable.

3.5 Conclusions

As there is no EU-wide comparable data, the only firm conclusions that can be drawn from the available information are that relatively few consumers overall attempt to claim their rights when the goods they buy turn out to be faulty (on average only 16 in every 100 EU consumers with a problem); and more generally that problems with faulty products form a very large proportion of overall consumer problems. There is now reliable cross-border shopping data available, collected in a comparative way by the ECC network; this also shows defective goods to be one of the major causes for complaints from consumers and a major proportion of all the cases they deal with.

Of the three countries we have looked at, only the UK had nation-wide detailed quantitative data on consumer action and its results. This indicates proportionally a large occurrence of problems with defective goods, and that at least 50% of consumers are prepared to complain (depending on the good and its value) or take other action to remedy them. The data for the UK also shows categories of goods most affected, of which 'house fittings and appliances' is the largest.

In Poland detailed national statistics are not kept, but some evaluation is possible from the information collected by local consumer ombudsmen and the two consumer organisations that give legal advice to consumers. This indicates that at least half of all complaints relate to defective goods, and that one of the most common categories complained about are low quality shoes.

For Italy, EU surveys show that 12% of consumers have taken action, however no further evaluation was possible from the data available.

Clearly it would be valuable for more detailed and more comprehensive comparative data to be available at pan-EU level. This should include not only general percentages of consumers who complain or take further action, but also more meaningful figures that can help the policy and enforcement processes, such as overall economic detriment to consumers, what product categories and sectors cause the most detriment, what remedies are available in reality and the general behaviour of traders.

4. CONSUMER EXPERIENCES WHEN THEY RETURN FAULTY GOODS

This section focuses on trader behaviour and reactions when consumers attempt to claim their rights, including times taken to solve it, attitudes and choice of remedies offered. As for other aspects considered in this study, there is no comparative detailed empirical research available on how consumers perceive trader behaviour on the pan EU level other than the Eurobarometer data.

The latest statistics on consumers' opinions whether traders/providers respect their rights can, however, provide a broad overview on trader behaviour⁶⁷. On average, 59% of European consumers believe that, in general, sellers/providers in their country respect their rights as consumers. This average has declined by 3 points since the last survey in 2006⁶⁸ and reflects a wide variation amongst Member States. The highest ratings are in northern European countries, with ratings over 75% in Finland, Belgium, UK, Sweden and the Netherlands while in Italy, Lithuania, Greece, and Portugal consumers are the most pessimistic with ratings below 40%. Trust in traders has declined considerably in some countries, for example Italy (-11%), France (-8%) and Ireland (-8%), while in others it has noticeably improved, most notably in Spain (+17%) and Slovakia (+9%).

4.1 Italy

Italian consumers are among the most pessimistic in Europe when it comes to trust in their traders. Only 36% of them believe that sellers/providers in their country respect their rights as consumers (the EU average is 59%). It seems, from the experiences related by participants in the focus group as well as the experience of consumer advisers that they may have some reasons to feel like this.

Judging from the focus groups participants detailed experiences, the first step consumers take when goods they buy are defective is to follow up on shops' own promises, and return the goods for replacement within 7 days accompanied by a receipt. Large retailers, for the most part, seem to put this promise into practice.

However, when products are no longer deemed replaceable – in the seller's view, rather than as prescribed by law – customers are commonly directed by sellers to take the goods personally to the manufacturer or distributor's service centre for inspection and a decision of further action; participants regarded this delegation as an abuse of power.

“...in general these centres are located on the other side of the city, why do I have to go there? After all, I bought it from them [seller], it should have been them who sent it there..”⁶⁹.

Both the retail stakeholder and consumer group also confirmed that sellers usually follow the procedure that is least expensive for them, most frequently by passing on the faulty item to the producer's service centre, and the producer then decides whether to replace or repair. The exact procedure reportedly depends on how the contractual relationships in the distribution chain are regulated⁷⁰.

⁶⁷ Eurobarometer 298, Consumer Protection in the Internal Market, October 2008, section 3.1.

⁶⁸ Eurobarometer 252, 2006. This Eurobarometer refers to the EU25.

⁶⁹ Milan focus group participant, Oct 2008.

⁷⁰ Interview, retail stakeholder, Nov 2008. The retail stakeholder underlines that retailers, especially small retailers, are the weak part of this chain; in its view, there is no justification for the fact that a seller, who has no direct responsibility for the defect of the product, is obliged by the law to fulfil guarantee rights and the manufacturer is not legally bound.

It seems a common practice among sellers to repair a faulty product, rather than replace it. From all participants experiences, replacement after attempt at repair occurred only in one case; even in that case the product was replaced with a different model, not the consumer's choice, and without being offered the chance to choose other remedies, such as rescinding the contract.

Participants also reported long waiting times for goods to be repaired by the service centres.

*"...I hope that the matter will be resolved properly, but they had it for two months now, it seems a long time to me, at least if I knew why...at times the repair times are really long... There ought to be specified times! ..."*⁷¹

Only one of the participants used the available Chambers of Commerce dispute resolution route (easily available via the Internet) to seek redress. On the whole, legal routes tend to discourage people, as they are associated with stress and strong fears of incurring additional costs. This is particularly true when the value of the good is relatively small, e.g. below 100 Euro.

Common reasons for complaint to the consumer organisation include sellers refusing to repair faulty products, using various false excuses e.g. that the defect is not covered by the guarantee, or that the guarantee is only one year, or that the producer went bankrupt. A national consumer organisation described their experiences as follows:

*"In some cases it happened that the item was kept by the seller for repair and handed back still faulty, after the [legal] guarantee had expired. For consumers is then really hard to prove that the item was still faulty when the seller sent it back"*⁷²

In addition, consumers are reluctant to seek further redress when the initial complaint to the seller is not resolved, particularly when the value of the item is small. Experiences of Italian consumers as reported in the focus groups are presented in the following box:

⁷¹ Milan focus group participant, Oct 2008.

⁷² Interview national consumer organisation, Nov 2008.

“I am not at all happy” – cases from focus group Italy

Game console fight

Mr D recently bought a video game console P. worth over Euro 300. He discovers, first time he plays, that it does not save to memory. At the store, 3 days after purchase, the assistant refuses to replace it and tells him to contact the service centre of the producer. He persists and gets a replacement: “I insisted and I got angry: it was unthinkable that they should send it to the repair centre where it would have been kept for Lord knows how long! My [video game console] is important to me, I did not want a repaired one!!!”

Mobile muddle

Ms H’s new mobile phone does not stay switched on, so she takes it back within the customary 7 days. She requests a replacement, but told that this is not possible because she has used the phone for 15 minutes, a term beyond which the producer was said to no longer take back its products. Ms H was not told about this term at the time of buying (other participants in the group confirm this practice by other mobile manufacturers, also never clearly communicated). She refuses to take the phone to the service centre for repair, as it is too far away from her. At home she discovers it is the battery at fault, so she buys a new battery at her own expense.

Car grind

Three months after buying a new car Mr L notices that its steering has become loose and wobbles. The dealer tells him that the brake discs have become overheated and deformed through excessive braking. The repair offered consists of re-grinding the disks, rather than replacing them. Mr L is not satisfied and sends a letter to the parent company demanding a replacement of the disks, as re-grinding would make the discs thinner, so the car less reliable. He does not get his demand as the company states that its practice is to re-grind and not replace. Mr L does not take the action further. “I am not at all happy, moreover I know that it is dangerous to re-grind, and everyone tells me so”.

4.2 Poland

For Poland we received a detailed outline of trader practices, based on the experience of the many cases dealt with by local consumer ombudsmen and consumer organisations. Detailed experiences of participants in the focus group also confirmed the overall picture painted by the consumer advisors.

Overall the Polish law follows the minimum requirements of the Sales of Goods Directive, however one special feature is that sellers have to reply to demands from the buyers within 14 days, and if they fail to do so, the demand will be deemed justified.

Perhaps as a direct result of this the complaints procedure itself is one of the common reason for complaints to advisors, as sellers often reject complaints as unjustified within the 14 days limit, or they fail to answer complaints on time but do not honour the demands as required⁷³. Focus group participants often felt *persona non grata* when filing complaints in shops, describing the manners of the sellers as negative and unprofessional. The main reason given for complaints being turned down was that the product had been misused. This is illustrated by the following cases reported by focus group participants.

⁷³ Interviews with local consumer advisors (ombudsmen).

On a date with the service employee: cases from focus group Poland (I)

Tongue in shoes

Ms C bought a pair of shoes whose tongue split while she was putting them on. She claimed the tongue had to be pulled in order to put the shoes on. She took the shoes to the seller who sent them back to the manufacturer. After 14 days Ms C received the shoes back with a letter stating that the shoes had been misused. The letter ended with this rude note: "Please complain about windows after breaking them". Ms C was not happy, but repaired the shoes on her own expense; she had no motivation to pursue the matter since the cost of the repair was low.

Mobile multiple failure

Mr A filed a complaint regarding a fault in his mobile phone and was offered a repair. The same fault developed again within a week. He was once again offered a repair. Exactly the same happened six times in a row. He finally demanded a replacement for a new phone. His claim was rejected and he was offered yet another repair. The respondent managed to get a new phone in the end, but it was due to personal influence – his friend went on a date with one of the service employees. Mr A felt the complaint was not only handled unsatisfactorily, but it was also unprofessional.

Attitudes of the sellers are also one of the reasons why participants would often waive their rights – as the process of complaint registration can lead to stressful situations. They often decide to buy a new product if not expensive, as it is a quicker solution to the problem.

Three other common trader practices were reported. The first – forcing consumers to claim on the manufacturer's, rather than the legal guarantee – was mentioned by practically everyone. Under manufacturer's guarantees time limits and remedies are set by producers, and they are often less advantageous than the seller's legal obligations. This is described by several local consumer ombudsmen:

"Among those who come to me, maybe 5% actually know the complaints procedure. And the sellers don't make it easier for consumers. They suggest or even force only (commercial) warranty repair, and consumers usually agree to that."

"So far I have never come across a situation where for the goods with producer's warranty the seller has initiated the complaint procedure by himself, on the basis of his obligations imposed by the directive."

"Consumers usually address their claims to sellers. They are not aware that seller and producer have different obligations towards consumer, therefore they usually don't protest when they are being directed to producer's service by the seller who refuses to take responsibility"⁷⁴.

Small sellers may send consumers to the producer directly, while bigger retailers take the goods but act as intermediaries with the producers. According to the representative of the retailers' association, the situation is more complex as it depends on the service contracts that retailers agree with the distributors or producers; for example in the case of own brands retailers act as producers, while for other goods they will take consumers' claims while the internal agreement with the supplier or service network is their problem.

Another common problem encountered in Poland when goods purchased are defective is abuse of the time limits set by legislation. Abuse of time limits can take two forms. Sellers may demand expert opinion before accepting a complaint on the basis of the six months reversal of proof provision in the law. As a result, a consumer would have to pay for a specialist opinion, just to be able to act on his or her right to complain.

⁷⁴ Interviews with 3 local consumer ombudsmen, Nov 2008.

Sellers also often reject complaints on the basis that they have been made 6 months after selling the good. In this case too consumers would need independent expert opinion in order to proceed with the claim. According to the interviewees, this is a big problem as there are very few experts on the market, especially in the field of footwear and household and electronic equipment, subjects of the most frequent complaints. So sellers can reject the complaint safe in the knowledge that the consumer won't claim his or her right in court.

Finally, it seems Polish consumers are also often dissatisfied with remedies offered – repair is the most common, even in the case of defective, and little used, shoes. Several repairs may be made before a replacement is offered, by which time consumers lose faith in the product and brand altogether. This is illustrated by the experiences of the focus group participants:

“Ugly and unsatisfactory” – cases from focus group Poland (II)

Faulty fridge

Ms C's new refrigerator stopped working after one year of proper functioning. The fridge was repaired, but after two months the same fault developed. Ms C found the repair unsatisfactory and demanded a refund. She was informed that she was not entitled to a refund, as the same model was still on the market; the fridge was then taken to a service centre where it was diagnosed with a structural fault. A replacement was delivered within five days. Ms C said she would have preferred a refund, as she was afraid that the refrigerators made by the same company may be prone to breaking down.

More shoe repairs

Ms G bought platform shoes, and the soles came off after a week of wearing. The shop told her the complaint could not be accepted as the shoes had been worn. On her insistence the manager agreed to send the shoes back to the manufacturer, and she received repaired shoes back within 14 days. The repair was ugly and unsatisfactory. Miss C refused to accept the shoes and was offered a replacement, however the only pair available was the wrong size. Even then a refund was refused, so she ended up with a pair two sizes too big. Miss C described the behaviour of the shop staff as highly unprofessional throughout this incident.

As their counterparts elsewhere, consumers in Poland appear easily to give up on claims for defective goods unless they are of high value to them. Reasons cited for this by participants in the focus groups included lack of time; fear of stress, due to hostile attitudes from sellers and producers; and lack of knowledge of their legal rights, when a claim is rejected.

4.3 UK

The research conducted for this study and other empirical research in the UK suggests a variety of experiences for consumers when attempting to claim their rights, often with a great deal of effort and without a satisfactory outcome. From experiences related by focus group participants, sellers tended to offer remedies on their own terms. On the occasions consumers demanded preferred solutions, they often did not get what they asked for.

Cheaper replacement without a full refund: cases from focus group UK (I)

Bad Hair Day

Mrs H bought a set of expensive hair straighteners in a small hair and wig shop in her local high street. The next day she plugged them in and they would not work so she returned them to the shop and asked for her money back, as the seller had only cheaper brands as replacements. The seller refused to give her money back, after making her wait an hour in the heat while he searched for the same brand in another of his shops. She ended with getting a cheaper replacement without a full refund for the difference. She knew this was not right, but she was with her small son, it was a hot day, and the hassle was all too much.

Wobbly sofa

Mrs B purchased a sofa from a well-known specialist retailer, and paid a premium to have the fabric treated with a special coating against stains. The sofa arrived well beyond the promised delivery date, appeared faulty and a different colour to the model seen in the store. She contacted the retailer who came round to inspect and confirmed that the sofa construction was faulty. The retailer said they would replace the sofa, but Mrs B said she would rather have her money back. She was refused but told she could choose another model from in-store. The replacement model was more expensive, so she had to pay extra money, and she was also told that the coating she had paid for the original sofa would not count as credit for the new model. "I wasn't happy about it because I wanted my money back but I had to take another sofa, and the sofa didn't last for a year.... I gave the sofa away... I couldn't go through that again, it was just too much".

As is the case for Italy and Poland, the majority of consumers try to cope with the problem by themselves and take it for resolution initially to the seller, without seeking independent advice from other agencies⁷⁵. After complaining, they most frequently ask the company for a replacement (21% of those with problems), followed by refund (20%). Amongst the many remedies sought and obtained by consumers complaining, in 11% of cases a full refund was offered or given, while a replacement was offered/given in 12% of cases.

Judging by the research results however, the companies' response to consumer actions is less than satisfactory. In a quarter of cases (25%), the company has done nothing about the problem. Even when action was taken, consumers are not always satisfied with the outcome. For a fifth of the problems (21%), respondents feel they have been given an unsatisfactory explanation, while satisfactory explanations were reported in only 6% of cases.

The survey also investigated satisfaction levels with the company who sold the good or service. Consumers were asked to rate positively or negatively their experiences on aspects such as 'succeeding to put things right' and 'treating you fairly'. On both aspects the positive experience ratings were below 50% for all product and service categories⁷⁶.

Earlier consumer research in Scotland⁷⁷ also showed that consumers often did not achieve the outcomes they expected. For example, in 25% of cases they felt they were entitled to a full refund, but only received it in 7% of cases. In 40% they felt they were entitled to a full replacement, but only received that remedy in 27% of cases. A possible explanation for this consumer dissatisfaction, the Scottish report concludes, may be over-expectation of their rights, rather than retailer non-compliance with legal obligations⁷⁸.

One further issue that emerged during research in the UK concerned technology where software is integral to the functioning of the product, such as navigation systems and mobile phones. As commercial guarantees for such products only cover the hardware, consumers who are claiming against producers lose the right to claim against the seller once the

⁷⁵ OFT 992, Consumer Detriment, April 2008, page 68. 61% of consumers took their complaint to the company; only 12% of consumers with problems made a complaint to someone else, mostly frequently the Trading Standards Services.

⁷⁶ As above, pages 58-60.

⁷⁷ Scottish Consumer Council, *Knowledge of Consumer Rights in Scotland* (2003). Survey commissioned to MORI Scotland.

⁷⁸ As above, page 43.

manufacturer has opened to check the faulty product. Cases like this are reported ‘quite often’, especially with navigation systems⁷⁹.

Gadgets, less than smart: Cases from focus group UK (II)

Navigation error

Mr A purchased a satellite navigation system from one of the major retailers. After a few weeks in use the device would not switch on. He took the device back to the retailer with the original receipt, but was informed that it could not do anything about the broken device, and that he should contact the producer directly. Mr A assumed that since he had a 12 month guarantee statement on the receipt, the retailer would replace the device (and was the case with another technology item he purchased there). The manufacturer sent him initially a lengthy instruction sheet on how to fix it; when this didn’t solve the problem, he was advised to send the device to the producer’s repairs centre where it was repaired free of charge. Mr A believes it is the retailer’s responsibility to replace items that are faulty, and feels he has been inconvenienced for longer than it was necessary. “I actually googled it, see if Google got the same issues, which it did ... People had written about this on forums and complained about it in their own little way.”

Not a smart phone

Ms F had a new contract for a smart-phone directly from one of the major mobile phone network companies. After a few weeks of using the phone it began to delete all her emails and text messages. She rang the company to ask for a new phone to be sent. The company representative stated that since she has had the phone for more than 14 days they were not obliged to do so; however after much persuasion they did. Exactly the same fault occurred two more times, so Ms F demanded a different model. The company refused. A call centre operator let slip that they had been sending her reconditioned phones. Miss F felt angry that she had spent so much of her time on the phone trying to sort the problem. “I do feel I’ve got rights... and also I felt I’ve got this contract with X.... These people are going to sort this out because I am their customer ...”

4.4 Other Member States

Empirical research from other Member States concerning trader behaviour and reactions when consumers attempt to claim their rights appears to be scarce. One study identified concerns Denmark. It investigated whether adaptation of the Danish sales of goods law to implement the Sales of Goods Directive has resulted in a notable change in the behaviour of sellers/traders. The focus of study, which dates from 2005, was on the effect of new rules on the retail trade, though indirectly it also considered effects on consumer behaviour⁸⁰:

- On the six-months reversal of the burden of proof rule, the study concludes that this rule seems to have had a larger practical impact than expected. It seems that in fact the legal position of consumers has de facto been diminished due to the more restrictive attitude of traders towards complaints after six months;
- On replacement and repair the trader questionnaire survey showed that consumers request replacement more often than before the act was amended, but that in less than one third of the cases is this request met initially. Another conclusion is that about 20% of the respondent traders do not replace a product until three repair attempts have been made;
- Finally the extension of the legal guarantee period (from the previous law one year, to the current Directive two-year rule) has led to a general rise in the number of complaints, on average by 20-30% in the sectors studied.

⁷⁹ Interview with ECC UK, Oct 2008.

⁸⁰ Copenhagen Business School, New Rules on Consumer Sales, An empirical study, Bo Kristensen et al, March 2005.

4.5 Conclusions on trader behaviour

When it comes to the reaction and attitudes of traders when faulty goods are returned, consumer experiences in the three countries examined varied quite widely; however, a pattern of common practices in each country also emerged.

Common to all three countries is that the vast majority of consumers take back faulty goods to the seller; and in all three countries they are reluctant to pursue a complaint if the seller does not solve the problem, particularly for low value goods. All cite ‘too much hassle’, lack of time, stress and inconvenience as the reasons.

In Italy, research for this study shows that common practice by large stores is to replace faulty goods within 7 days of purchase on production of receipt; after that consumers are directed in person to the producers’ repair centres. Sellers follow the procedure least expensive for them, most frequently by passing on the faulty item to the producer’s service centre, and the producer then decides whether to repair or replace. Often consumers are directed to the service centre in person, which can be in inconvenient and far locations. Long waiting times for repair were also reported. Consumer advisers also report complaints regarding rogue trader practices, such as ‘playing for time’ and returning goods un-repaired after the six-months reversal of proof period has passed.

In Poland, a rule imposing a 14-day response time to complaints, is generally good practice but it can also result in frequent rejections of complaints, or long waiting times for repair after the complaint is accepted. A very common practice in Poland appears to be for sellers to drive consumers to claim on their commercial guarantees. Small retailers send the consumers to the producers directly, larger ones act as intermediaries. Repair seems to be the most common remedy offered, with replacements only after multiple repairs have failed. A further common practice encountered in Poland is abuse of time limits set by legislation – either asking for expert proof within the first six months period after purchase, before accepting the complaint; or commonly rejecting complaints after six months have passed, as few consumers will pursue professional expertise to prove their case.

More extensive UK research suggests a variety of experiences for consumers when returning faulty goods, though often without a satisfactory, or expected, outcome. There seems to be a wider choice of remedies on offer, though sellers still seem to choose the option that is cheapest and most convenient for them. UK consumers most frequently ask for a replacement or a refund. Satisfaction ratings with companies for ‘putting things right’ and fair treatment come at below the 50% mark for all product categories. Consumer research in Scotland suggests that consumer dissatisfaction may in some circumstances be the result of over-expectation of their rights, rather than (frequent) retailer non-compliance. Research in the UK also revealed problems with returns of new technology products, such as navigation systems, where software is integral to the product or have combined hardware and service contracts – so consumers cannot reject the former without rescinding the latter.

Most relevant recommendations received from interviewees in the three countries include:

- Making producers, as well as sellers, equally liable under legal guarantees (this was particularly favored by ECC interviewees in all three countries, as a strong aid to cross-border commerce);
- A clearer definition in the legislation as to the seller’s duty to return goods to conformity, without ‘significant inconvenience to the buyer’ (does this include for example having to take the goods to the service centers in person?);

- Giving strong consideration to extending the two-year legal guarantee period. One solution proposed would be to vary legal guarantee terms according to product categories, as products vary considerably in their useful life expectancy.

5. CHOICE OF REMEDIES

5.1 Italy

As noted in interviews and focus group discussions, it seems that consumers in Italy do not feel they are able to choose between the various remedies provided by legislation at the time when the goods they bought are discovered to be defective. They know they can have faulty goods replaced within 7 days at large retailers and they tend to fight for this if need be. Otherwise repair seems to be the general and only option offered, often with long waits. Participants in the focus groups stated that they want to be able to make use more extensively of their right to replacement and for longer than the 7-day practice. They also stated that they would like to law to define more precisely the so-called ‘reasonable’ limits of time within which the repair should be made:

“It does not seem right to me, if it is clear that it was already defective and you paid a lot of money for it or it was something that was important to you, ...it is annoying to think that they have repaired it for you; it is as though it were not new any more, or in bad shape..”⁸¹.

There was very little mention in the group, or by the interviewed experts, of the other statutory, second tier, remedies available – reduction in price or rejection of the contract. Participants mentioned only two cases of money refunds, both for goods ordered mail-order and involving TV promotions with special claims that were not fulfilled (so in fact subject to different rules).

5.2 Poland

As for Italy, those interviewed in Poland are categorical that consumers do not have a choice of remedies. It is the seller (or the manufacturer) who decides what to offer and most often it is repair, or even several repairs. For example, a local ombudsman reported:

“In 90% of cases they don’t have such choice [between remedies]. It’s usually the sellers who decide on whether the good will be repaired or replaced, and not the consumers”⁸².

From the experience of the interviewees it appears that the younger generation, when making a complaint, usually by intuition demand replacement or refund. Older consumers usually accept seller’s proposal to repair a good. Both young and old consumers reportedly often sign the complaint forms filled by the seller without even reading them.

One problem identified for the reason of effective lack of choice, even when repairs fail, is that the phrasing in the legislation is not clear, in particular the meaning of ‘reasonable time’ or ‘inconvenience to the consumer’ when it comes to repair or replacement. As a result sellers think that the choice between repair and replacement is theirs from the start⁸³. There is also a problem with the terminology related to time limits – there is a time limit of 14 days for having complaints answered, but no time limit for having the claim solved, for example repairing the goods⁸⁴.

As seen from sections above, Polish consumers often prefer replacements or refunds, depending on the nature of the defect and how many repairs have already been carried out.

⁸¹ Milan focus group participant, Oct 2008.

⁸² Interview with a local consumer ombudsman, Nov 2008.

⁸³ Interview with the ECC Poland, Nov 2008.

⁸⁴ Interview with POHID, the retailers’ association.

But in reality the effectiveness of consumer choice is very low. The following comment of a consumer ombudsman reflects a general opinion of those interviewed:

*“In general sellers ignore consumers’ demands for replacement and keep repairing the goods. Consumers agree to such practices, as they don’t want to engage in dispute solving in court.... The current regulation in Polish law gives sellers large freedom on how to deal with complaints. I think the issue of constant repairing of the good instead of replacing it with a new one should be addressed”*⁸⁵.

5.3 UK

Under UK legislation, consumers have two lines of remedies: they can choose to reject goods which are not of satisfactory quality within a ‘reasonable time’ and receive a full refund; or they can follow the remedies provided by the EU legislation. Opinion of the consumer advisors interviewed is that people in the UK value the right to reject, but that traders will go first for the remedy most convenient to them; and that traders will sometimes use consumers’ lack of awareness of their rights and try to impose the cheapest solution for them.

If consumers lose confidence in the seller, they might simply want to cancel the contract. In addition, when two goods are provided together (e.g. bundled goods such as service with hardware/handset), the consumer is bound by two contracts, so asking for a refund on one of the two is not really an option. Such contracts are becoming more and more frequent⁸⁶.

The retail association representative stated that UK retailers are also generally comfortable with refunds or price reductions if the defect is material, as “the attitude here is not to keep the contract in force, but sort the matter out by refund”⁸⁷. However very much depends on the nature and value of the product, and “probably there are also differences between big and small retailers”. For low value items, the cost of repair would be higher than replacement, so sellers would prefer refunds in such cases. A small defect in a car would not lead to replacement but repair; if a less expensive product (e.g. a CD player) does not work soon after it is bought, consumers are well entitled to ask for immediate refund.

These findings concur with the more extensive recent qualitative research by the Law Commission (see 2.3.1 above) who canvassed consumer views on remedies through focus groups throughout Great Britain. Discussions revolved around a number of scenarios involving faulty goods. Key conclusions include⁸⁸:

- Some faults are more likely to cause consumers to request a refund rather than repair or replacement. For example faults which are potentially dangerous, or those that may recur in replacements, such as poor stitching in clothing;
- People are more likely to accept a replacement if they made a considered decision to purchase a particular model or brand in the first place;
- Most participants were aware that they had a right to reject goods, even though they might not necessarily rely on it. In certain situations many participants felt strongly that they should be able to reject goods for a full refund, particularly where a replacement or repair has failed;
- In general, people seemed comfortable with the concepts of repair and replacement, though perceptions of rights were influenced by commercial guarantees;

⁸⁵ Interview with a local consumer ombudsman, Nov 2008.

⁸⁶ Interview with representatives of the ECC and Consumer Direct, Oct and Nov 2008.

⁸⁷ Interview with British Retail Consortium, Nov 2008.

⁸⁸ Law Commission and the Scottish Law Commission *Consumer Remedies for Faulty Goods*, a Joint Consultation Paper, Nov 2008, pages 44-46.

- Repairs were seen to be more relevant for high value items, such as cars, washing machines and other white goods. Repairs were thought to be unlikely to be offered in the case of low value goods where labour costs would exceed the cost of the product. However, they wanted repairs to be carried out quickly, particularly on important products (e.g. washing machines), which might be used daily;
- Participants would generally only be prepared to accept one replacement and if that proved unsatisfactory, they would expect a refund;
- First tier remedies (repair and replacement) were familiar to the UK consumers, but the second tier of reduction in price and rescission came across as “strange” and “alien”. Price reduction, rather than a full refund, for a returned good was seen as unfair and unlikely to be used, as it would damage a retailer’s reputation. Many of the participants said that one of the reasons for choosing a shop is that shop’s returns policy.

The report’s conclusions are subject to consultation until February 2009. Regarding remedies they include a recommendation that a short-term right to reject should be retained. It inspires confidence in consumers and provides them with a remedy where they have lost trust in the product or retailer. It is also an important bargaining tool, which drives up standards in the market. Finally, the Law Commission report argues, it is simple and relatively easy for consumers to understand⁸⁹.

5.4 Other EU Member States

The UK Law Commission report (see 5.3 above) also includes the results of a questionnaire survey of European Consumer Centres, 17 of which responded. The responses show that in many EU countries retailers voluntarily offer better remedy provisions in the first instance than repair or replacement; these include refunds; no-quibble money-back guarantees within a set period; exchanges for other products; vouchers; discounts and credit notes. The research also found a wide variation across Europe in relation to the “problematic” areas of the Consumer Sales Directive, such as how many repairs, ‘reasonable time’ for repairs, and ‘significant inconvenience’. The majority of respondents said that while the choice between repairs or replacement is legally the consumer’s, in practice it is the retailer who chooses⁹⁰.

The report also found that currently eight European jurisdictions give consumers the right to return goods, cancel the contract and obtain a refund for faulty goods as a ‘first tier’ remedy. In five of these Member States, consumers have the right of free choice between all four available remedies in the Directive, so can ask for a refund as a first choice⁹¹. In France and Ireland, the ‘right to reject’ is similar to the UK, in addition to the four remedies available under the Directive.

The report concludes that there is a fairly strong cultural tradition across Europe that consumers who buy goods that turn out to be faulty should be entitled to return them and receive a refund, and therefore any harmonised new legislation should incorporate a right to reject⁹².

⁸⁹ Law Commission and the Scottish Law Commission *Consumer Remedies for Faulty Goods*, a Joint Consultation Paper, Nov 2008, page 85, section 8.27 and following.

⁹⁰ As above, page 62, section 6.49 and following.

⁹¹ Latvia, Greece, Lithuania, Slovenia and Portugal.

⁹² Law Commission and the Scottish Law Commission *Consumer Remedies for Faulty Goods*, a Joint Consultation Paper, Nov 2008, sections 8.23 to 8.26.

5.5 Conclusions

There is strong evidence that in practice the choice of remedies for faulty goods is up to traders, so consumers do not have an effective choice of remedies as the law requires. This is true of the countries examined for this study, and this appears also to be the case in other countries in the EU.

In Italy, apart from voluntary replacement practices by large stores, repairs are the routine remedy offered; consumers say they prefer replacement.

The situation is similar in Poland, while consumers say they want the option of replacements or refunds.

Research in the UK shows that consumers value strongly their right to refund for faulty goods, even if they would not expect this remedy in every case.

Relevant recommendations made by those interviewed include:

- Defining the terms ‘reasonable time’ and ‘significant inconvenience’ in the legislation when it comes to the provision for repair or replacement of the goods, for example by specifying a maximum deadline for repair or replacement, as neither sellers nor consumers understand this;
- Restricting the number of repairs before a replacement or refund is offered for a defective product;
- Contracts that include both service and goods (for example mobile phone or broadband bundles) should be part of the legal guarantee provisions, as one cannot function without the other;
- Retain, or introduce, a right to refund for faulty goods as a first tier remedy. Or make all remedies available in the first instance, without a two-tier system.

6. OVERALL CONCLUSIONS

This study focused on the effectiveness of the implementation of rights provided to consumers under the EU Consumer Sales Directive in terms of their experience in exercising them. Its first overall conclusion is that there is virtually no in-depth empirical research, including comparative EU-wide research, to provide the necessary evidence base for policy makers on whether legal guarantees work in practice. We have only been able to find more extensive research of this kind in Denmark (focused on traders however) and in the UK. Given the stated purpose of EU policy to be more responsive to consumer needs and more focused on final outcomes, there is a clear and large gap in the evidence base in this area

We have therefore carried out some exemplary qualitative research of our own, examining consumer experiences in three countries, namely Italy, Poland and the UK. Two of these – Italy and Poland – have implemented the Consumer Sales Directive (CSD) more or less as it stands. The UK added CSD provisions to previously existing legislation; therefore UK consumers have more enhanced rights when it comes to remedies for faulty goods, as well as time limits within which to apply them.

Overall, research indicates that in terms of consumer experience, there are many features in common but also important differences between the three countries. The differences are particularly evident in the areas of consumer expectations of what remedies they are entitled to, as well as in voluntary customer services policies practiced by traders. Such differences may be due not just to legislation, but enforcement and levels of compliance by traders in each country.

The main conclusions and recommendations for possible ways forward concern three following areas:

- Consumer research;
- Consumer awareness of legal guarantee rights;
- Consumer experiences and choice of remedies.

6.1 Consumer research

There is no EU-wide detailed comparable data, so the only firm conclusions that can be drawn from available surveys are that relatively few consumers overall attempt to claim their rights when the goods they buy turn out to be faulty (on average only 16 in every 100 EU consumers with a problem). There is also evidence, particularly from the UK and the ECC network, that faulty products form a very large proportion of consumer problems. In the UK, evidence shows that at least 50% of consumers with problems over faulty goods are prepared to complain or take other action. In Poland, the available data indicates that over a half of all complaints made by consumers relate to defective goods. For Italy, apart from Eurobarometer data, no further evaluation was possible.

This leads to the following key recommendations to improve consumer research:

⇒ *More detailed pan-EU comparative research data* is needed, such as market studies, tracking specific consumer experiences, ‘mystery shopping’ and so on. This to include not only numbers of consumers who take action, but more meaningful breakdowns to help the legislative and enforcement process, such as economic detriment, sectors affected, remedies achieved and general trade compliance. Such studies can be carried out through the Consumer Scoreboard.

6.2 Consumer awareness of legal guarantee rights

In general awareness by consumers of their legal guarantee rights is low in all three countries examined. Consumers know they have rights, but they do not know the specifics. They are heavily influenced in their attitudes and knowledge by voluntary shop customer service policies, and by commercial guarantees provided by producers. Thus they may over-estimate, as well as under-estimate their rights. In fact legal and commercial guarantees are rarely distinguished from each other.

However, consumers in the UK know and expect to have a right to reject goods and get a refund for faulty goods. This is also an expectation in Poland. Italian consumers, on the other hand, considered no-quibble replacements of goods within 7 days, a common large store policy, as part of their legal right.

This leads to the following key recommendations to improve consumer rights awareness:

- ⇒ *Putting obligations on sellers to inform buyers of their legal rights*, just as they do for commercial guarantees. This could be achieved by developing simple easily remembered messages to be included e.g. on receipts, or point of sale, or on packaging.
- ⇒ *Write plain-language legislation* that is easy to understand and interpret, therefore more actionable for consumers.

6.3 Consumer experiences and choice of remedies

In all three countries examined consumers are motivated to find out their rights when things go wrong, and in particular when the goods are expensive. Equally in all three countries they give up easily in pursuing their rights, because of the hassle, stress and inconvenience involved.

In all three countries the vast majority of consumers take back faulty goods to the seller, and in all three sellers follow procedures and offer remedies that are most convenient and least expensive for them. However, consumer experience also varies between the countries.

In Italy, traders tend to pass the faulty item to the producer's service centre where the remedy is decided, usually repair. Often consumers are inconveniently directed in person to the service centre; long waiting times for repairs, as well as some rogue trader practices, e.g. playing for time, are reported.

In Poland, sellers appear to drive consumers to claim on commercial guarantees as a common practice. Repair is the most frequent remedy offered, and multiple repairs are common. Abuse of time limits set by legislation is reportedly common in Poland, for example rejection of complaints after 6 months.

UK research suggests a variety of experiences for consumers when returning goods, though often without a satisfactory or expected outcome. There seems to be a wider choice of remedies on offer, though sellers still choose the most convenient option for them. UK consumers most frequently ask for replacement or refund. UK research also revealed problems with new technology products that have integral software, or combined hardware and service contracts, such as navigation systems.

In practice, in all three countries examined (and apparently as well in other EU Member States), the choice of remedies for faulty goods is up to the traders, so consumers do not have a real choice, as the law requires.

This leads to the following key recommendations to improve consumer rights delivery:

- ⇒ *Defining the terms ‘reasonable time’ for repairs and ‘significant inconvenience’ in the legislation, for the provision of repair or replacement of the goods, by specifying a maximum period, as well as the maximum number of repairs that should be carried out before a product is replaced.*
- ⇒ *Introducing a right to refund for faulty goods as a first tier remedy, or make all remedies available in the first instance, without a two-tier system. This could be expected to drive up trader standards and voluntary services, as well as improve consumer confidence and expectations.*
- ⇒ *Making contracts that include both service and goods (for example navigation systems or broadband bundles) part of the legal guarantee provisions, as the two depend on each other.*
- ⇒ *Varying legal guarantee terms according to product categories, as products vary considerably in their useful life expectancy and for some, such as home construction materials, may not show latent faults for considerable time.*
- ⇒ *Consider extending responsibility for lack of conformity to producers, as well as sellers. This would be particularly valuable when consumers buy expensive items and live far away from the point of sale, so that they cannot easily claim the legal guarantee against the seller (for instance, in cross-border purchases). In these cases, it might be easier for the consumer to contact the service point or representative of the producer.*

ANNEX I: ORGANISATIONS INTERVIEWED

Italy:

ECC Italy

Codacons (Coordinamento delle associazioni per la difesa dell'ambiente e dei diritti degli utenti e dei consumatori)

Retail stakeholder

Poland:

ECC Poland

Association of Polish Consumers (Stowarzyszenie Konsumentow Polskich)

Polish Consumer Federation (Federacja Konsumentów)

3 local ombudsmen

POHID (Polish Organisation of Commerce and Distribution)

United Kingdom:

ECC UK

Consumer Direct

British Retail Consortium

ANNEX II: QUESTIONNAIRES FOR INTERVIEWS

EVALUATION OF THE GUARANTEE RIGHTS IN CONSUMER GOODS

ECC

The European Parliament has commissioned Civic Consulting to conduct a study on the transposition and implementation of the two years guarantee contained in the Directive 1999/44/EC. The study is focused on the level of consumer awareness of the right provided by the directive, how they exercise it and what difficulties they may encounter.

1. General details (Name, organisation, date of interview):

Please specify

2. If you handle consumer advice, do you have any statistics on how many consumers contact you asking for information or complain about their guarantee rights (for e.g. number of call/emails in the last 6 months)?

Please specify

3. What are the common reasons for complaint or seeking advice regarding product guarantees? What are the problems that consumers may face when claiming their guarantee rights cross-border? Are there any differences depending on whom they claim against (seller, manufacturer or distributor)?

Please specify

4. In your experience, what is the general level of consumer awareness regarding guarantee rights provided by EU Law (1999/44/EC) and on how to claim them?

Please specify

5. In your view, are consumers able to distinguish between legal guarantee and the extended guarantee that the seller/producer may provide (also called warranty)?

Please specify

6. How do consumers usually claim their rights? Is it generally clear to them whom they should claim against (manufacturer, distributor, seller) or address their claim to and in what circumstances? Are there any differences?

Please specify

- 7. Do you consider that consumers have an effective choice between the remedies offered when they claim under guarantee (refund, repair, replacement)?**

Please specify

- 8. What types of redress mechanisms are available to consumers if a cross-border dispute arises concerning their guarantee rights?**

Please specify

- 9. Sales directive (1999/44/EC) is going through an amendment process. In your view, does it need amendment and why?**

Please specify

- 10. Could you suggest any changes that might increase the efficiency of the system and/or benefit consumers?**

Please specify

- 11. Any other comments?**

Please specify

EVALUATION OF THE GUARANTEE RIGHTS IN CONSUMER GOODS
*
RETAILER ASSOCIATIONS

The European Parliament has commissioned Civic Consulting to conduct a study on the transposition and implementation of the two years guarantee contained in the Directive 1999/44/EC. The study is focused on the level of consumer awareness of the right provided by the directive, how they exercise it and what difficulties they may encounter.

1. General details (Name, organisation, date of interview)

Please specify

2. How are guarantee rights usually communicated to customers? Do sellers provide information on guarantees before customers buy a product? If so, in what form and were?

Please specify

3. Do you think that consumers are usually aware of their guarantee rights and on how to claim them?

Please specify

4. Do you think that traders are aware? Is any formal training given to traders particularly small traders?

Please specify

5. Do you think that consumers are able to distinguish between legal guarantees (statutory guarantee provided by the Law) and additional/extended guarantees (also called warranties) that sellers might provide?

Please specify

6. Do customers usually have choice on the remedies? (replacement, repair, price discount?) What remedies do they ask more often? What kind of remedy do sellers provide more often?

Please specify

7. What is the remedy most favoured by sellers/traders – refund, repair or replacement?

Please specify

- 8. Are you satisfied with the guarantee system established by the Law in your country? (notification requirements, presumption of liability in the first 6 months after delivery, time limit, remedies..) In your view, does the Law need amending and why?**

Please specify

- 9. Could you think of any changes that might increase the efficiency of the system and/or benefit consumers?**

Please specify

- 10. Any other comments? In particular has there been any research done by industry on consumer attitudes to guarantees that you can recommend?**

Please specify

ANNEX III: FOCUS GROUP REPORTS

Study on the transposition and implementation of the two years guarantee contained in the Sales directive

**Research International
London, UK
30th October 2008**

1 Country

United Kingdom.

1.1 Background and Methodology

In 1999 the European Commission adopted Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (hereafter ‘the Directive’)

According to Article 5 of the Directive in case of lack of conformity that becomes apparent within two years from the delivery of the goods, the consumer can ask the seller for goods to be repaired, replaced and reduced in price or for the contract to be rescinded. The seller is thus liable to the consumer unless at the moment of conclusion of the contract of sale the consumer knew or could not reasonably be aware of lack of conformity.

Research International was commissioned to conduct research to evaluate to what extent consumers currently exercise the rights provided in the Directive in case of lack of conformity.

Specifically, the study aimed to assess:

- ☐ Whether consumers are aware of their rights as implemented in the UK;
- ☐ Whether consumers are able to distinguish between the statutory guarantee provided by the law and commercial guarantees voluntarily offered by sellers/ producers;
- ☐ Whether consumers attempt to exercise their right;
- ☐ How did the seller react and what was the choice given to the consumers between the different remedies provided by the Directive.

The methodology adopted for this study was one focus group discussion with 6 respondents. Focus groups of this size allow for each respondent to share their individual experiences whilst allowing for in depth discussion between respondents to allow for new ideas to be created.

The group consisted of 2 male and 4 female respondents ranging in age from 24 to 55. All had had experience of purchasing a product that failed to conform for various reasons. The group contained a mix of respondents who had experienced either a satisfactory or unsatisfactory outcome.

1.2 Summary of main findings

- ❑ Respondents had varying experiences with seeking redress from products purchased that failed to conform;
- ❑ All but one of the consumers we spoke to were not aware of any legal rights they could cite to the seller;
- ❑ Consumers expected that the commercial guarantee would be enough to seek redress;
- ❑ Sellers did provide a choice of different remedies to the consumer as provided by the Directive;
- ❑ Respondents were not fully aware of their rights as implemented in the UK;
- ❑ Respondents were unclear of where to ascertain information regarding their rights;
- ❑ Respondents felt that advertising is the best way to communicate consumer right information.

1.2.1 Own Experiences in claiming guarantee rights

- ❑ Consumer A is a 25 year old male living in London. He purchased a satellite navigation system from Tom Tom from Currys. After a few weeks of use, the device would not switch on. He took the device back to Currys with the original receipt who informed him they could not do anything about the broken device but that he should contact Tom Tom directly.

Consumer A assumed that since he had a 12 month guarantee that this would provide enough cover for Currys to replace the device. After contacting Tom Tom directly, he was advised to send the device to the Tom Tom repairs centre who repaired the device free of charge.

Consumer A feels as though Currys has let him down as he believes it is their responsibility to replace items that are faulty. He feels as though he had to go through extra steps and has been inconvenienced for a longer period of time than is necessary.

- ❑ Consumer B is a 55 years old female living in London suburbs. She purchased a sofa from DFS and paid a premium to have the fabric treated with a coating. The sofa arrived very late and the colour appeared slightly different to the model she had seen in store. The sofa also appeared to be faulty in terms of the way it stood and the back of the sofa felt wobbly.

Consumer B spoke to the retailer and asked for a replacement. DFS sent a representative round to examine the sofa who reported there may have been some problems with its construction, specifically the filling had been inserted wrongly. DFS said they would replace the sofa but Consumer B said that she would rather have her money back. DFS then said that they could not do this but that she could choose another model from in-store.

After choosing another model, Consumer A discovered that when paying the difference for the new model, which was more expensive, the coating she had paid for in the first instance did not count as credit towards the second model.

Just over a year later Consumer B decided she no longer wanted the sofa as it was not what she originally wanted. She knew she had a one year guarantee but since she was just outside this, she did not feel as though she could go through the process of replacing the model she had.

- ❑ Consumer C is a 27 year old male living in London. He purchased a Bosch fridge freezer from a Comet clearance store. The appliance was in the clearance store because it had a scratch on the top of the fridge and so had been rejected at delivery by the customer who originally purchased it. After a few weeks he noticed the fridge was not working properly. He rang

Comet who sent an engineer out to fix the problem. He said that if Comet had been unable or unwilling to fix the problem, a two years guarantee from Bosch would have covered the problem.

Consumer C has positive feelings towards Comet as he is aware that for some serious claims a fee applies. He therefore expected a bill to come through the post and so feels positive towards Comet for not doing so.

- ❑ Consumer D is a 46 years old female living in the London suburbs. She purchased a portable television set from ASDA for her son. After a few weeks the ariel socket in the back of the television broke so the ariel would not stay plugged in. Consumer D took the television back to the ASDA she had purchased it from. She could not however locate the receipt which acts as a guarantee. The customer service representative said they did not usually replace items without the receipt, however after consulting the store manager they allowed it 'on this occasion'.

After several weeks the same problem occurred again so Consumer D took the television back to the store again. This time she had the receipt and they changed it without any problems.

- ❑ Consumer E is a 36 year old female from London. She bought a washing machine from Argos when her old machine broke down. When the new washing machine was delivered, Consumer E asked if the machine could be placed in the slot where the old machine had been as she was heavily pregnant and was not able to move it herself. The delivery staff said that due to insurance purposes they were not able to push the machine right in.

Consumer E proceeded to fit the machine herself. However when she turned it on, the water would not drain properly. She spoke to the Argos helpline whom she asked if it was possible to get somebody out to look at it. Argos were insistent that the problem could be resolved over the phone, however after troubleshooting Argos said they would send a replacement, but it would take up to 10 days. Consumer E felt as though Argos had insinuated that she herself had broken the washing machine and did not like the way she had been treated on the phone. When the machine arrived she fitted the machine herself with a successful outcome.

After some negotiations Consumer E also managed to get refunded for the laundrette bills incurred from the time without the washing machine.

- ❑ Consumer F is a 24 year old female living in London. She purchased a BlackBerry mobile phone from an Orange store. After a few weeks of using the phone it began to delete all her emails and text messages. Consumer F rang Orange to ask for a new phone to be sent. They said that since it was

after 14 days they were not obliged to do so; however on this occasion they would. Exactly the same thing happened two more times, by which case Consumer F wanted a different model BlackBerry. Orange had said this was not possible. A call centre operator let slip that they had been sending her reconditioned phones.

Consumer F felt angry that she had spent so much of her time on the phone to Orange trying to sort out the problem. However, she was reluctant to contact BlackBerry directly as she felt that it was Orange's responsibility to resolve the issue.

1.2.2 Exploratory discussion

All but one of the consumers we spoke to were not aware of any legal rights they could cite to the seller. For the most part, consumers expected that the guarantee that came with the product would be enough to ensure the faulty product would be repaired or replaced and so did not feel they needed to pursue the matter further.

In those instances where the seller did not resolve the issue, information about whom to contact was sought from friends and family. Consumer B contacted trading standards after a friend recommended that she did so following the problems with her sofa. The trading standards representative advised Consumer B to go back to the store from which she purchased the sofa and discuss the issue with the store manager. Consumer B felt that the trading standards representative with whom she spoke was relatively junior and did not have sufficient knowledge to advise her adequately and so did not take the advice.

Consumer E threatened to call the television programme Watchdog after Orange advised her that they could not provide her with an alternative handset. She had learned that threatening to call Watchdog would help her to resolve the issue with Orange from her father who had a similar experience. Several other of the consumers we spoke to reported that they had also informed sellers they would call Watchdog if the issue was not resolved.

Consumer D explained that, even though the problems with the television she had purchased had been resolved, she believed that as she had paid for the television by credit card, the credit card issuer would provide some protection over the purchase. The credit card issuer, she explained would have been her next port of call had ASDA not been able to resolve the issue.

None of the consumers we spoke to had taken out any additional protection or commercial guarantee provided by the seller. The majority had been offered additional protection at the point of sale but none had been pressured into purchasing it. All had declined because they felt that it was not needed as the product would be covered by legal guarantee.

1.2.3 Design of the optimal system

All felt that it was the responsibility of the seller to resolve any issues that arise from products sold. They do not understand that the manufacturer holds responsibility for solving the issue, as it is the seller who sold the product and not the manufacturer. They believe that consumers should be able to claim guarantee rights through contacting the seller and having the product replaced, repaired or to receive their money back if there is a problem with the product they have purchased. This should be done either through taking the product back to the store it was purchased from or through calling the customer care line.

There was a consensus among the group that consumer rights are created for the more serious cases and less so for 'everyday' issues. This is a result of seeing the most severe cases in the media and on television programmes such as Rouge Trader. As a result, most did not feel they needed to source information about consumer rights to resolve their issue, rather a trip back to the store the product was purchased from would suffice.

Also a consensus was that at present information about consumer rights is far too complicated for the majority to understand. There is a feeling that information needs to be simplified in order to aid consumers understand their rights. In particular, the consumers felt that the sources of information could be placed on one website in order for there to be a 'one stop shop' for the consumer. This was described as 'another Martin Lewis product' but for consumer rights instead of financial information. Consumer D suggested that a feature of this website could be a live help function where consumers could talk over instant messenger to an advisor. A website such as this could make consumers more aware of their rights but also inform them that consumer rights are not just there for the more serious incidents but also for the more everyday issues.

Respondents felt that information about this website and consumer rights in general would best be delivered through television and radio advertising. Guarantee information booklets and information on receipts are so rarely read. The consumers agreed the best option would be to pass on information to the public via advertisements which, it is thought, would be easier and more convenient to absorb.

1.2.4 Any other points/comments mentioned in the discussion

A key issue that came out in discussion regarding the Directive was that the process of claiming money back or from having a faulty item replaced or repaired would be long and arduous if claiming legal rights. Consumers felt that it would probably be more effort than it was worth.

When shown the Consumer Direct webpage, consumers were only vaguely clear about who Consumer Direct were. However they felt that the website was a very good way of letting people know about their rights. They felt that advertising would be a good way of letting people know about the website.

1.3 Conclusion

Consumers do not know how to seek redress legally and how they are covered by statutory rights. They therefore will look to commercial guarantee to solve the problem.

On the whole, sellers did provide a choice of different remedies to the consumer as provided by the Directive. However, it was often communicated as the only solution and took a deal of effort from the consumer to get a satisfactory outcome.

Consumers are not fully aware of their rights as implemented in the UK. They are unclear of where to ascertain information regarding their rights and feel advertising on television and radio would be the best way to communicate consumer right information.

Study on the transposition and implementation of the two years guarantee contained in the Sales directive

**Research International
Milan, Italy
27th October 2008**

1 Country

Italy.

1.1 Background and Method

In 1999 the Commission adopted Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees/ warranties.

According to Article 5 of the Directive, in the event of lack of conformity that becomes apparent within two years as from delivery of the goods, the consumer can ask the seller for goods to be repaired, replaced, and reduced in price or for the contract to be rescinded. The seller is thus liable to the consumer unless at the time the sales contract was concluded the consumer knew or could not reasonably be unaware of lack of conformity.

All member States have now transposed the Directive, but little research has been conducted so far on the effective implementation of Directive at national level.

According to the 2006 Eurobarometer survey, between February 2005 and February 2006, only 15% of European consumers tried to assert their guarantee rights, mainly in their home country.

Against this background, the European Parliament, DG Internal Policies, commissioned Civic Consulting to carry out a study on the transposition and implementation of the two-year guarantee contained in the Directive 1999/44/EC.

The study will evaluate to what extent consumers currently exercise their rights as laid down in Directive 1999/44/EC in the event of lack of conformity.

In particular, the study aims to determine:

- ❑ Whether consumers are aware of their rights as implemented in their own country, and the level of awareness of legal guarantee rights;
- ❑ Whether consumers are able to distinguish between the statutory guarantee provided by the law and commercial guarantees voluntarily offered by

sellers / producers (which may be offered at extra cost or as a special incentive);

- ❑ Whether consumers attempt to exercise their rights;
- ❑ The reaction of the seller/producer when consumers attempt to claim their legal guarantee rights (and if consumers are given a choice between the different remedies laid down by the Directive);
- ❑ The relative importance from a consumer viewpoint of specific remedies offered by the Directive.

The focus groups were intended to get a feel for the above key-points, as well as find out some specific experiences on the theme.

Method and Research design:

1 Focus Group in Milan - lasting 2hrs

- ❑ 10 respondents (7 men – 3 women); mix of ages and professional classes;
- ❑ Consumers who bought a product that turned out to be either faulty or different from what they expected from the description / advertising and went back to the seller to claim their legal guarantee right;
- ❑ The group was formed both of consumers who were successful in their request and consumers who did not obtain satisfactory redress;
- ❑ The fieldwork was conducted in Milan on October 27th.

1.2 Summary of the main findings

The findings of the study confirm Italian consumers' awareness of their right to the legal guarantee and also its duration, whereas they are not at all au fait with the specific contents of the law.

Similarly, they know the difference between legal guarantee and commercial guarantee if this latter is identified as an extension in time of the legal guarantee, but – for example – they are unable to say if the right to obtaining replacement of the goods – a practice commonly implemented by the large stores – is a benefit granted by the sellers or instead an actual legal right of the consumer.

Generally speaking, in the event of non-conforming goods, the consumers always seems to undertake the first step towards the restoration of the conformity, which in the majority of the cases means the replacement of the goods within 7 days of their purchase.

The mechanism becomes more complex and can generate dissatisfaction when the item is not replaced but repaired. In these cases, the consumer does not feel that he has the right to choose between the various different modes of bringing the goods back to conformity provided by the law, may have to wait for a long time and may, lastly, find the goods brought back to conformity in way that he did not want.

In these cases consumers often spontaneously forgo any further claim, unless the item of goods has a high commercial / moral value. Taking the legal path, be it private or not, tends to act as a disincentive inasmuch as cause of further expense, source of stress and waste of time.

As far as an ideal system of guarantees and warranties is concerned, the consumers' main requests hinge around a) receiving more information about the specific contents of the law; b) having a more precise definition of the period of time within which the seller or manufacturer must restore the conformity; c) having a greater possibility of obtaining the replacement, rather than the repair, of the goods, especially if the fault becomes apparent within the first few months and lastly d), a more explicit statement of the seller's duty to assume responsibility for the defectiveness of the goods and to undertake to return to the consumer the repaired goods within a certain time, without any extra charges/any further inconvenience to the consumer.

1.2.1 Own Experiences in claiming guarantee rights

The consumers take a very active part in the discussion, telling even more than one experience relating to the topic in hand.

All the items of goods they talk about have always been purchased from large retail outlets (hypermarkets, shopping centres, large stores specialising in the sale of electronic appliances).

9 out of 10 consumers are aware of the fact that the legal guarantee covering purchased goods has for some time now been 2 years (the only consumer not up-to-date thinks that it is still 1 year, he has never informed himself on the matter).

It is an awareness acquired from the times when the Directive was published: at that time a lot of information was broadcast on the state TV, but even today all the leaflets illustrating the guarantee print the two years in bold type. "Yes, I know that by law it is 2 years, at the time it was mentioned on the TV news ... but, if am not wrong, they also did adverts about it, sort of institutional

advertising ... the TV news programmes talked about it as well ... in any case it is printed inside everything that you buy ...”.

The respondents’ level of awareness of their legal rights goes no further than the overall duration of the guarantee. They do not know any of the specific clauses of the law (they do not know that, within 6 months, it is presumed that the defect already existed at the time of purchase, whereas after the six month period this fact will need to be proved. They are unaware of the restrictions to the possibility of claiming/demanding the replacement of the item (rather than a repair, for example), they do not know that the repair must in any case be carried out within a reasonable time ... etc).

Their behaviour is however shaped by a sort of “intuition and empirical deduction” of their rights. It needs to be born in mind in fact that:

The consumers demand (and generally obtain) the replacement of the faulty goods within 7 days of purchase at the large shopping centres or large specialised stores upon presentation of the till receipt. The consumers do not know if it is a legal or commercial guarantee (they do not know if it is the large retailers that have established this norm, or whether it is a right laid down by the law tout court), but they consider it a right based on the propaganda that the large retailers themselves make about it at the sales point. “You see it written in large letters on the placards inside ... we now all know that this is how it is, even the people at the check-out or the assistants tell you ...”.

The consumers consider it their “moral” right to direct their complaint at the seller, he being the person they purchased the goods from. “After all, it was him I gave my money to, it will be up to him to claim back from the manufacturer; why do I have to get involved? My money was ‘good’ when I gave it to him!”.

Accordingly, the fact that the seller (after 7 days have elapsed since the purchase, in other words when the consumer can no longer demand the replacement of the goods) re-directs the consumer to the delegated service/repair centres (with all the resulting waste of time and possible disservice suffered at the hands of these centres) is a source of great disappointment for the consumer, who sometimes forgoes contacting the centre if the goods are of low value (around 100 euros). “Why, if the product is faulty, should it be me who has to take it upon myself to go along to the service centre and deal with whole procedure? Sometimes these centres are really a long way away and it takes up a lot of your time ... it should be the seller that acts as intermediary!”.

Expired the time limit for getting the goods replaced, or when replacement is denied, the consumers intuitively know that they are entitled to have the goods repaired within a certain time limit but they do not know the actual text of the law. Some complain about goods being returned after too long a time with corresponding monetary or moral damage.

The text of the law defines the acceptable period of time as “reasonable”. Once the consumer is advised of this, this definition induces discontent. It in fact leaves the problem of its quantification completely open, makes it an arguable, debatable point, and does not aid the consumer in his direct requests for redress to the seller or service centre. In the event of protest, of any delay in the return of the goods, in fact, the term “reasonable” obliges the injured party to seek the services of a legal body or of a private lawyer, something that in fact – because of the disadvantages this lays them open to – consumers are only willing to do for fairly costly goods. “But what does reasonable mean? If no specific length of time is laid down, what is not reasonable for a person who wants back what he purchased is instead reasonable for them and so if you want to obtain satisfaction you have to institute legal proceedings and we all know what this means!”.

Case history

Totally positive outcome:

- ❑ Consumer A: a Hoover vacuum cleaner manifests a fault the day it was bought (it cannot stay on). The consumer takes it back with the till receipt. The fault is ascertained (overheating) and the goods are immediately replaced.
- ❑ Consumer B: the consumer sees a TV promotion for weight-loss tablets. The clause “satisfied or your money back” is expressly stated: “should there be no weight loss, just send the empty blister packs back to the company and the entire amount will be reimbursed”. The consumer receives the goods at home and pays cash on delivery. At the end of the course of treatment, not being satisfied, the respondent returns the empty blister packs to the company and a few months later receives the cheque for the whole purchase amount, “I swear that I was never expecting it, instead they reimbursed me the whole amount”.
- ❑ Consumer C: the consumer watches a TV promotion for an electro-stimulator for shaping the body. The advertising depicts people who are serenely performing some activities while the machine simultaneously

carries out its action. She orders and receives the goods, together with the payment notes. When she tries the machine she notices that the electric shock – even at the lowest power setting – is too high and prevents her from relaxing and performing other activities, as instead is claimed on TV. She contacts the manufacturer, who asks her to re-pack the appliance and return it by courier. The consumer is satisfied. She paid the costs of returning the goods to the sender, but does not regard this as damage suffered or something she should claim back.

- ❑ Additional cases: various cases of purchases of goods that were discovered not to work properly immediately after purchase. Taken back to where they were bought from, they were immediately replaced upon presentation of the till receipt (e.g. steam iron; DVD player, foods past their sell-by date purchased at supermarkets, etc.)

Positive outcome, but with dispute:

- ❑ Consumer D: about 4 months ago the respondent bought a Playstation (costing around 300 to 400 euros). When using it the first times, he ascertains a fault in the hardware (the Playstation does not save to memory). 3 to 4 days after buying it, the consumer takes the item back to the specialised store, till receipt in hand. The assistant refuses to replace the item and tells the consumer to contact the specialised Sony centre. The consumer asks to speak to the manager and his request for a replacement is at this point accepted. The consumer is satisfied, but considers that the resistance displayed by the store is not correct. The product has a quite high commercial value, and an even higher emotional value (the consumer is an enthusiastic gamer); since his complaint was made only a few days after buying the good, it was patently faulty at the time of purchase itself, and the store itself publicises their customers' entitlement to replacement within 7 days. "I insisted and I got angry: it was unthinkable that they should send it to the repair centre where it would have been kept for Lord knows how long! And in any case I had paid for something that was supposed to work and it actually says on posters inside the sales point that they will replace anything that does not work properly! My Playstation is important to me, I did not want a repaired one!!! But if I had not insisted like I did, I would not have succeeded in having what I wanted".

- ❑ Consumer E: the customer purchased a Nokia mobile phone from a large shopping centre. After about 1 month the memory card becomes faulty (the phone was no longer able to read it). The shopping centre re-directs the consumer to the service centre where he is told that the Nokia guarantee does not include any component external to the phone, and so he is not entitled to either a repair or a replacement. The consumer insists, asserting that the memory card cannot be regarded as a part that is external to the telephone, in view of the fact that it is not only built in to the phone, but without it the phone loses a large part of its monetary and functional value. The service centre does not intend to satisfy his request in any way, and avails itself of a “Nokia procedure”. The consumer refuses to accept defeat and through the website of the Chamber of Commerce accesses the complaints department. He initiates the procedure that is quickly resolved in his favour. The service centre – with Nokia’s apologies – replaces the memory card. The consumer also obtains a more powerful model as compensation for the damages suffered. “I am pleased with the way things went, but it makes me angry, because if I had not done what I did I would have had to buy another one myself and it would not have been right. Not everyone however is able or knows how to proceed or has time to institute proceedings of this type, and the companies take advantage of this ...”.

Partially unsatisfactory outcome:

- ❑ Consumer F: about 7 to 8 months after purchase, a Whirlpool microwave oven no longer works when switched on. The consumer takes the oven back to the Expert store, but is re-directed to a service centre. The oven is repaired under guarantee at extra cost, it now functions perfectly, but the consumer does not consider it correct to have been forced to personally take the appliance to the service centre and collect it again. “In general these centres are located on the other side of the city, why do I have to go there? After all, I bought it from them, it should have been them who sent it there ...”.
- ❑ Consumer G: the consumer bought a camera before the summer. While on holiday he discovers that the zoom does not work properly. He sends it to the service centre at the end of the holiday. As of today, the camera has still not been repaired, nor has any information been given as to why it has been kept there for so long. “I hope that the matter will be resolved properly, but they have had it for two months now, it seems a long time to me, at least if I

knew whyat times the repair times are really long. At the moment I don't necessarily need the camera, but what if I were someone who needed it for work tool? There ought to be specified times!".

Unsatisfactory outcome:

- ❑ Consumer H: a lady buys a Motorola mobile phone. Within the customary 7 days from purchase she notices that the phone does not stay switched on and she takes it back to the large specialised store she bought it from. Although the lady has requested the replacement within the set time, she is told that replacement is no longer possible because she has already had 15 minutes conversation with the phone, a term beyond which the Motorola Company no longer takes back its products. The lady is very dissatisfied because this she had not been advised of this condition at the time of purchase nor is it indicated inside the pack. She refuses to take the phone to the service centre for repair because it is located too far away for her. At home she tries replacing the battery of the new Motorola with another one and she ascertains that the problem lies simply in the battery. She buys a new battery at her own expense.

Other consumers present in the group affirm that this "rule" of the 15 minutes of conversation is also applied by other mobile phone manufacturers, but it is never clearly communicated.

- ❑ Consumer I: the consumer buys a radio-alarm. The fault is discovered about 15-20 days after the purchase, since it is a gift. The large specialised store re-directs the consumer to the service centre. The consumer leaves the radio-alarm with the centre to be repaired, but a few months go by before the service centre declares that the radio-alarm cannot be repaired. It is replaced with another model, but now the people for whom the radio-alarm had been purchased have bought another product because they needed it. The new radio-alarm remains with the consumer, but for him it serves no purpose. The replacement was made after a period of time that evidently did not correspond with the need of the good. The consumer however, although dissatisfied, does not take the matter further. He is not aware of his right to receive the repaired or replaced goods with a reasonable period of time. In any case the modest value of the goods (30 euros) does not represent a sufficient stimulus to initiate legal proceedings that would certainly entail outlay in terms of time and energy. "I am not at all pleased with the way things went. But it was of very small value, I was not fully aware of my

rights and in any case you don't bring in a lawyer for small issues, things drag on and cost you lots of money".

- Consumer L: 3 months after buying a Toyota car the consumer notices a problem with the steering. At the dealer's he is told that, as a result of braking in the rain, the brake disks became overheated and deformed. The repair according to Toyota consists of re-grinding the disks. The consumer protests and sends a registered letter to the parent company. He demands that the brake disks be replaced and not re-ground, since this second operation would make the vehicle less reliable.

He does not succeed in his intent because Toyota states that for this type of problem the company's practice is to re-grind and not replace. The consumer is dissatisfied and also a bit worried, but he does not take his complaint any further. "I am not at all happy, moreover I know that it is dangerous to re-grind, and everyone tells me so. I should have at least contacted a consumers association, but it is common knowledge that they want money too!!...".

1.2.2 Exploratory discussion

Apart from some cases of more "obstinate" consumers, or when it is the person's own profession that makes them more likely to take an interest in legal matters, we note a certain resistance on the part of consumers to actively and a priori find out about their rights (they assimilate the information if it is well communicated, but very rarely they put themselves out to seek information).

Hectic life styles, the difficulties of everyday life and the perception of legal matters as something complex, difficult and unpleasant, presumably lie at the basis of this resistance.

Consumers do not have the sensation of being able to choose between various alternatives at the time when the goods they have bought reveal to be defective. They know that they can have them replaced within the 7 days at the large stores and in general they claim this right if the seller does not intend to fulfil it (generally speaking, however, it seems that the large chains replace the goods without any problems, provided that the established terms are complied with and the till receipt presented).

After more than 7 days from purchase it seems that repairing the goods becomes an obligatory step, with the additional burden for the buyer of having to personally take the goods to the service centres.

In our sample replacement after an unsuccessful attempt to repair occurred in only one case, but the goods were replaced with a different model, not the consumer's choice, and without being offered the chance to implement other solutions (discount or rescinding of the contract).

Only the more stubborn consumers (those who make it a question of principle) or only for goods of high monetary value (much higher than 100 euros) tend to inform themselves more accurately, to attempt legal solutions in order to assert their rights (in our sample, only 1 case, via the Internet). The legal procedures tend however to discourage people, because they are associated with stress and strong fears of incurring in additional costs.

The difference between legal guarantees and additional cover is well known: by additional cover or commercial guarantees the consumers understand an extension of the guarantee beyond the two years laid down by the law. They are quite common guarantees especially when fairly expensive goods are involved: domestic appliances and electronic goods.

Sometimes it is the large retailers themselves who propose these contracts, in a clear, easy to understand way, without exerting any pressure on consumers, simply presenting them as a possibility; other times the large stores do not even mention them, but the consumer finds all the information and the procedures (clear and simple) for buying them inside the packaging.

1.2.3 Design of the optimal system

The consumers find that, in an ideal system, for taking advantage of the guarantee:

- ❑ More information should be given regarding the specific contents of the law (e.g. the clause about the first 6 months vs. the subsequent ones; the right to choose among the different ways of bringing the goods back to conformity – with relative restrictions - the right to have the goods back within a reasonable time, etc). “They ought to talk more about it in informational programmes on TV ... they ought at least to clearly communicate where this information can be found ... they could produce a small book for sending to families like was done for health and drugs, it would be very useful”;
- ❑ The time period within which the seller or manufacturer must bring the goods back to conformity should be better known and more clearly specified. At the present moment, consumers can find themselves waiting

many months for a repair. The lack of a precise time limit exposes them to the will of the sellers/manufacturers or to the need for legal protection;

- ❑ The consumers want more possibilities for obtaining replacement of the goods – longer than the 7 days that represent the current practice of the shopping centres / specialised stores - rather than their repair, especially if the fault manifests itself within the first few months. The consumers deem it psychologically demoralising to own a new item that has already been repaired after just a few months; they are left with a lingering sensation of possessing a “weak, defective product”. “It does not seem right to me, if it is clear that it was already defective and you paid a lot of money for it or it was something that was important to you, that you might have been wanting for a long time, it is annoying to think that they have repaired it for you; it is as though it were not new any more, or in bad shape”;
- ❑ Consumers would like a clearer statement of the seller’s duty to accept responsibility for the defectiveness of the goods and to undertake returning the repaired or “once again conforming” goods to the consumer within a certain period of time, without further inconvenience to the buyer (which includes having to personally take the goods to the service centres);
- ❑ The booklets describing the warranty terms should be clearer to read, e.g. larger type (reducing, perhaps the number of the foreign languages that the text is printed in) and only the strictly necessary information;
- ❑ Incorporate the text of the law into the packaging of the goods or also print in the warranty booklet the free-phone number of the association of consumers that deals with disputes in the event of any problems;
- ❑ Issue till receipts that are not printed on chemical paper (after a while they become illegible and risk nullifying the right to the guarantee);
- ❑ Receiving a short SMS directly from the manufacturer in the event that goods are subject to special guarantee terms (e.g. the constraint of not exceeding the 15 minutes of talk time for some mobile phone manufacturers);
- ❑ Abolish the obligation – or clearly specify for how long - imposed by the shopping centres / big stores to keep the packaging of the goods, failing which they can refuse to replace them.

1.3 Conclusions

It exists a good level of awareness with regard to the fact that the legal guarantee has been increased to two years; on the contrary, the specific contents of the law are unknown to consumers.

The consumers are able to clearly distinguish between legal and commercial guarantee, if commercial guarantee means an extension of the legal period of warranty that is offered upon advance payment of a certain amount.

Consumers are, however, unable to say if the right to the replacement of the goods within 7 days of their purchase – as practised by all the large retailers / specialised stores – is a guarantee laid down by law or comes instead from the statute of the sellers.

Consumers have a certain reticence towards actively seeking information beforehand. They tend to find out about their rights only after having become the injured party and, in these cases, only if they have particular individual characteristics, or the amount of the damage suffered is relevant. For the rest, the “unpleasant” nature of legal proceedings and a certain lack of confidence in being able to obtain justice quickly and without spending a lot of money tend to hold them back from more actively searching for information, and from starting actual legal proceedings (whichever the means: consumers association or private lawyer).

With regard to the satisfaction or difficulty in exercising the right to guarantee in Italy, it can be concluded that:

- ❑ The replacement within 7 days that is enjoyed when buying from the large retail stores is an excellent reassurance; the consumers assert this right, actively demanding replacement of the faulty goods upon presentation of the receipt; the large retailers/specialised stores seem to put it into practice without any great difficulties, except in particular cases;
- ❑ Consumers are less satisfied, on the other hand, with the mechanisms that are activated when the goods are no longer deemed replaceable and have to be sent to the service centre to enable them to be declared repairable or to pursue other ways of restoring the conformity. In these cases the consumer:
 - does not have the sensation of being able to choose between different ways of restoring the conformity, considering instead that

he has to abide by the decisions of the service centres/of the manufacturers, unless he wants to take legal action;

- Is forced to personally take the goods to the service centre, and regards this delegation as an abuse of power on the part of the seller;
- In the event of disputes, tends to pursue his claim only if the dispute becomes for him a question of principle or if the goods are of high value; if this is not the case, he forgoes asserting his legal rights because of scant familiarity with and low trust in the legal system (procedures that are slow, costly, a source of stress).

The consumers' proposals in terms of "ideal system" for availing themselves of the guarantee protection relate basically to the possibility of acquiring greater awareness of their specific rights through far-reaching and simplified communication of the relevant law, and also of having easier access to the bodies/associations that they can contact in order to obtain protection (easy to locate and not expensive).

In more operative terms, consumers would also like to be able to enjoy more extensively of their right to replacement (rather than mere repair), if the item has been recognised as faulty at the time of purchase and complained about within a short time (e.g. within a few months after purchase). In addition, they would like the law to define more precisely the so-called "reasonable" limits of time within which the goods should be returned or the repair should be made, to enable them to claim their rights personally and with more confidence of success. Last but not least, they want to be able to make their complaints directly to the sellers and receive service from them rather than from their service centres (at least for a certain period of time from the date of purchase).

Study on the transposition and implementation of the two years guarantee contained in the Sales directive

**Research International
Warsaw, Poland
27th October 2008**

1 Country:

Poland.

1.1 Background and Methodology

In 1999 the Commission has adopted Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. All Member States have now transposed the Directive, but little research has been conducted so far on effective implementation of Directive at national level.

In Poland, guarantee rights are regulated under the Act of 27th July 2002 on special conditions of consumer selling and on amending the Civil Code. The Polish legislation does not provide for provisions on conformity of consumer goods more stringent than those of Directive 1999/44/EC. Pursuant to the above-mentioned Act, the seller is liable to the buyer where the consumer goods at delivery do not comply with the contract. The seller is liable under where the “non-compliance” becomes apparent within two years as from the moment of delivery. The consumer has to notify the lack of conformity with the contract within two months from discovery. When consumer goods do not comply with the contract, the consumer can ask to have the product repaired free-of-charge or replaced, unless repair or replacement are impossible or imply excessive costs. When repair or replacement cannot be provided in a proper time, or they would expose the consumers to significant inconvenience, the consumer has the right to demand a reduction of the price (for minor defects) or to withdraw from the contract. The legislation also provides that consumer guarantees must be drafted clearly and they must state what rights they confer.

According to the 2006 Eurobarometer survey, between February 2005 and February 2006, only 15% of European consumers have tried to assert their guarantee rights, mainly in their home country.

Against this background, The European Parliament has commissioned to carry out a study on the transposition and implementation of the two years guarantee contained in the Directive 1999/44/EC.

To investigate the research of the study a focus group interview was conducted in Warsaw. The focus group consisted of 8 consumers of mixed age, gender and professional class. The selection criteria were as follows:

- ❑ Consumers who have bought a product that has turn out to be either faulty or different from what they expected from the description/advertising and went back to the seller to claim their legal guarantee right;
- ❑ Consumers who were successful in their request and consumers who did not obtained satisfactory remedy.

The discussion encompassed following phases:

- ❑ Introduction and warm up;
- ❑ Own experience of the respondents in claiming their guarantee rights;
- ❑ Exploratory discussion: gaining knowledge about guarantee rights, awareness of the differences between legal guarantee and commercial warranty, effective choice between the different remedies offered by the Law in claiming the guarantee rights, own or acquaintances' experience as a help in claiming guarantee rights;
- ❑ Design of the optimal system.

1.2 Summary of main findings

Legal guarantee is very often confused with commercial warranty. In most cases the respondents had problems telling the difference as well as establishing correlation between them.

Complaints are usually received by shop assistants. Their attitude during the process of complaint registration is very often described as negative. The respondents feel unwelcome when they file a complaint and perceive sellers' behaviour as unprofessional.

After acknowledging a complaint, the faulty product is usually sent to the manufacturer, who in most cases decides how to handle the claim. The most commonly offered remedy is a repair of faulty merchandise. However, in many cases these repairs are not to consumer's satisfaction.

1.2.1 Own Experiences in claiming guarantee rights

Before the product developed a fault, none of the respondents was familiar with warranty terms and conditions. Only when a fault is discovered do the respondents familiarize themselves with express warranty terms and conditions, provided there is one. In other cases they ask the seller whether they're entitled to register a complaint.

Most of the respondents were not given a choice regarding remedy, it was up to the seller or manufacturer to decide whether it would be a repair, replacement or refund. In many cases repairs were unsatisfactory – they were either ineffective or unaesthetic.

The main reason of complaints being turned down was a claim that the product had been misused or used inappropriately.

In all cases, the complaints were being settled within fourteen days.

□ Consumer A: Claim regarding a faulty mobile phone.

The respondent filed to the manufacturer a complaint regarding faulty phone. He was offered a repair. After the repair the same fault developed within a week. The respondent took it back to the service, where he was once again offered free-of-charge repair. Similar thing happened six times in a row. The respondent found the repairs unsatisfactory, as despite them the same fault kept developing. He demanded a replacement for a new phone, which would not be faulty. His claim was rejected and he was offered another repair. The respondent managed to receive a new phone in

the end, but it was due to personal influence – his friend went on a date with one of the service employees. The respondent felt the complaint was handled unsatisfactorily and in an unprofessional manner.

❑ Consumer B: (a) Claim regarding faulty shoes.

The respondent bought a pair of athletic shoes and after short use the front part of the soles came off. The respondent took them to the shop altogether with the receipt. The claim was accepted by the shop assistant. When the respondent asked about offered remedies, the seller answered that it would be up to the manufacturer. After two weeks the respondent picked up the repaired shoes.

The respondent was satisfied with the form of remedy. The repair was professionally done and the shoes looked the same as before discovering a fault.

(b) Claim regarding faulty refrigerator.

After a year of proper functioning the fridge stopped working. The fridge was repaired, but after two months the same fault developed. The respondent found the repair unsatisfactory and demanded a refund. The service worker who was present at respondent's house could not take such decision, so he phoned his manager. The respondent was then informed that she was not entitled to a refund, as the same model of fridge was still on the market. The money could be refunded only if it was not available on the market. The fridge was taken to the service point where it was diagnosed with a structural fault. The respondent received a new fridge as a replacement within five days. Although, she preferred a refund as she was afraid that the refrigerators made by the same company may be also prone to break down.

❑ Consumer C: Claim regarding faulty shoes.

The respondent bought a pair of shoes whose tongue split while she was putting them on. The respondent claimed that she had been appropriately using the shoes, as the tongue had to be pulled in order to put the shoes on. She took the shoes to the seller, who decided to send them back to the manufacturer. The respondent was asked to wait 14 days for the decision. After this period the respondent received the shoes altogether with a letter stating that the shoes had been misused. There was a rude note at the end of the letter saying "please complain about windows after breaking them." The respondent was not satisfied with the result of her claim but ceased to make other claims and repaired shoes at her own expense. She had no knowledge

what next steps she could take and had low motivation to inquire about her rights since the cost of the repair was low.

❑ Consumer D: Claim regarding faulty backpack.

The respondent bought a backpack for his son at a hypermarket. The backpack started to rip during use. While the complaint was registered, the respondent was informed by the seller that the backpack had been misused. The respondent was aware of the fact that his son carried loads that were over 5kg in the backpack, which was more than the maximum weight allowed. He decided to waive his demands and bought another, more durable backpack.

❑ Consumer E: Claim regarding faulty electric kettle.

Soon after the purchase the kettle broke down and was not functioning properly. The respondent took it to the shop, presented the receipt and wanted to register a complaint. The shop assistant demanded to see express warranty with a stamp, otherwise the claim would be rejected. The respondent assured the assistant that when she was making a purchase, she was informed that the receipt was a sufficient documentation to file a claim. The manager of the shop, who was asked to intervene, confirmed that the respondent was right, and she received a new kettle as a replacement. The respondent was satisfied with the given remedy.

❑ Consumer F: Claim regarding front door not compliant with offer.

The respondent purchased custom-made door which was later delivered to her house. After unpacking the door, the coffers turned out to be ragged, and the wooden veneer to be patchy. The door exhibited at the shop as a model were of one colour and the coffers were straight. The respondent refused to accept the door and it was taken back by the deliverers. After 14 days it was delivered again. After unpacking, the door turned out to be in the exactly same state as before, and no repairs nor alterations seemed to have been made. The respondent decided not to accept the door, but this time she took precise measurements of the door, in order to write an official letter of complaint. She asked an acquainted lawyer for advice, who told her what her rights were and helped to write a letter. This intervention led to the alteration of the coffers. As for the patchy veneer, the manufacturer explained that the manufacturing process of this model did not allow to produce identically looking door. Having been offered a discount, the respondent accepted the door in the end.

❑ Consumer G: Claim regarding faulty shoes.

The respondent bought summer shoes, platforms, whose soles came off after a week of wearing. She took the shoes to the shop where she heard that the complaint could not be accepted as the shoes had been worn. The manager of the shop to whom the respondent referred, stated that he did not know what to do in that case. After the respondent insisted on acknowledging her claim, he agreed to admit it and decided to send the shoes back to the manufacturer. After 14 days the respondent received repaired shoes back. The repair was unsatisfactory as it was unaesthetic. The respondent did not agree to accept the shoes and was then offered a replacement. However, the only pair available was of the wrong size. Still, the respondent was refused a refund and ended up with a pair that was two sizes too big. The respondent was not satisfied with the outcome of her claim. She had sold the shoes to a friend and in that way retrieved the money but described the behaviour of the shop assistant as unprofessional. When she came to the shop to address her claim she was treated in an unfriendly way, she felt that she was unwelcome there.

❑ Consumer H: Claim regarding faulty blouse.

The respondent bought a blouse in a clothes shop, which turned out to be faulty when she came back home. She was not aware of the fault while making a purchase. She took it back to the shop, and after 14 days she was given a refund. The respondent was satisfied with the way her complaint was resolved.

1.2.2 Exploratory discussion

According to the respondents who took part in the discussion, the knowledge about consumer rights is not common. In most cases the respondents themselves had problems determining the rights they were entitled to. Moreover, they did not know what the exact length of guarantee was.

Some of the respondents have heard about legal guarantee, which they often refer to as “European Union guarantee”. The respondents come across such information mainly due to campaigns transmitted on public TV. Despite this, the respondents in most cases confuse express warranties offered by sellers and manufacturers with guarantee guaranteed by law.

The respondents look for additional information and legal advice only when a problem occurs – the product they bought turned out not to comply with the contract - and bigger amounts of money are at stake. In that case the main source of information are acquainted lawyers or solicitors, who specialise in providing information and help in writing official letters. Another source of information constitute friends who might not have legal knowledge, but have experienced similar problems with filing claims.

„My neighbour bought this camera, reflex one, he paid 2.5 thousand zlotys. And after a year it broke down, the pictures it took were black. After checking that the warranty length was for 12 months, he thought he'd have to pay for the repair himself. But I told him to go with the receipt and file a complaint, as they should acknowledge that. And it turned out I was right, they repaired this camera free-of-charge. “

In case of complaints regarding less expensive items, the respondents rely mostly on information provided by the seller. If the claim is turned down, the respondents often decide not to proceed with the complaint.

„When we complain about something cheap, you never know if it'll work out. But if something substantial is concerned, when you've spent a lot of money, than you stand up for yourself.”

The respondents are often under impression that information provided by the seller is insufficient or false. They think the explanation for this is either ignorance of the sellers or deliberate policy aiming at turning down as many complaints as possible.

„ Sometimes it’s as if the sellers wanted to tell you as little as possible, as if it was convenient for them that the customer doesn’t find something out...”

The respondents also observed that shop attendants are sometimes impolite during registering complaints. When giving their accounts of filing claims, the respondents often described the manners of the sellers as unprofessional or rude. After lodging a complaint in a shop some of the respondents felt as if they were “persona non grata”.

The problem of bad attitude applies to some manufacturers the respondents dealt with as well. A situation when in reply to a letter of complaint the respondents receive template answers, irrelevant to their claims, is very common. Manufacturers very often will not acknowledge a claim, stating that the item was misused. The respondents feel that these decisions are made solely by the manufacturer, and there is no expertise carried out by a disinterested professional.

1.2.3 Design of the optimal system

The main problem encountered by the respondents during the complaint procedure is insufficient access to information, described as information chaos. Hence the optimal system of guarantees should be based on clear rules expressed in a lucid manner. The ideas for improvement that respondents came up with during the study included:

- ❑ Hotline which provides information and advice connected with guarantees;
- ❑ Information brochures, explaining the legal implications connected to guarantees in a manner clear to a layman;
- ❑ Leaflets containing basic information on consumer rights attached to each item bought in a shop;
- ❑ Information boards hung in shops.

The ideal system should also stress the importance of sellers and manufacturers providing accurate information. According to the respondents this could be achieved by:

- ❑ Increasing the level of knowledge regarding consumer rights of shop assistants and imposing a duty of providing consumers with reliable information;

- ❑ Imposing high penalties for manufacturers who misinform consumers.

In order to improve the existing system, the following points should be implemented as well:

- ❑ There should be a duty imposed on the traders which would oblige them to send faulty items to suitable experts, who will evaluate the claim and find out how the fault developed - whether it was misuse or structural defect;
- ❑ Impose a duty of providing consumers with thorough information on the course of actions while the complaint is being handled.

1.2.4 Any other points/comments mentioned in the discussion

The reasons why the respondents waive their rights:

- ❑ Lack of time – filing a complaint seems to be a lengthy process for the respondents, as it involves long periods of waiting for decisions, repairs or replacements. Respondents also fear that they would be left without the product they have bought for a long time, what can be inconvenient when they need it. If the product they complained about is available on the market and is reasonably priced, they often decide to buy a new one, as it is a quicker solution of the problem;
- ❑ Unwillingness to get nervous – the process of complaint registration can lead to stressful situations, when sellers or manufacturers take a hostile attitude;
- ❑ Lack of knowledge – in case consumers are not aware of their legal rights, they often decide not to proceed with the complaint, e.g. in case express warranty expired or when their complaint is refused by seller.

1.3 Conclusion

The respondents are generally aware of the existence of legal guarantee, but they are not familiar with specific regulations. They have problems determining the length of the guarantee, the recipient of the complaint and also offered remedies. Legal guarantee is very often confused with express warranty. In most cases the respondents had problems telling the difference as well as establishing correlation between them.

Insufficient knowledge regarding consumer rights is one of the reasons the respondents decide not to file a complaint, or not to take matters further in case their claim is rejected.

The respondents rarely try to broaden their knowledge. It happens most often when the subject of complaint is of high value, as it motivates the respondents to claim their rights. The most common way of obtaining information is through conversation with a lawyer or advice given by friends who are more experienced in this field. Information available on the Internet is described by the respondents as unintelligible. The respondents are daunted by the specialist jargon used in online texts.

The most common recipients of complaints are shop assistants. Interactions with them are described as stressful. The respondents feel unwelcome when they file complaints. Additionally, they are often under impression that the information provided by the sellers is not reliable or even misleading.

The people who participated in the study declared that in most cases they were not given a choice regarding remedy, it was up to the seller or manufacturer to decide. The most commonly offered remedy was a repair of faulty merchandise. However, in many cases repairs were unsatisfactory – they were either ineffective or unaesthetic.

The optimal, consumer friendly guarantee system should be first of all based on clear, standardised regulations, which are comprehensively formulated and easily understood by an average consumer.