

Unofficial English translation

Belgium

Notification Art. 33 CRD

National provisions going beyond Art. 5(1) to (3) and Art. 7(1) of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

Civil Code

Articles 1641 - 1649 of the Civil Code

Article 1641. ‘The seller is bound by the guarantee covering hidden defects in the item sold which render said item unfit for the use for which it was intended, or which diminish this use to such a degree that the buyer would not have bought said item or would only have paid a lower price for it if the faults had been known.’

Article 1642. ‘The seller is not liable in respect of obvious defects which the buyer was able to discover him/herself.’

Article 1643. ‘He/she is liable in respect of hidden defects, even when he/she was unaware of them, unless, in this case, it was stipulated that he/she would not be bound by any guarantee.’

Article 1644. ‘In the case of articles 1641 and 1643, the buyer may choose to return the item and receive reimbursement of the price or to keep the item and receive reimbursement of part of the price, as arbitrated by experts.’

Article 1645. ‘Should the seller be aware of the item's defects, he/she shall be obliged, in addition to reimbursing the price received, to pay the buyer compensation.’

Article 1646. ‘Should the seller be unaware of the item's defects, he/she shall be obliged only to repay the price and reimburse the buyer for the costs occasioned by the sale.’

Article 1647. ‘Should the defective item have perished due to its poor quality, the loss shall be borne by the seller who shall be obliged to repay the buyer the price and any other compensation for damages explained in the previous two articles.

Loss due to unforeseeable circumstances is, however, borne by the buyer.’

Article 1648. ‘Proceedings resulting from actionable defects must be instituted by the buyer, as soon as possible, depending on the nature of the defects and customary practice in the place where the sale was made.’

Article 1649. ‘It shall not be applicable to sales effected by judicial authority.’

Article 1649a. ‘Section 1. This Section is applicable to sales of goods by a seller to a consumer.

Section 2. For the purposes of applying this Section:

1. “consumer” shall mean any natural person who is acting for purposes which are not related to his/her trade, business or profession;
2. “seller” shall mean any natural or legal person who sells consumer goods in the course of his/her trade, business or profession;
3. “consumer goods” shall mean any tangible movable item, with the exception of:
 - goods sold by way of execution or otherwise by authority of law,
 - water and gas where they are not put up for sale in a limited volume or set quantity,
 - electricity;
4. “producer” shall mean the manufacturer of consumer goods, the importer of consumer goods into the territory of the European Community or any person purporting to be a producer by placing his/her name, trade mark or other distinctive sign on the consumer goods;
5. “guarantee” shall mean any undertaking by a seller or producer to the consumer to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;
6. “repair” shall mean, in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale.

Section 3. Contracts for the supply of consumer goods to be manufactured or produced shall also be deemed contracts of sale for the purposes of applying this Section.’

Article 1649b. ‘Section 1. For the purposes of applying Article 1604, paragraph 1, consumer goods delivered by the seller to the consumer are deemed to be in conformity with the contract only if they:

1. comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;
2. are fit for any particular purpose for which the consumer requires them and which he/she made known to the seller at the time of conclusion of the contract and which the seller has accepted;
3. are fit for the purposes for which goods of the same type are normally used;
4. show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or the producer's representative, particularly in advertising or on labelling.

Section 2. The seller shall not be bound by public statements, as referred to in Section 1(4), if he/she shows that:

- he/she was not aware of the statement in question and could not reasonably have been aware of it,
- by the time of conclusion of the contract the statement had been corrected, or
- the decision to buy the consumer goods could not have been influenced by the statement.

Section 3. There shall be deemed not to be a lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware of the lack of conformity or could not reasonably be unaware of it, or if the lack of conformity has its origin in materials supplied by the consumer.

Section 4. Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his/her responsibility.

The same shall apply if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions'.

Article 1649 c. 'Section 1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered and which becomes apparent within two years of the delivery.

The two-year period laid down in paragraph 1 shall be suspended during the time needed to repair or replace the goods, or in the event of negotiations between the seller and the consumer aimed at reaching an amicable agreement.

Notwithstanding paragraph 1, the seller and consumer may, in the case of second-hand goods, agree a period of less than two years although such period may not be less than one year.

Section 2. The seller and the consumer may agree a period within which the consumer is required to inform the seller of the existence of the lack of conformity, although that period shall not be less than two months from the day when the consumer detected the lack of conformity.

Section 3. The consumer's action shall be time-barred within a period of one year from the day the lack of conformity was detected, although that period cannot expire before the end of the two-year period laid down in Section 1.

Section 4. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity, taking account in particular of the new or second-hand nature of the goods.

Section 5. The provisions of this chapter on the guaranteeing of hidden defects in the article sold shall be applicable after the two-year period laid down in Section 1.'

Article 1649d. 'Section 1. Apart from damages and interest where applicable, the consumer shall be entitled to require the seller who is liable for a lack of conformity pursuant to Article 1649c either to repair or replace the goods, under the conditions laid down in Section 2, or to make an appropriate reduction in the price or rescind the contract, under the conditions laid down in Section 3.

However, account shall be taken, where appropriate, of the aggravation of the damage resulting from the consumer's use of the goods after he/she detected, or should have detected the lack of conformity.

Section 2. The consumer may, in the first place, require the seller to repair the goods or he/she may require the seller to replace them, in either case free of charge, unless this is impossible or disproportionate. Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

The costs concerned by the words "free of charge" in the previous paragraph shall be the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.

For the purposes of applying paragraph 1, a remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account:

- the value the goods would have if there were no lack of conformity,
- the significance of the lack of conformity,
- whether the alternative remedy could be completed without significant inconvenience to the consumer.

Section 3. The consumer shall be entitled to require the seller to make an appropriate reduction in the price or rescind the contract:

- if the consumer is entitled to neither repair nor replacement, or
- if the seller has not made the repair or replacement within a reasonable time or without significant inconvenience to the consumer.

Notwithstanding paragraph 1, the consumer shall not be entitled to have the contract rescinded if the lack of conformity is minor.

For the purposes of applying paragraph 1, any refund made to the consumer shall be reduced to take account of the use that the consumer has had of the goods since their delivery.'

Article 1649e. ‘Where the seller is liable to the consumer for a lack of conformity, he/she may pursue a remedy against the producer or any other contractual intermediary in the transfer of ownership of the consumer goods based on the contractual liability binding on that producer or intermediary in respect of the goods, without it being possible for this to be opposed by a contractual clause having the effect of restricting or waiving that liability.’

Article 1649f. ‘Section 1. Any guarantee shall be binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising.

Section 2. The guarantee shall:

- state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee,
- set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.

Section 3. On request by the consumer, the guarantee shall be made available in writing or presented to him/her in another durable medium available and accessible to him/her.

In any event, where the contract of sale is in written form, it shall contain the information referred to in Section 2.

Section 4. The non-conformity of a guarantee with the requirements stated in Sections 2 and 3 shall not affect the consumer’s right to require that it be honoured.

The same shall apply if the guarantee is not in conformity with the requirements laid down in Article 13(1) of the Law of 14 July 1991 on commercial practices and consumer information and protection.’

Article 1649g. ‘Any contractual terms or agreements concluded before the lack of conformity is brought to the seller's attention by the consumer which, directly or indirectly, waive or restrict the rights accorded to the consumer by this Section shall be null and void.

Any stipulation declaring the law of a State outside the European Union to be applicable to a contract governed by this Section shall be null and void in respect of the matters governed by this Section where, in the absence of that stipulation, the law of a Member State of the European Union would be applicable and that law accords a higher level of protection to the consumer in those matters.’