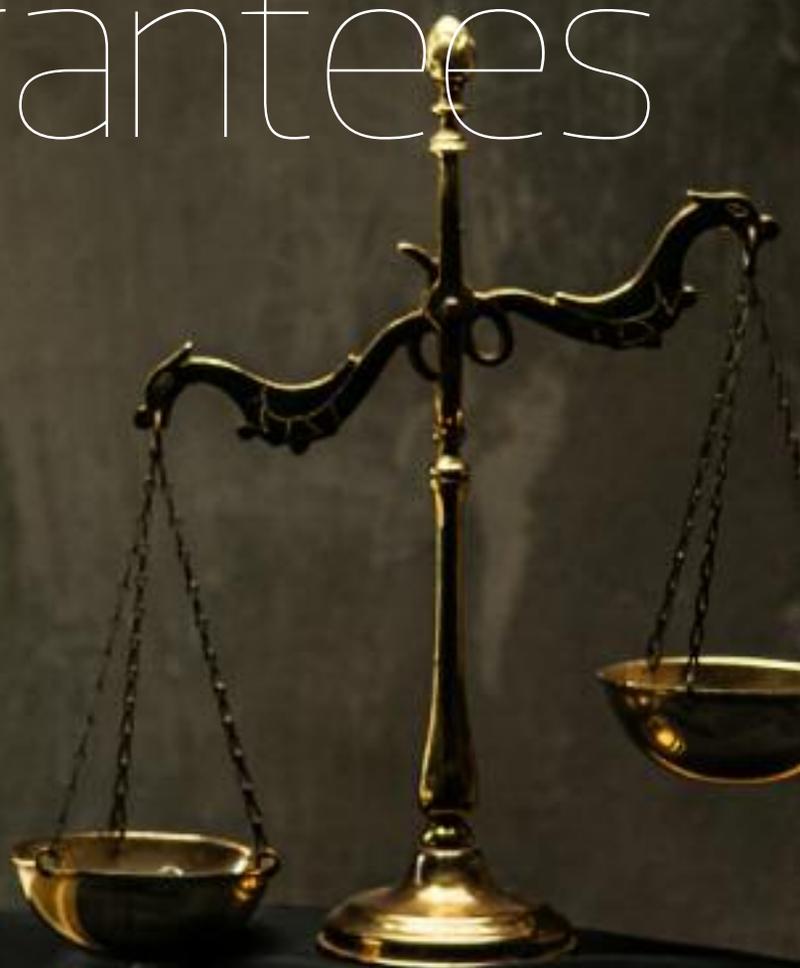


Yacht Acquisition in the EU

Warranties and Guarantees

In the first of a two-part series on the legal obligations of shipyards in the European Union concerning warranty and guarantees, Prof. Dr. Christoph Ph. Schließmann of The Yacht Attorney brings to attention the primary clauses for clients in the Americas purchasing a new or used yacht within the EU. With the comparative laws being fundamentally different to those in the USA, familiarizing yourself with those applicable in the EU will help prevent future misunderstandings.





According to EU law a yacht acquired privately for leisure use is considered a 'consumer good' and thus the purchaser enjoys several levels of protection.

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When acquiring a yacht from a shipyard within the EU, it is prudent to be aware of your legal standing with regards to war-

ranties and guarantees, which are fundamentally different to the US law you may be more familiar with. Essentially, a privately purchased yacht for pleasure use is a 'consumer good' according to the law of the EU, and consumers all over the EU, Iceland and Norway enjoy several levels of protection against the delivery of goods that are not in conformity: Firstly, there is protection by law prohibiting the sales of goods that do not conform to their description; secondly, legal guarantees apply

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to faulty products; and thirdly private initiatives from the business side in the form of commercial warranties.

To improve purchaser's understanding, I'd like therefore to provide an overview of the EU law in general and the law having been ratified into national laws of EU countries—for example in Italy, which is consistently the world's largest producer of yachts. To start with, we have to look at the EU directive 1999/44/EC, written in May 1999 by the European Parliament and the Council of the European Union with the objective of creating a common set of minimum rules, which would remain valid no matter where in the EU goods are pur-

chased. The important extract is this: Every consumer purchase is covered by a mandatory legal guarantee. No seller can claim otherwise. 'A two-year guarantee applies for the sale of all consumer goods everywhere in the EU. In some countries, this may be more, and some manufacturers also choose to offer a longer warranty period.' For used goods, the legal minimum guarantee is one year. The EU rule does not require the buyer to show the fault is inherent in the product and not down to their actions. The EU rule also says buyers need to report a problem within two months of discovering it if they want to be covered under the rule.

THE LEGAL GUARANTEE

All companies selling in Europe are legally bound by this directive. It specifies that the seller of a product is, "liable to the consumer for any lack of conformity which exists when the goods are delivered to the consumer and which becomes apparent within a period of two years, unless, at the moment of conclusion of the contract of sale, the consumer knew or could not reasonably be unaware of the lack of conformity."

The "lack of conformity" must exist at the time of delivery and must become apparent within two years from delivery. The directive should not be viewed as a guarantee. The consumer does not have the power to demand a replacement regardless of the nature of normal use, wear and tear is not included. Barring any warranty or guarantee offered freely by a manufacturer or distributor, the seller is only liable for any lack of conformity that exists at the time of delivery of the product.



While all goods are covered by a legal guarantee in the EU, an optional commercial warranty may be offered by the shipyard or purchased from a third party.

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Legal Guarantee Directives

Taking Italy again as an example, this is how the Legal Guarantee directives have been transferred into Italian Law—as this will mostly be the ruling Law, entry into force 13th of June 2014.

- The duration of this legal guarantee for new and second-hand vessel is 2-years but can be reduced to 1-year for second-hand goods.
- The seller is responsible for putting things right.
- Within 2-months of noticing the defect, the consumer, must notify the seller of any defect.
- The seller always has to prove the presence/absence of a defect. During the first 6-months, however, there is a presumption that the defect already existed at the time of handover.
- The consumer can ask any repair shop for an expert opinion, but they do not have to give one and their opinion might not be accepted by the

seller. In the event of a court procedure, the judge may accept the consumer's expert's opinion or ask for an independent expert opinion.

- The consumer is entitled to request all remedies free of charge. There is a so-called hierarchy of remedies. Firstly, repair or replacement, according to the consumer's wishes, within a reasonable time frame and free of charge. Secondly, refund or reduction of the purchase price if repair or replacement is impossible, but only under certain conditions. There is no deadline for implementing a solution.
- The repaired/replaced product is not covered by a new guarantee. The legal guarantee period is only extended by the time necessary.
- If no amicable solution can be found, the deadline for taking the case to court is 26-months from delivery of the product.
- There is a legal guarantee against hidden defects, but the consumer must prove the existence of any such defect.

THE COMMERCIAL WARRANTY

Whereas the legal guarantee is mandatory under EU consumer law, the commercial warranty is a voluntary service offered by the seller or the producer, sometimes even by a third party. It is important to note that a commercial warranty cannot affect the consumer's rights under the EU legal guarantee. Rather it should upgrade them, for example, by having a longer duration, covering situations not covered by the legal guarantee, or offering additional services such as repair at home.

Superyacht shipyards often give a two-year warranty, a functional guarantee like this: "For a period of twelve months following acceptance of the VESSEL (the Warranty Period) the SELLER warrants for the VESSEL and all the equipment including the engines against all defects due to defective design and/or defective material and/or incompetent workmanship or negligent or other acts of omission on the part of the Shipyard/SELLER. The SELLER shall at its own expense remedy the said defects on the terms stated under this Clause."

Beside the "legal guarantee" a seller/producer can fix the conditions, so it can be free of charge or offered against payment. This does not influence the legal guarantee. The duration of commercial war-

rancies in the EU Member States is usually between one and five years, and in most cases two years, as with the legal guarantee. More expensive items usually have a longer warranty, which often applies to specific parts of the product.

The party offering the warranty, be it the seller, the producer or a third party guarantor is responsible for application of the warranty provided. The seller has to provide the commercial warranty in a written document or in a durable and accessible format at the consumer's request. He has to inform clearly about the content of the warranty, all essential elements such as duration and geographical coverage, details of the company offering it and a reminder of the legal guarantee. It should also state that the commercial warrant does not affect the consumer's rights under the legal guarantee.

Attention: However, a Buyer having been offered a commercial warranty in a cross-border context should be well aware of the specifics of the warranty. There can be geographical restrictions, like the commercial warranty could only valid in the country of origin for example. This is a very important point of negotiation, especially, if for example, when the yacht is not likely to remain territorial waters but cruises elsewhere or is transported abroad.

GENERAL PRODUCT SAFETY DIRECTIVE

Legal basis ruling the Product Safety in EU is the European General Product Safety Directive (2001/95/EC) from December 2001 went into effect in most countries in January 2004 (later for 10 new EU countries and Oct. 1, 2005 in the UK). The directive covers nearly all products sold in the EU. In general, it places responsibility on suppliers of consumer goods to make sure their products are safe for normal and foreseeable use. Obviously the goal is to make sure producers are placing safe products on the market, but it doesn't end there. The directive requires producers to supply consumers with relevant information that enables them to assess the risks inherent in that product. It takes into account various characteristics including quality and organization of production and sale, packaging/labeling, instructions for use and disposal, packaging, maintenance and more.

In the next issue we'll take a closer look at both the issues surrounding liability and the extent to which it extends through the chain of producers that supply the components that make up a yacht, plus address the legal responsibilities of the producer in terms of replacement or repair. Until then, exercise prudence in acquisitions and safe summer sailing!

