

## Legal Literature

### Legal Literature Details

**Member State:** Romania

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### Directive Articles

Consumer Sales and Guarantees Directive, [Article 2, 2.](#) Consumer Sales and Guarantees Directive, [Article 2, 2., \(a\)](#) Consumer Sales and Guarantees Directive, [Article 2, 2., \(b\)](#) Consumer Sales and Guarantees Directive, [Article 2, 2., \(c\)](#) Consumer Sales and Guarantees Directive, [Article 2, 2., \(d\)](#) Consumer Sales and Guarantees Directive, [Article 2, 3.](#) Consumer Sales and Guarantees Directive, [Article 3, 2.](#)

### Headnote

The author analyses the conformity obligation as regulated in the national legislation. In particular, he analyses the legal particularities of such obligation under Law no. 449/2003 on consumer goods sales (which transposes the provisions of Directive 1999/44/EC) ("Law 449/2003"). The most important aspects to be retained are the following:

- In case Law 449/2003 does not provide certain aspects, it shall be completed with the provisions of Government Ordinance no. 21/1995 on consumer protection.
- Law 449/2003 shall not apply for real estate and services when such services are not attached to a sale
- Law 449/2003 regulates the conformity obligation by taking into consideration both objective (conformity with the sale-purchase agreement) and subjective (the consumer's expectation) aspects.
- The legal nature of the conformity obligation:
  - o The seller's negligence does not affect the appreciation regarding the performance / non-performance of its obligation;
  - o As a rule, it is a contractual obligation. By way of exception, it is a legal obligation in case another consumer (who is not the first buyer) challenges the conformity of the good.
- The conditions of non-conformity
  - o Non-conformity must exist at the moment of the delivery, which is interpreted as the moment of handover of the goods;
  - o Non-conformity must not be known to the buyer at the moment of the purchase;
  - o The degree of non-conformity. In case of consumer sale, the goods should be perfect. However, minor departure from this requirement is allowed by the non-conformity unit of measurement: national standards SR ISO 1951/1998 and regulations related to conformity.
- Proof of non-conformity: Law 449/2003 regulates a relative presumption against the seller. When the buyer proves the non-conformity, there is presumption that the non-conformity existed at the moment of the purchase. Therefore the seller must prove the existence of an exonerating cause.
- Legal terms:
  - o The lack of conformity must become apparent within 2 years from delivery. The lack of conformity must only become apparent within this term and not necessarily discovered and notified to the seller. However, the general limitation term, as well as the two months term (as described below) should be observed.
  - o The 2 months term for informing the seller about the lack of conformity. The term starts to run from the moment the effective discovery of the faults. It should be noted such term may be extended by agreement of the parties.
  - o The 6 months term from delivery of the product. If the non-conformity becomes apparent within this term, it shall be presumed to have existed at the moment of the purchase. Therefore, after this term, the consumer shall prove the lack of conformity according to the requirements regulated by law.

### General Note

The article was published in Pandectele Romane Review, no. 5/2005 and refers to Law no. 449/2003 which transposes the provisions of Directive 1999/44/EC.

### Related Cases

No results available