

LEGISLATIVE DECREE of 2nd February 2002, no. 24
Implementation of directive 1999/44/EC on certain aspects of consumer sales and guarantees *(O.J. no. 57 of 8th March 2002 - Ordinary Supplement no.40)*

THE PRESIDENT OF THE REPUBLIC

In the light of articles 76 and 87 of the Constitution;

In the light of law no. 422 of 29 December 2000 (Community law 2000), and in particular article 1, paragraphs 1 and 3, and annexe B;

In the light of directive 1999/44/EC of the European Parliament and the Council of 25th May 1999, on certain aspects of the sale and guarantee of consumer goods;

In the light of article 14 of law no. 400 of 23rd August 1988;

In the light of the preliminary decision of the Cabinet, adopted at the meeting of 21st November 2001;

Having obtained the advice of the relevant committees of the Chamber of Deputies and of the Senate of the Republic;

In the light of the resolution of the Cabinet, adopted at the meeting of 1st February 2002;

Acting on the proposal of the Ministers for the European Communities and for Production, with the collaboration of the Ministers for Foreign Affairs, of Justice and of Finance and the Economy;

Issues

The following legislative decree:

Art. 1.

Rules governing the sale of consumer goods

1. The following paragraph shall be inserted after paragraph 1 of section II of Chapter I of Article III of Book IV of the Civil Code: *[the existing paragraph 1 would have to be renumbered '1(a)' and article 1519 would become '1519 (a)']*

"1 (b): Sale of Consumer Goods.

1519 (b) (Definitions and applicability). – This paragraph governs certain aspects of contracts for sale and guarantees relating to consumer goods. For these purposes the following are equivalent to a contract for sale: contracts with trade-in, supply contracts, contracts for services, contracts for work performed and any contract whatsoever concluded for the supply of manufactured consumer goods or consumer products.

For the purposes of the present paragraph the words listed have definitions as follows:

- a) consumer: any physical person who in a contract of the types referred to in the first paragraph, does not act in a business or professional capacity;
- b) consumer goods: any moveable goods, including self-assembly goods, with the exception of:
 - 1) goods subject to compulsory sale or to be sold pursuant to any other form of judicial order, including orders delegated to a notary;
 - 2) water and gas provided they are not produced for sale in determined volumes or quantities;
 - 3) electrical energy;

c) vendor: any physical or private or public legal person who, in the exercise of his commercial or professional activity, employs a contract of the kind referred to in the first paragraph;

d) producer: the manufacturer of consumer goods, the importer of consumer goods into the territory of the European Union or any other person who represents himself as a producer by attaching his name, trade mark or other distinctive sign to the consumer goods;

e) supplementary standard guarantee: any undertaking by a vendor or producer, without additional cost to the consumer, to refund purchase price, or to replace, repair or deal otherwise with consumer goods, if they do not comply with conditions contained in the guarantee or in associated advertising;

f) repair: the recall of consumer goods in order to remedy a breach of the terms of the contract of sale.

The provisions in this paragraph apply to the sale of second-hand consumer goods, taking into account the amount of prior use, only to the extent that defects do not arise from the normal use of the item.

1519 (c) (Conformity with contract terms). - The vendor has a duty to provide the consumer with goods that conform to the terms of the sale contract.

Consumer goods shall be deemed to conform to the contract terms if, where applicable, the following conditions obtain:

- a) they are suitable for the use to which this type of goods is normally put;
- b) they correspond to the description given by the vendor and are of a like quality to any goods which the vendor has presented to the consumer as a sample or model;
- c) they are of a quality and specification consistent with what a consumer would reasonably expect to find in goods of this type, taking into account the nature of the goods, and where applicable of publicly stated claims concerning the characteristics of the goods, made by the vendor, the producer or his agents or representatives, particularly in advertising or on labelling;
- d) they are also suitable for the particular use to which the consumer wishes to put them, if the vendor was made aware of such a requirement and signified his acceptance when the contract was concluded.

There shall be no breach of the contract terms if, when the contract is concluded, the consumer is aware of any of conditions (a) to (d) above that do not obtain, or would on exercising ordinary diligence be so aware, or if any of the said conditions fail to obtain because of instructions given or material furnished by the consumer.

The vendor shall not be bound by any publicly stated claims as referred to in paragraph (c) above if he can demonstrate that any of the following conditions are fulfilled:

- a) he was not aware the claim had been made and could not with normal diligence have been so aware;
- b) the claim was substantially corrected by the time the contract was concluded and the correction brought to the consumer's attention;
- c) the decision to acquire the consumer goods was not influenced by the claim.

A breach arising from faulty installation of the consumer goods shall be deemed equivalent to a breach relating to the goods themselves where the installation is included in the sale contract and is undertaken by the vendor or under his responsibility. Such equivalence shall apply in cases where the product is intended to be installed by the consumer and the consumer installs it incorrectly due to deficient instructions for installation.

1519 (d) (consumer rights). The vendor is liable to the consumer for any breach existing at the moment the goods are delivered.

Where there is a breach, the consumer is entitled to rectification without charge by means of repair or replacement, as provided by the third, fourth, fifth and sixth paragraphs below, or to an appropriate reduction in the price, as provided by the seventh, eighth and ninth paragraphs below.

The consumer may, at his own choice, elect to have the vendor repair or replace the goods, free of charge in both cases, except where to do so would be impossible or unduly burdensome for the vendor.

In this regard either said remedy shall be deemed unduly burdensome if it imposes on the vendor unreasonable costs, taking into account:

- (a) the value that the goods would have had were it not for the breach
- (b) the extent of the breach
- (c) the possibility of providing an alternative remedy without undue inconvenience to the consumer.

The repair or replacement must be carried out within a reasonable time of the request and in a manner which does not inflict any significant disadvantage on the consumer, taking into account the nature of the goods and the purposes for which the consumer has acquired them.

The charge referred to in the second and third paragraphs above relates to costs necessarily incurred in rectifying the breach, and in particular to costs of labour, materials and delivery.

The consumer may at his own choice elect an appropriate reduction in the cost of the goods or the discharge of the contract when any of the following conditions obtain:

- a) repair and replacement are impossible or unduly burdensome
- b) the vendor has not effected repair or replacement of the goods within the reasonable time stipulated in the sixth paragraph above
- c) a repair or replacement has been effected but has inflicted significant disadvantage on the consumer

The amount of any reduction or refund shall be determined having regard to the use to which the goods were put.

Once a breach has been complained of, the vendor may offer the consumer any other available remedy, with the following consequences:

- a) if the consumer has requested a specific remedy, the vendor remains liable to provide it, within the reasonable time referred to in the sixth paragraph above, unless the consumer accepts the proposed alternative remedy;
- b) if the consumer has not requested a specific remedy, he must accept the vendor's proposed remedy or reject it by choosing another of the remedies provided for in the present article.

A minor breach which is impossible or unduly burdensome to resolve by means of repair or replacement shall not give rise to any right to have the contract discharged.

1519 (e) (Vendor's recourses) The final vendor, when he is liable to a consumer in respect of an act or omission of the producer, of a prior vendor within the same chain of supply contracts, or of any other intermediary, has, unless there is an agreement to the contrary or the right has been renounced, a right of reclamation against the party or parties at fault within the said chain of supply contracts.

A final vendor who has complied with a consumer's rights to a remedy, may, within a year of such compliance, obtain reimbursement of the cost of compliance from the party or parties at fault.

1519 (f) (Time limits) The vendor shall be liable, within the provisions of article 1519 (d), provided the breach becomes apparent within two years from delivery of the goods.

The consumer's rights provided for in article 1519 (d) shall be forfeited if he fails to notify the vendor of the breach within two months of the consumer's becoming aware of it. Notification shall not be required if the vendor has acknowledged or concealed the breach.

In the absence of proof to the contrary it shall be presumed that breaches which become apparent within six months of delivery of the goods were already in existence at the time of delivery, unless this presumption is incompatible with the nature of the goods or breach in question.

The right of action to remedy any breach not wrongfully concealed by the vendor shall expire after twenty six months from the date of delivery; a consumer who has agreed to the execution of the contract, may still avail himself of the rights provided for in the second paragraph of article 1519 (d) provided that the breach is notified within two months of discovery and before the expiry of the twenty-six month limit herein.

1519 (g) (Standard guarantee) A standard guarantee is binding on the person who issues it in the terms contained in the guarantee itself and in any associated advertising.

It shall be the responsibility of the person issuing the guarantee to ensure that it contains at least the following:

- (a) a declaration that the consumer enjoys the rights as set out in this paragraph and that the guarantee does not affect those rights;
- (b) a clear and comprehensible statement of the item the guarantee refers to and the conditions under which it will apply, including the duration and territorial extent of the guarantee and the name and address, or business name and registered office of the issuer.

At the consumer's request, the guarantee shall be made available in writing or in another durable format that he can access.

The guarantee shall be in Italian in letters at least equally prominent as the version in other languages, if any.

Any guarantee that does not conform to the requirements in the second, third and fourth paragraphs shall nonetheless remain valid and the consumer may continue to avail himself of it and insist that it be applied.

1519 (h) (Compulsory nature of terms) Any agreement, made prior to notification to the vendor of a breach, which purports to exclude or limit (directly or indirectly) the rights accorded in the present paragraph, shall be void. Any such void agreement may be invoked only by the consumer and may be acknowledged judicially.

In the case of second-hand goods, the parties may limit the term of liability referred to in the first paragraph of article 1519 (f) to a period of not less than one year.

Any contractual term that purports to make the contract subject to a non-EU jurisdiction, with the effect of depriving the consumer of the protection contained in this paragraph, shall, where the contract is closely connected with the territory of an EU member state, be void.

1519 (i) (Effect of other provisions) The provisions of this paragraph shall not be construed to exclude or limit any rights accorded to the consumer by virtue of any other enactment."

Avvertenza: - not translated

Art. 2.

Transitional arrangements

1. The provisions of article 1 shall not apply to the sale of goods or equivalent contracts where the subject matter of the contract was delivered to the consumer before the entry into force of the present decree.
2. Until 30th June 2002, the provisions in article 1519 (g) of the Civil Code, inserted by article 1 of the present decree, shall not apply to products brought onto the market before the entry into force of the present decree.

The present decree, bearing the seal of state, shall be incorporated into the official record of the legislation of the Italian Republic. All persons to whom it applies are hereby bound to obey it and secure obedience to it.

Signed at Rome, on 2nd February 2002

CIAMPI

Berlusconi, President of the Council of Ministers and, for the time being, Minister for Foreign Affairs

Bottiglione, Minister for the European Communities

Marzano, Minister for Production

Castelli, Minister of Justice

Tremonti, Minister of Finance and the Economy

Witnessed by: Castelli