

Legal Literature

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Directive Articles

Consumer Sales and Guarantees Directive, [Article 2, 3](#). Consumer Sales and Guarantees Directive, [Article 3, 2](#). 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](#).

Headnote

By referring to Law no. 449/2003 on the sale of goods and associated guarantees (which transposes the provisions of Directive 1999/44/EC), the author analyses the consumer's obligation to check the purchased good. More specifically:

- The apparent faults of the good preclude the buyer's possibility to invoke the conformity guarantee. However, the check performed by the buyer should be appreciated with indulgence, given his/her lack of experience.
- It is not mandatory for the buyer to personally check the conformity of the good. In performing this obligation, the buyer could also use a third person, such as an expert, employee or the transporter of the goods.
- Neither the objective determination of compliance of the goods by an administrative body, nor any findings of this kind made by any other person who is not charged in this regard by the buyer may be considered a check. However, the comments made in an administrative procedure will constitute serious evidence for the conformity of the goods at a certain moment.
- The verification can be made together with the seller. This form of control is the expression of the duty for the parties to cooperate and requires an exchange of information related to the characteristics of the goods. Such cooperation is relevant with respect to evidence in the way that an unilateral verification made by the buyer will be less reliable than one whose conclusions are the expression of the will of both parties.
- As an expression of cooperation of the parties, verification can be also be achieved by anticipation.
- Finally, the seller cannot replace the buyer in the checking of the goods. If the contract provides for the seller to make such a check, this stipulation may be considered at most a liability exoneration clause for the seller, in a situation where, in fact, no checking has been carried out.

General Note

This article was published in Romanian Private Law Review, no. 2/2007 and refers to Law no. 449/2003 which transposes the provisions of Directive 1999/44/EC.

Related Cases

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