



30.1.2015

NOTICE TO MEMBERS

Subject: Petition 0361/2013 by Andrés Márquez Vázquez (Spanish), on product warranties in Spain

1. Summary of petition

The petitioner urges legislation to improve warranties on electronic products. He explains that he has complained in the past to regional authorities in Spain because manufacturers have failed to observe applicable warranties on purchased items. The petitioner seems to suggest that Spanish Royal Decree 1/2007 would not be in line with EU legislation.

2. Admissibility

Declared admissible on 11 November 2013. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 January 2015

Directive 85/374/EEC of 25 July 1985 on liability for defective products¹ applies to damages caused by movable products even if incorporated into another movable or an immovable product. Thus, the Directive applies to damages caused by a defective fridge.

Directive 85/374/EEC extends the liability of manufacturers or suppliers to members of the public injured and who suffer loss through defective products without need to prove a contractual link, a duty of care and failure to take reasonable care or a failure to comply with

¹ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210 of 7 August 1985,p. 29).

relevant legislation. According to Article 9 (b), the liability for a defective product covers damages caused to any item of property, other than the defective product itself, with a lower threshold of EUR 500. The objective of such a threshold is to avoid litigation in an excessive number of cases, as explained in the 9th recital of the Directive. However, this provision is subject to different interpretations in the Member States. In some of them, the threshold is treated as a deductible, so that the amount of damage awarded to a claimant is reduced by the specified amount; in other Member States the threshold is treated as a minimum amount so that, provided the damage exceeds that minimum, the full amount is recoverable.

Directive 85/374/EEC does not allow Member States to adopt or to maintain more stringent measures in matters in respect to which it makes a provision, in order to secure a higher level of consumer protection.

The Commission recalls that the European Union Court of Justice declared that a Member State that has not made provision in the national legislation transposing Council Directive 85/374/EEC for the threshold of EUR 500 fails to fulfil its obligation under Article 9(b) (See Judgment of 25 April 2002, Commission v/ Greece, Case C-154/00¹).

Due to the fact that the respect of the lower threshold of EUR 500 is not optional for the Member States, the Commission concludes that a damage to property of EUR 150 is not covered by the Directive 85/374/EEC on liability for defective products.

However, Directive 85/374/EEC does not affect any rights which an injured person may have according to the rules of the national law (contractual or non-contractual liability).

Concerning the national legislation, the Spanish Royal Decree 1/2007 of 16 November, concerning the General Law for the Defence of Consumers and Users introduces in Title II the liability of the producer for the safety of products. In this context, Article 141 a) limits the liability of the producer for damages caused by defective products by introducing a franchise of EUR 390, 66 which is to be deducted from the amount of the compensation.

The Commission intends to contact the Spanish authorities on this matter.

Directive 1999/44/EC² on certain aspects of consumer sales and associated guarantees provides consumers with a minimum two-year legal guarantee. The Directive provides that the seller is liable to the consumer for any lack of conformity which existed at the time the goods were delivered to the consumer ('legal guarantee'). The Directive regulates also, to some extent, the conditions for commercial guarantees offered voluntarily by traders.

A defective product, according to Article 137 of the Decree 1/2007, is a product that does not offer safety that can be reasonably expected from the foreseeable use of this product.

Consequently, limitations of the liability in the Spanish Decree 1/2007 concern the safety of products and not their conformity with the contract (legal guarantee). The liability for unsafe products is not regulated by Directive 1999/44/EC.

¹ CJEU- Judgement of 25 April 2002, case C-154/00, Commission v Greece, 2002 ECR I-3879.

² Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of consumer sales and associated guarantees, OJ L 171 of 7 July 1999.

Moreover, even for products that do adhere to safety requirements but are not in conformity with the contract, Directive 1999/44/EC does not harmonise national rules regarding liability for damages caused products and such rules remain regulated by national civil laws.

Conclusion

The Commission considers that Directive 85/374/EEC on liability for defective products does not cover damages that do not reach the lower threshold of EUR 500. Member States cannot adopt or maintain measures intended to ensure a higher level of consumer protection which are not in conformity with the Directive.

Therefore, the Commission will address this question to the Spanish authorities.

The Commission believes that the Spanish legislation limiting the liability of producers for damages caused by defective products is not related to Member States' obligations under Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.