

NOVEMBER 2003

Number XI

IN THIS ISSUE:

CONSUMER PROTECTION

- Law regarding the sale of products and related guarantees – field of application
- Products' conformity with the specifications contained in the sale-purchase contract
- Obligations and responsibility of the seller
- Consumer's rights
- Obligation of guarantee **page two**

BUDGETARY
RECEIVABLES

- Legal conditions for purchasing goods put under distraint **page four**

PUBLIC FINANCES

- Incomes out of which the risk fund for the State guarantees is created **page four**

CONSUMER PROTECTION

On November 12th, 2003 **Law no. 449** („Law 449/2003”) regarding the sale of products and guarantees relating to them was passed the purpose of which is to ensure the consumer’s protection concerning the products purchased; the said law is enforceable as from January 1st, 2007.

The Law 449/2003 expressly abrogates as from the date of its coming into force: (i) the **Government Decision no. 394/1995** pertaining to the obligations of the economic agents - natural or legal persons - in the commercialization of long-term use products destined to consumers, (ii) the **Government Decision no. 665/1995** on the replacing, repair or reimbursement of the equivalent value for products with quality deficiencies, as well as (iii) series of provisions of the **Law no. 21/1991** on the consumers’ protection.

Field of application

Under this law the protection is extended to natural persons, individuals or groups (associations), who purchase, obtain, use or consume products not belonging to their professional or commercial activity by concluding for this purpose a sale-purchase contract with an authorized natural or legal person, who is commercializing products in the frameworks of his activity.

Regarding the **products** which fall under the incidence of this law, they are movable material assets whose final destination is the

consumption or the individual or collective use, as well as those purchased on basis of a sale contract and which follow to be fabricated or processed.

Products’ conformity with the specifications contained in the sale-purchase contract

The legal criteria, in relation to which the conformity of products with the sale-purchase contract is set, are the following:

- a) The products correspond to the description made by the seller and they have the same qualities as the products presented by the seller as a sample or model;
- b) The products correspond to any specific scope requested by the consumer, scope which was acknowledged and accepted by the seller upon the concluding of the sale-purchase contract;
- c) The products correspond to the scopes for which the products of such kind are normally used;
- d) The products have the normal quality parameters and performances that might be reasonably expected by the consumer.

It is not deemed as a lack of conformity, if upon concluding the sale-purchase contract:

- a) The consumer was aware or he could not reasonably be unaware of this lack of conformity;
- b) The lack of conformity is originating in the materials provided by the consumer.

Nevertheless, any lack of conformity resulted from an incorrect operation that the product was put into shall be deemed as equivalent to the lack of conformity of the products, if the said operation to which the product was subjected to is provided by the products' sale contract and the products were put into operation by the seller on his own responsibility.

The degree of the lack of conformity and of the gravity of the same is made according to the provisions of the national standards SR ISO 3951/1998 and of the other enactments pertaining to the lack of conformity.

Obligations and responsibility of the seller

Pursuant to the Law 449/2003, the seller has the **obligation** to supply to the consumer products which are in compliance with the provisions of the sale-purchase contract.

Concerning the seller's responsibility, the seller is liable to the consumer for any lack of conformity of the product existing at the moment when the product was supplied.

Still, the seller has a regress action against the producer or an economic agent from the same contractual chain, if the lack of conformity is the result of an act or a failure to act on the part of the producer or an economic agent.

The seller's right to regress action for the lack of conformity can be enforced within **2 years** as from the product's supply, but the consumer shall lose his right to turn against the seller if he fails to inform the seller of the

lack of conformity within 2 months as from finding such lack of conformity.

Consumer's rights

In case of lack of conformity the consumer has the following **rights**:

- a) the products to be brought to conformity, free of charge, by repair or replacement depending on the consumer's option, or
- b) to benefit by the adequate reduction of price, or
- c) to benefit by the rescission of the sale-purchase contract concerning the said products.

The reduction of price or the contract's rescission can only be demanded in subsidiary, namely only if the consumer does not benefit by a compensatory measure or if he benefits of an inadequate one.

Obligation of guarantee

Pursuant to the Law no. 449/2003, the guarantee is compulsory for the offeror from the legal point of view, under the conditions specified in the details pertaining to the guarantee and in the related publicity.

The compulsory elements of the guarantee are the following: i) to mention the rights granted to the consumer, ii) to clearly attest that such rights are in no way whatsoever affected by the guarantee offered, iii) to specify the elements of identification of the product, the term of guarantee, the ways to ensure the guarantee, the name and address of the seller and of the service unit, iv) to be

written in simple and easy to understand terms.

The contractual clauses or the conventions concluded between the seller and the consumer which are directly or indirectly limiting or eliminating the consumer's legal rights are null de jure.

BUDGETARY RECEIVABLES

The Law no. 433/2003 published in the Official Gazette no. 773 of November 4th, 2003 brings several additions to the Government Ordinance no. 61/2002 on the collecting of budgetary receivables with reference to the sale-purchase of goods put under distraint

Legal conditions for purchasing goods put under distraint

The sale of goods put under distraint is made only by natural or legal persons who do not have any unpaid budgetary obligations (in the category of unpaid budgetary obligations are not included the budgetary obligations for which, under the law, payment reductions, postponements or instalments were granted). All those interested in the purchase of goods must remit a proof delivered by the budgetary creditors stating that they have no unpaid budgetary obligations.

PUBLIC FINANCES

By the Order no. 1426 of the Ministry of the Public Finances of October 14th 2003, the Instructions on the creation, management

and use of the risk fund for State guarantees for domestic and external loans were approved.

Incomes out of which the risk fund for the State guarantees is created

Pursuant to the Instructions, the risk fund for the State guarantees is created separately for domestic and external loans out of the following sources:

- amounts collected from the beneficiaries of domestic or external loans with the State's guarantee, namely autonomous administrations, national companies/corporations and trading companies, other than those falling under the incidence of the GO no. 29/2002, representing the risk commission negotiated as a percentage quota on the value of the guaranteed loan;
- interests granted to the amounts available in risk funds for the State guarantees for domestic and external loans, amounts kept in the general current account of the State's treasury;
- interests and penalties of delay for the delay in payment of the risk commission;
- interests and penalties of delay for the non-payment of the capital instalments, commissions interests and other costs related to the guaranteed loans;
- amounts recovered from debtors on basis of recovery agreements;
- amounts received from the State budget, in completing the risk funds for the State guarantees for loans;

- amounts recovered by AVAB further to the recovery of debts according to the GO no. 29/2002, as approved and amended by the Law no. 324/2002, and the EGO no. 42/2003;
- other sources duly created with this destination.

Legal persons, beneficiaries of the State guarantees for loans, are liable to pay the amounts owed to the risk fund in the quantum and at the dates stipulated by the

guarantee convention entered into with the Ministry of Public Finances.

The Instructions detail the procedure and documentation for the Ministry of Public Finances to make the payments for the State guarantees, the recording, reporting, modality of managing and use of the risk fund, as well as the modality to recover the amounts payable by the beneficiaries of the State's guarantees.

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