

Literatura jurídica

Detalles de la literatura jurídica

Estado miembro: España

Título: Repair and replace items in trading: evolution and latest trends.

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Artículos de la Directiva

Consumer Sales and Guarantees Directive, [Article 3](#) Consumer Sales and Guarantees Directive, [Article 3, 3.](#) Consumer Sales and Guarantees Directive, [Article 3, 3.](#), - Consumer Sales and Guarantees Directive, [Article 3, 3.](#), - Consumer Sales and Guarantees Directive, [Article 3, 3.](#), - Consumer Sales and Guarantees Directive, [Article 3, 3.](#)

Nota preliminar

Reparar y sustituir cosas en la compraventa: evolución y últimas tendencias.

International texts recognise the buyer's right to the repair or replacement if the goods do not conform with the contract, and at the same time, establish exceptions to their application and certain rules of protection for the seller (Art. 46 CISG, Art. 7.2.3 UNIDROIT Principles of International Commercial Contracts, Art. 9:102 PECL and Arts. 4:202 y 4:204 (1) PEL S). This approach is a result of a compromise between Civil Law systems and the Common Law and it has been widely extended to the regulation of consumer sales over the last decade (Art. 3.3 of the Directive 1999/44/CE, Art. III.-3:302 DCFR, Art. 26 of the proposal for a Directive on Consumer Rights). These norms regulate the different ways of requiring the fulfilment of a contractual obligation from a new paradigm which has little to do with the need to protect the weak consumer which governed the origins of consumer policy in the European Community. Now, the idea of the consumer who will behave economically efficiently prevails in Art. 3.3 of the Directive 1999/44/CE, a norm which is clearly influenced by the international texts and whose transposing into the national legislation of Member States has created important problems for traditional dogmas. In this sense, there are still some unclear issues such as the possibility of replacement in sales of goods of a specific nature or second-hand goods, some aspects on the exercise of repair and replacement, and even their use as primary remedies rather than a reduction in price or a rescission of the contract. Regarding this, in England, the possibility of offering the consumer free choice between these measures if the goods do not conform with the contract has been raised. This is far from the principle of pacta sunt servanda and is clearly contrary to the economic approach of the proposal for a Directive on Consumer Rights. Up to now, Spain has limited itself to implementing Art. 3.3 Directive 1999/44/CE into its legal system in almost literal terms and the case law on the issue has turned out to be completely insufficient. In contrast with Germany, the Spanish legislator has not extended the application of the rules of repair and replacement of Directive 1999/44/CE to non-consumer sales, even though two draft bill proposals along these lines were presented by the General Commission for Codifying ("Comisión General de Codificación"), the last one being in January 2009.

Nota general

Asuntos relacionados

No hay resultados disponibles