



Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Italy

EUROPEAN COMMISSION

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1. Italy

1.1 Regulatory background

Directive 1999/44/EC on Consumer Sales was transposed via Decreto Legislativo n° 24 of 2 February 2002 "*Attuazione della direttiva 1999/44/CE su taluni aspetti della vendita e delle garanzie di consumo*". The Directive has been transposed shortly after the deadline provided (1st of January 2002).

The legislative decree n° 24 of 2 February 2002 inserted a new paragraph into the Italian Civil Code about the sale of consumer goods.¹ Those provisions have been repealed from the Civil Code after the adoption of legislative decree n° 206 of 23 October 2005 (hereinafter "*Codice del Consumo*"), which unified all the provisions on the protection of consumers in one Code².

The adoption of Directive 2011/83/EC on Consumer Rights partly modified the text of Directive 1999/44/EC. This Directive has been transposed in Italy via the legislative decree n° 21 of 21 February 2014 on consumers' rights; the latter does not affect the provisions on the guarantees for consumer sales, therefore it will not be analysed.

1.1.1 Transposition of Directive 1999/44/EC

Directive 1999/44/EC was transposed into Italian law in 2002; the transposition was then modified and the same provisions were repealed from the Civil Code and inserted into the Codice del Consumo.

Definitions and scope

The definitions contained in Art 1 Directive 1999/44/EC have all been transposed into Art 128 of the Codice del Consumo, apart for the definitions of "consumer" and "producer", already included under Art 3 of the same Code. The definition of "consumer" concerns any natural person not acting as under the scope of his profession. This definition excludes not only physical persons acting as professionals, but it also excludes legal entities different from natural persons with "non-lucrative" purposes and legal persons.

In addition to the Directive, the Italian law affirms that the same definitions are also applicable to the sale of second hand goods, as long as the deficiencies are independent from the normal usage of the good.³

The transposition is missing the provision which includes in the definition of "contract" the notion of "contracts for the supply of consumer goods to be manufactured or produced".⁴

Right of consumers

The legal guarantee covers the defects existing at the moment of delivery of the product, which means the fault existing *ab origine*⁵. The seller is responsible for the application

¹ "Della vendita dei beni di consumo", Arts 1519-bis – 1519-nonies of the Italian Civil Code. Accessed on 1st December at http://www.jus.unitn.it/cardoza/obiter_dictum/codciv/Lib4.htm

² Codice del consumo. Accessed on 1st December at: <http://www.codicedelconsumo.it/index.html>

³ Art 128 comma 3, Codice del Consumo.

⁴ Art 1.4 Directive 1999/44/EC.

⁵ *Latin*. from the very beginning; from the source or origin.

of the legal guarantee⁶. If the good is not conforming to the contract, the consumer can ask for a repair or replacement of the good. When these remedies are impossible to satisfy or disproportionate, the consumer may request a reduction of the price or have the contract rescinded when specific cases apply. The Italian text goes further in detail. When determining the amount of the reduction of the price or the amount of the refund, the usage of the good is also taken into account. After the consumer has notified the lack of conformity to the seller, the seller can offer to the consumer any remedy available, but the following hierarchy should be respected:

- The seller should give priority to the remedy requested by the consumer;
- If the consumer has not yet requested a specific remedy, the consumer must accept the remedy offered by the seller or dismiss the remedy offered by proposing an alternative remedy.⁷

The consumer cannot rescind the contract if the defect of the good is minor (but repair and replacement are valid). If the product is repaired or replaced with the 24 months of the legal guarantee, the guarantee is not renewed. However, if the products is repaired/replaced after the expiry of the guarantee, then the product enjoys a new guarantee (this could occur for example if a claim is underway, for example in court, where there is a 26 month limit to bring a claim following delivery of the good). For second hand goods the guarantee may be reduced to one year⁸.

Time limits

The seller is liable for the defects which arise within 2 years from the sale of the good. However the burden of notifying the non-conformity to the contract, lies on the consumer. Art 132.2 gives the consumer a deadline of two months from the moment of the discovery to notify the lack of conformity and once the deadline is passed, the consumer no longer enjoys the rights conferred at Art 130.2. However, in Italy the notification is not necessary if the seller has recognized the existence of the non-conformity of the good or if the seller had maliciously concealed the fault.

When the defect appears within the first six months of the goods, there is a presumption that the defects existed at the time of delivery; the burden of proof is therefore reversed in favour of the consumer. However, the burden of proof can be challenged if “this presumption is incompatible with the nature of the goods or the nature of the lack of conformity”⁹.

The statute of limitations on a consumers claim under the legal guarantee is a total of 26 months. The reason for this timeframe is that the defect can appear within 24 months from the delivery of the good, and the consumer has then 2 months to notify the non-conformity. Therefore, if the defect appears on the 24th month, the consumer has still the following two months to claim. The same logic is applied to the actions of the

⁶ When the final seller is liable towards the consumer for an act or an omission caused by the producer or a previous seller, the final seller enjoys the right of redress towards the producer. This provision has been adopted both by the European text as well as by the Italian transposition. In addition, the Italian texts specify that the final seller enjoys the right of redress only after having enacted the remedy in favour of the consumer and within the timeframe of one year. Art 131, comma 2, of the Codice del Consumo.

⁷ Art 130 comma 8-9 of the Codice del Consumo.

⁸ See 'Notifications according to Article 32 and 33 of the CRD' at http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/notifications/. Status as of 19 May 2015, accessed on 14 October 2015

⁹ See 'Notifications according to Article 32 and 33 of the CRD' at http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/notifications/. Status as of 19 May 2015, accessed on 14 October 2015

consumers for guarantees of shorter length, such as guarantees of second hand goods (e.g. if the guarantee is of 12 months, the statute of limitations is 14 months).¹⁰

Commercial guarantees

The guarantee transposed into national law at Art 133 of the *Codice del Consumo* is more specifically defined in Italian as “*garanzia convenzionale*” (guarantee agreed upon). Despite the text of the article matching the text of the correspondent Art 6 of Directive 1999/44/EC, the title of the article is more specific. The law, in fact, wants to distinguish between legal guarantees and guarantees that two parties agree upon (i.e. commercial guarantees, which are contractual in nature). The first type of guarantee is granted by the law and refers to the conformity of the good with the contract. The second type of guarantee is an additional guarantee that can be added to the legal guarantee; these guarantees cannot limit the rights of the consumer but can only expand them.¹¹

The guarantee should be provided in written form when requested by the consumer and it must be written in Italian.

1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and their transposition into the Italian legislative system. Most of the articles have been transposed and some of them contain an extension of the scope provided by the European legislation as commented below. This is briefly described in the column “Comment”.

¹⁰ “La nuova disciplina in materia di garanzie nella vendita di beni di consumo – nota esplicativa al Decreto legislativo n. 24 del 2002”, p. 22.

¹¹ The difference is also stressed by the Autorità Garante della Concorrenza e del Mercato (Accessed June 2015), ‘Garanzia legale sui beni di consumo: ecco i diritti dei consumatori’. Available at: <http://www.agcm.it/consumatore/decalogo/5102-garanzia-del-venditore-guida-per-il-consumatore.html>

Table 1: Transposition of Directive 1999/44/EC in the Italian legislation

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Art 128.1 D.Lgs. 206/2005	<i>Direct transposition</i> - The purpose being to ensure a uniform minimum level of consumer protection
	1.2.a	Def. Consumer goods	Art 128.2.a D.Lgs. 206/2005	<i>Direct transposition</i> - Consumer goods meaning any tangible movable item (i.e. services excluded, e.g. electricity supply)
	1.2.b	Def. Consumer	Art 3.1.a D.Lgs. 206/2005	<i>Direct transposition</i> - Meaning any natural person acting for purposes not related to his trade, business or profession
	1.2.c	Def. Seller	Art 128.2.b D.Lgs. 206/2005	<i>Direct transposition</i> - Seller being any natural or legal person who sells consumer goods
	1.2.d	Def. Producer	Art 3.1.d D.Lgs. 206/2005	<i>Direct transposition</i> - Producer being the manufacturer or importer of the good, or purporting to be so via trademark
	1.2.e	Def. Guarantee	Art 128.2.c D.Lgs. 206/2005	<i>Direct transposition</i> - Guarantee being any undertaking by the seller/producer to offer a given remedy free of charge if the consumer good does not meet the advertised specifications
	1.2.f	Def. Repair	Art 128.2.d D.Lgs. 206/2005	<i>Direct transposition</i> - Repair meaning bringing consumer goods into conformity with the contract of sale.
	1.3	Exclusion second hand	Art 128.3 D.Lgs. 206/2005	Second hand items are included in the guarantee
	1.4	Contracts of sale types		
Conformity with the contract	2.1	Conformity requirement	Art 129.1 D.Lgs. 206/2005	<i>Direct transposition</i> - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	Art 129.2 D.Lgs. 206/2005	<i>Direct transposition</i> - Stating that goods will be in conformity with the contract if they comply with a set of conditions (e.g. compliant with the description given by the seller; fit for purpose; quality and performance similar to goods of the same type)
	2.3	Lack of conformity	Art 129.3 D.Lgs. 206/2005	<i>Direct transposition</i> - Disregarding lack of conformity if the consumer was aware of the fault, or if the lack of conformity had its origin in materials supplied by the consumer
	2.4	Seller statements	Art 129.4 D.Lgs. 206/2005	<i>Direct transposition</i> - The seller shall not be bound by public statements in case she/he was not aware of the statement; the statement had been corrected; or the statement did not influence the decision of the consumer to purchase the good
	2.5	Installation	Art 129.5 D.Lgs. 206/2005	<i>Direct transposition</i> - Incorrect installation considered equivalent to lack of conformity if installation formed part of the sale or if the installation instructions created the shortcomings
Rights of the consumer	3.1	Liability	Art 130.1 D.Lgs. 206/2005	<i>Direct transposition</i> - Establishes that the seller is liable for any lack of conformity which exists at the time the good is delivered

	3.2	Remedies	Art 130.2 D.Lgs. 206/2005	<i>Direct transposition</i> - Stating that the consumer has the right to have non-conforming goods brought into conformity free of charge, or to receive an appropriate discount in price, or to contract rescission
	3.3	Conditions	Art 130.3 D.Lgs. 206/2005	Art 130.9 further details the hierarchy of the remedies.
	3.4	Free of charge	Art 130.3 D.Lgs. 206/2005	<i>Direct transposition</i> - "Free of charge" referring to the necessary costs incurred to bring the goods into conformity, including postage
	3.5	Reduction of the price	Art 130.7 D.Lgs. 206/2005	When determining the reduction of the price, the usage of the good must be taken into consideration (Art 130.8)
	3.6	Contract rescission	Art 130.7 D.Lgs. 206/2005	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	Art 131.1 D.Lgs. 206/2005	<i>Direct transposition</i> - The seller is entitled to pursue remedies against the previous sellers, intermediaries or producer in the contractual chain if the lack of conformity originated there
Time limits	5.1	Time period	Art 132.1 D.Lgs. 206/2005	<i>Direct transposition</i> - The seller shall be held liable if the lack of conformity becomes apparent within two years from delivery of the good
	5.2	Defect confirmation	Art 132.2 D.Lgs. 206/2005	Statute of limitations period for legal action by the consumer based on the legal guarantee of conformity, added at Art 132.4, and established at 26 months
	5.3	Reversed burden	Art 132.3 D.Lgs. 206/2005	<i>Direct transposition</i> - Any lack of conformity detected within six months of delivery of the goods is presumed to have existed at the time of delivery unless incompatible with the nature of the goods or the lack of conformity
Guarantees	6.1	Legally binding	Art 133.1 D.Lgs. 206/2005	<i>Direct transposition</i> - Stating that the guarantee will be legally binding on the offerer of the guarantee under guarantee statement and conditions
	6.2	State rights and contents	Art 133.2 D.Lgs. 206/2005	<i>Direct transposition</i> - The guarantee shall state that the consumer has legal rights under applicable national legislation, make clear that those rights are not affected by the guarantee; give the guarantee details and process for claiming, plus name, address of guarantor plus scope and duration.
	6.3	Written contract	Art 133.3 D.Lgs. 206/2005	<i>Direct transposition</i> - On request by the consumer, the guarantee shall be made available in writing or another accessible durable medium
	6.4	Language of guarantees	Art 133.4 D.Lgs. 206/2005	Official languages, Italian.
	6.5	Respect 6.2-4	Art 133.5 D.Lgs. 206/2005	<i>Direct transposition</i> - Specifying the validity of the guarantee contract for consumer even if it infringes on the above three paragraphs
Binding nature	7.1	Restricted rights	Art 134.2 D.Lgs. 206/2005	<i>Direct transposition</i> - Stating that previously agreed conditions between seller and consumer which are agreed before a lack of conformity is known will not be binding if they reduce the consumer rights under this Directive.

	7.1	Reduced period (2nd hand)	Art 134.2 D.Lgs. 206/2005	<i>Direct transposition</i> - In the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter liability period for the seller (not less than one year).
	7.2	Measures of protection	Art 134.3 D.Lgs. 206/2005	<i>Direct transposition</i> - Consumers are not to be deprived of the protection afforded by this legislation if the contract opts for the law of a non-member state
National law and minimum protection	8.1	Supplementary rights		
	8.2	National rules retain		
Information	9	Inform of the rights		
Modification	10	Directive 98/27/EC		
Transposition	11.1	Date		
	11.2	Provisions		
Review	12	Jul-06		
Entry into force	13	Day of publication		
Address	14	To Member States		
Recitals	15	Period-of-use deduction	Art 130.10 D.Lgs. 206/2005	Whereas, in determining the amount of the reduction or refund, it will take into account the period of use (but the law does not specify how to calculate this “period of use”)
	18	Suspension 2-year period		

* The mention of "direct" means a direct transposition, disregarding the fact that the sentences can be placed differently or paraphrased relative to the Directive formulation

Legend

	Articles at the discretion of the Member State (not mandatory)
	Rules on procedures to transpose
	Recitals –at the discretion of the Member State

1.1.3 Additional rights

The *Codice del Consumo* sets additional rights in protection of the consumer. The code has been recently amended to include the changes introduced by Directive 2011/83/EC concerning the protection of consumers in respect of contracts negotiated away from business premises and the protection of consumers in respect of distance contracts.¹² The main protections towards the consumers comprise the following:

- Information to the consumer, communications and publicity;
- General conditions of the contracts between seller and consumer;
- Safety and quality of the products;
- Consumer associations;
- Actions for liability.

Right of information

The following table addresses some of the most important articles of the national law safeguarding the right of information of the consumer:

Table 2: Right of information in the national legislation		
Consumer right of information	National Law	Comments
Right to obtain clear and comprehensible information	Art 5 D. Lgs. 206/2005	General obligations of information
	Art 6 D. Lgs. 206/2005	Minimum information to be provided
	Art 9 D. Lgs. 206/2005	Information to be provided at least in Italian
	Arts 25 and 31 D. Lgs. 206/2005	Specific protection to minors, kids and teenagers in the communication of the information (commercials and advertisements).

Right of withdrawal

The right of withdrawal is differentiated depending on the type of contract:

- Contracts negotiated at the business premises fall outside of the scope of the Codice del Consumo.¹³
- For contracts negotiated outside of the business premises, the professional must inform the consumer, in writing, of the right of withdrawal.¹⁴
- The right of withdrawal for both contracts negotiated outside of the business premises and for distance contracts can be exercised with no penalty and with no need of providing any justification, within 10 days.¹⁵ The consumer must send a written communication via registered mail to the professional.

¹² See also D.Lgs. of 21 February 2014, n° 21, "Diritti dei consumatori".

¹³ These contracts are regulated by the general provisions of the Civil Code and of D.Lgs. of 31 March 1998, n° 114, "Riforma della disciplina relative al settore di commercio, a norma dell'articolo 4, comma 4, della legge 15 marzo 1997, n° 59.

¹⁴ Art 48 Decreto Legislativo 6 settembre 2005, n. 206, "Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229" published in Gazzetta Ufficiale n. 235 8th October 2005 - *Supplemento Ordinario* n. 162

¹⁵ Art 64 Decreto Legislativo 6 settembre 2005, n. 206: In addition, the day from which the ten days accrue from, depends on the object of the contract. (Art 65; e.g. from the date of submission of the order once the consumer has been informed of the right of withdrawal or, for goods, from the day the consumer receives them provided that the consumer was well informed or, for services, from the day the contract is concluded or from the day after all the information has been provided to the consumer, etc).

1.2 Enforcement and redress

National and European laws protecting consumers can be enforced through litigation procedures before national courts or through alternative dispute resolution methods (hereinafter “ADR”). The latter methods have been encouraged by the European Union as well as by national laws. Two important roles in the ADR function are covered by the Chambers of Commerce and by the consumers’ associations.

Firstly, the Chambers of Commerce, singularly or collectively, can promote the formation of arbitration or conciliation boards for the resolution of controversies between enterprises or between enterprises and consumers.¹⁶

Secondly, the consumers’ associations can activate the procedure of conciliation before the Chamber of Commerce competent for the territory.¹⁷

In addition, the D. Lgs. of 9 April 2003 n° 70, transposing Directive 2000/31/EC introduces “Online Dispute Resolution” (“ODR”).¹⁸ In case of a conflict between the provider and the receiver of the service, they can decide to resort to alternative dispute resolution boards operating on-line. These organisms must operate in conformity with the national and European principles, they should be notified to the European Commission and they will be added to the Network for the extra-judicial settlement of consumer disputes (EEJ-Net).

The most common alternative dispute resolution methods are mediation and conciliation. The role of mediation has grown since 2010, when the mediation process became a mandatory step before court litigation for civil and commercial controversies (in particular for all disputes in a number of specific areas; e.g. insurance, banking and financial contracts, rent, inheritance etc.)¹⁹ This innovation aims at alleviating the burden of court litigation and at facilitating the dispute resolution process.

In addition, consumers’ associations promote class actions for the protection of consumers in different sectors (*Codacons*)²⁰ and they facilitate procedures of conciliation between consumers and enterprises (*Federconsumatori* and *Lega Consumatori*.)²¹

Only after the parties have failed to reach an agreement can the mediator can formulate a proposal of conciliation. The mediator can also propose conciliation anytime during the mediation process upon request of the parties. The proposal of conciliation is communicated in writing to the parties who have seven days to send their response of acceptance or refusal. In case of no response the proposal of conciliation is considered to be refused.²² An additional type of conciliation is foreseen by certain consumers’ associations,²³ the “equal conciliation” (i.e. “*conciliazione paritetica*”). This type of conciliation is based on a protocol agreed between the consumers’ association and the enterprise and on a conciliation regulation that deals with the practical aspects of the conciliation. In addition, a Conciliation Commission, composed by one representative per party, facilitates the procedures.

In matters relating to protection of savings, from 2010 there is a Chamber of conciliation and arbitration at the National Commission for Societies and Stock Market (Consob),

¹⁶ Art 2.4 of the Law of 29 December 1993 n° 580 “Riordinamento delle camere di commercio, industria, artigianato e agricoltura.”

¹⁷ Art 3.2 of the Law of 30 July 1998 n° 281 “Disciplina dei consumatori e degli utenti.”

¹⁸ Art 19 of D.Lgs. of 9 April 2003 n° 70 “Composizione delle controversie.”

¹⁹ Art 5 of D.Lgs. of 4 March 2010, n° 28 “Mediazione finalizzata alla conciliazione delle controversie civili e commerciali.”

²⁰ See http://www.codacons.it/aree/area_Classaction_74.html.

²¹ See <http://www.federconsumatori.it/default.asp> and <http://www.legaconsumatori.it/home.html>.

²² Art 11 D.Lgs. of 4 March 2010, n° 28 “Mediazione finalizzata alla conciliazione delle controversie civili e commerciali.”

²³ See, for example, Adiconsum at www.adiconsum.it, AssoUtenti at www.assoutenti.it.

competent for all issues between consumers and banks or financial institutions for violations of laws on transparency and accuracy of the information on transactions and investments. At last, the *Arbitro Bancario Finanziario* is a branch of Bank of Italy and it deals with issues in matters of banking contracts between the banks and their clients.²⁴

Court settlements

Consumers' goods are regulated by the general provisions on sale of goods in the Civil Code at Art 1494 which covers the right to redress²⁵. The seller must provide compensation for the damage caused to the buyer unless he proves that he ignored, without negligence, that the good was defective. The seller must also provide compensation for any damages that originated from the defect of the good.

Cases

There have been a number of cases dealing with conflicts with regard to guarantees for consumer goods in Ireland. Below are examples from the national consumer agency's annual report²⁶.

Box 1: Court case on unfair commercial practices in the sale of guarantees for consumers' goods against Apple by Autorità Garante della concorrenza e del mercato (ACGM), 2011²⁷

Ruling N° 23155 of 21st December 2011 considered that Apple, on the sale of guarantee products, was acting against the "Legal guarantee of conformity and commercial guarantees for consumer goods" on the basis of arts. 128 - 135 of the Consumer Code. The authority demanded Apple Sales International S.r.l. for unfair commercial practice, and the company was sued €200,000, and forced to change the settings and offerings of their commercial website.

In the ruling, the AGCM considered:

" a) the disclosures provided and the conducts upheld by the professionals in relation to the provision of the legal guarantee constitute an unfair practice in that they are contrary to professional diligence and liable to mislead consumers in regard to the nature, content and effective performance of the legal guarantee (...). They are also aggressive in that they entail the raising of obstacles to the consumers' exercise of their rights that are non-contractual in nature, cost-bearing and disproportional (...);

b) the disclosures supplied by the traders regarding the nature, content and duration of the various support services offered to consumers by the Apple Protection Plan (hereinafter, also "APP") at the time of purchase of a consumer good do not adequately clarify the consumers' right to a two-year guarantee by the seller (...) leading them to enter into a new, payment-based contractual relationship, the contents of which partially overlap with the (...) legal guarantee, which entails no costs or limitations."

²⁴ See <https://www.arbitrobancariofinanziario.it>

²⁵ Civil Code. Article 1694. Available at: http://www.jus.unitn.it/cardoza/obiter_dictum/codciv/Lib4.htm

²⁶ National Consumer Agency (2014), "Annual Report 1 January – 30 October". Available at: <http://corporate.nca.ie/eng/About/Annual%20Reports/NCA-2014-Annual-Report-English.pdf>

²⁷ Tribunale di Modena (2009), Sentenza n. 1198 del 3 Settembre 2009. Available at: <http://www.giurisprudenzamodenese.it/GM/2009-1198.pdf>

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Civil Code. Article 1694. Available at: http://www.jus.unitn.it/cardozo/obiter_dictum/codciv/Lib4.htm

Art 48 Decreto Legislativo 6 settembre 2005, n. 206, "Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229" published in Gazzetta Ufficiale n. 235 8th October 2005 - Supplemento Ordinario n. 162 Available at: <http://www.aduc.it/generale/files/allegati/codiceconsumo.pdf>

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