

EU Consumer Law Acquis Compendium

Legislation

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Full name and/or number of the statute (in original language):

Decreto-Lei n.º 67/2003, de 8 de Abril

Translation of the name:

Decree Law No 67/2003 of 8 April

Reference in Official Journal (if appropriate):

Diário da República, I Série-A, n.º 83, 2003.04.08, pp. 2280 et ss.

Date of coming into force:

09.04.2003

Subsequent amendments:

none

Text:

THE PRESIDENT OF THE COUNCIL OF MINISTERS

Decree Law No 67/2003 of 8 April

The matter to be completed is the transposal into Portuguese law of Directive No 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

This Act transposes the said directive by adopting a new legal framework ensuring the conformity of the movable property with the associated sales agreement concluded between tradesmen.

The legal scheme that has been approved reflects the requirements of said Directive 1999/44/EC. The main novel aspects include the express adoption of the concept of conformity with the contract that is assumed to be unconfirmed if there is an occurrence of any of the facts described in this scheme now being approved.

A lack of conformity is considered to be equivalent to the incorrect installation of an item produced by the vendor or on his behalf or whenever the associated instructions are inaccu-

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rate.

For the purposes of determining the lack of conformity with the contract it is the moment when the item is delivered to the consumer, with provision, however, that a lack of conformity that comes to light within a period of between two to five years from the date of delivery of the item of movable or immovable property respectively shall be considered to have existed at the time of delivery. The main concern was to avoid the transposal of the directive entailing a lowering of the level of protection today enjoyed by consumers in Portuguese society. To this end, the solutions currently envisaged in Law 24/96 of 31 July will be retained, specifically the series of rights enjoyed by the purchaser in the event that the item is defective.

As regards the time limits there is provision for a guaranteed period and that is the lapse of time during which, if any lack of conformity becomes apparent, the consumer may exercise his recognised rights. This period is fixed between two and five years commencing on the date of delivery of the item by the consumer regardless of whether the item is movable or immovable property.

It remains the responsibility of the consumer to apprise the vendor of any defects and the time period for such notification changes to two months from the date on which knowledge of the defect is acquired in the case of the sale of movable property.

This scheme to protect consumers remains essential given that in the event of the sale to the consumer of an item of used movable property the time period of two years may be reduced to one of one year if agreed by both parties.

It is thus for the first time that legal measures are being adopted relating to the "guarantees" voluntarily offered by the vendor, the manufacturer or by some other intermediary for the purpose of reimbursing the price paid, replacing, repairing or attending to the defective product one way or another and thereby establishing the binding nature of such declarations.

One innovation that is important is the assignment of direct responsibility to the producer vis-à-vis the consumer, obliging the former to repair or replace the defective product. This solution extends a manufacturer's responsibility in terms of quality control to include safety defects (already covered by Decree Law No 383/89 of 6 November) and introduces a purchaser's protection scheme like those found in other Member States and which is the purpose of the directive being transposed.

Lastly, a professional tradesperson respecting a consumer's right in connection with a lack of conformity of an item for which a contract exists (as well as the person from whom the redress was sought) shall be entitled to seek redress from the professional who sold him the item to compensate for all the damages suffered in the course of exercising the said rights.

This entitlement to seek redress may only be ruled out or restricted in advance if the person holding such rights is appropriately compensated in advance.

The opinion of the National Consumer Council has been heard.

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Therefore:

Pursuant to the terms of Article 198 (1) (a) of the Constitution the Government decrees the following which will have general legal status in Portugal:

Article 1

Aim and scope of application

This Act transposes into Portuguese Law Directive No 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees with the aim of ensuring the protection of consumers' interests as defined in Article 2 (1) of Law No 24/96 of 31 July 1996.

This Act shall be applicable, duly adapted, to supply contracts for consumer goods to be manufactured or to be produced and shall be applicable to the hiring of consumer goods.

Article 2

Conformity with the contract

The vendor shall be required to supply the consumer with goods that are in conformity with the purchase agreement.

The consumer goods shall be considered as not in conformity with the purchase agreement if any of the following apply:

They are not in conformity with the description of them made by the vendor or they do not have the properties of the good that the vendor presented to the consumer as a sample or model;

The goods are not suitable for the specific use to which the consumer wished to put them and about which he informed the vendor when the agreement was signed, the vendor accepting as much;

The goods are not suitable for uses to which similar goods are usually put;

The goods do not have the qualities or the usual performance levels of goods of the same type and which the consumer could reasonably expect given the nature of the goods and possibly the public statements about the properties of the goods made by the vendor, the manufacturer or his representative, specifically in the context of advertising or on the labeling.

Under the terms of this Article lack of conformity shall be considered not to exist if at the moment of the signing of agreement the consumer knew of the lack of conformity or could not reasonably ignore it or if the lack resulted from the materials supplied by the consumer.

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A lack of conformity that is the result of the bad installation of the consumer good shall be equated to a lack of conformity of the good whenever the installation formed part of the sales agreement and was carried out by the vendor or on his behalf or if the product, where it was to be installed by the consumer, was installed by the consumer and the poor installation was due to errors contained in the assembly instructions.

Article 3

Delivery of the good

The vendor is responsible vis-à-vis the consumer for any lack of conformity that exists at the moment when the good is delivered.

A lack of conformity that becomes evident within a period of two or five years from the date on which the material movable item or immovable item is delivered is presumed to have existed on that date unless such an assumption were incompatible with the nature of the item or with the characteristics of the lack of conformity.

Article 4

Rights of the consumer

In the event of a lack of conformity in the good for which an agreement was concluded the consumer is entitled to have the good replaced without charge by means of repair or replacement, an appropriate price reduction or the rescission of the agreement.

Any repair or replacement must be completed within a reasonable period of time and without serious inconvenience to the consumer, taking into consideration the nature of the good and the purpose to which the consumer wished to put it.

The expression “without charge” used in paragraph 1 above relates to the necessary expenditure for replacing the good in a way which is consistent with the agreement, including, specifically, expenditure on shipping charges, labour and materials.

A consumer’s entitlement to rescind the agreement or obtain a price reduction may be exercised even if the item has perished or deteriorated for reasons not attributable to the purchaser.

The consumer may exercise any of the rights referred to in paragraphs above unless it should prove impossible to do so or would constitute an abuse of this right in general terms.

Article 5

Time limits

The purchaser may exercise the rights referred to in the previous Article when the lack of conformity becomes evident within a period of two or five years from the date on which the good is delivered, depending on whether it is a movable or an immovable good.

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For a second-hand movable good the time limit referred to in 1. above may be reduced to one year if both parties agree.

In order to exercise his rights the consumer must inform the vendor of the lack within two months in the case of a movable good or within one year in the case of an immovable good, both periods commencing on the date on which the lack of conformity is detected.

The rights conferred on the consumer by Article 4(1) shall cease when either of the time limits referred to above pass without the consumer having notified or within six months of any such notification.

The time limits will be suspended for the duration of the period during which the consumer considers to have been deprived of the use of the goods while the latter were undergoing repair.

Article 6

Direct responsibility of the producer

Without prejudice to the rights of the producer vis-à-vis the vendor the consumer who has acquired a defective product may opt to require the producer, at the consumer's discretion, to repair or replace the product.

The producer may oppose the exercise of these rights by the consumer in the event of any of the following:

the defect is reported exclusively in declarations made by the seller regarding the item and its use or from incorrect use;

the item has not been put into service;

it can be considered that in view of the circumstances the defect did not exist at the time when the item was put into service;

it did not manufacture the item either for sale or for any other form of lucrative distribution or did not manufacture or distribute it as part of his professional activities;

more than ten years have passed since the item was first put into service.

The producer's representative located at the consumer's place of residence is jointly and severally responsible with the producer vis-à-vis the consumer, and the provisions of Article 6(2) above shall also apply to him.

For the purposes of this legislation a producer shall be considered to be the manufacturer of a consumer good, the importer of the consumer good who imports it into the Community or any other person acting as producer by virtue of an indication of his name, brand or other identifying sign on the product.

For the purposes of 3. above a producer's representative shall be considered to be any

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person, individually or collectively, acting in a capacity as commercial distributor for the producer or after-sales centre with the exception of independent sellers operating exclusively as retailers.

Article 7

Right of redress

A seller who has honoured one of the consumer's rights under Article 4 as well as the person against whom the right of redress was exercised enjoy right of redress vis-à-vis the professional from whom they obtained the item in respect of any damages caused by the exercise of any such rights.

The provisions of Article 3(2) also benefit the holder of the right of redress and the appropriate period of time commences on the date of delivery to the consumer.

The defendant may counter the right of redress by proving that the defect did not exist when the goods were delivered or if the defect predated the delivery that it was not caused by him.

Without prejudice to the general clauses of contract the agreement by which the exercise of right of redress is excluded or limited in advance has effect only if the holder of the right was duly compensated.

Article 8

Exercising the right of redress

A professional may exercise the right of redress in any action brought by the consumer by applying, *mutatis mutandis*, the provisions of Article 329(2) of the Civil Proceedings Code.

A professional enjoys the right under the preceding Article for a period of five years from the date of delivery of the goods by the professional named in the action.

A professional may exercise his right during a period of two months from the date on which the consumer's right is honoured.

The period referred to in 2. above shall be suspended during the court proceedings in which the final seller is a party.

Article 9

Voluntary guarantees

The declaration by which the seller or manufacturer or any other intermediary promises to refund the price paid, replace, repair or deal with in any way the defective product binds its author in accordance with the relevant conditions and any conditions as advertised.

The statement of guarantee must be delivered to the consumer in writing or on some other

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durable support to which he has access.

The guarantee must be drawn up in clear and concise Portuguese and must contain the following:

a statement of the rights enjoyed by the consumer under this legislation and a statement to the effect that these rights are not affected by the guarantee;

the conditions relating to the benefits that are available;

the benefits that the guarantee offers the consumer;

the duration and geographical coverage of the guarantee;

the firm or name and postal address or, electronic address, of the author of the guarantee which may be used to exercise the said guarantee.

Unless otherwise specified, the rights deriving from the guarantee are transferred to any person acquiring the goods.

Infringement of the provisions of paragraphs 2 and 3 of this Article shall not affect the validity of the guarantee and the consumer may continue to claim under it and require its application.

Article 10

Binding nature

Without prejudice to the general clauses of contract any contractual agreement or clause shall be considered null and void if prior to the notification of the lack of conformity to the seller it excludes or limits the rights of the consumer under this legislation.

The nullity referred to above is subject to the provisions of Article 16(2) and (3) of Law No 24/96.

Article 11

Restrictions on the choice of legislation

If the sales agreement concluded between a tradesman and a consumer is closely linked to the territory of the Member States of the European Union the selection, for the purposes of governing the contract, of a law of a country that is not a Member State and that proves less favourable to the consumer cannot deprive him of the rights assigned to him by this Decree-Law.

Article 12

Information measures

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The Consumers' Institute will promote measures to inform and encourage professional organisations to inform consumers of the rights assigned to them by this Decree-Law.

Article 13

Amendments to the law protecting consumers

Articles 4 and 12 of Law 24/96 of 31 July are amended to read as follows:

“Article 4

Entitlement to quality goods and services

Goods and services intended for consumption must be suitable to fulfil the purposes for which they are intended and produce the effects attributed to them in accordance with legally established standards or failing that in a manner meeting the consumer's legitimate expectations.

Article 12

Entitlement to indemnification

A consumer shall be entitled to indemnification for material and non-material damages suffered as the result of the supply of goods or services that are defective.

The producer is responsible, in accordance with the law and regardless of guilt, for damage caused by defective products he markets.”

Article 14

Entry into force

This Decree-Law shall enter into force on the day following its publication, without prejudice to the provisions of the second paragraph.

The provisions of Article 9 will enter into force 90 days after the publication of this Decree-Law.

Seen and approved in the Council of Ministers dated 20 February 2003 — *José Manuel Durão Barroso, António Manuel de Mendonça Martins da Cruz, Maria Celeste Ferreira Lopes Cardona, José Luis Fazenda Arnaut Duarte, Carlos Manuel Tavares da Silva.*

Promulgated on 20 March 2003

For publication

President of the Republic, JORGE SAMPAIO

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Countersigned on 25 March 2003

Prime Minister, *José Manuel Durão Barroso*