Petition 0928/2006 by Andrea Morelli (Italian), on the scope of the warranty on a computer under Directive 1999/44/EC

1. Summary of petition

The petitioner describes a dispute with the Fujitsu Siemens company about the validity of the two-year warranty on a new notebook, which broke about a year after it was bought. In essence, he cannot, for personal reasons, approach the shop which sold the computer, and the company’s head office has invoked a string of exceptions that have invalidated the scope of the warranty as provided for in Directive 1999/44/EC. Fujitsu Siemens maintains that the warranty applies only when goods do not conform to the contract of sale, and cannot be invoked by the holder of a VAT identification number; any claims under it must, moreover, be made directly to the shop where the goods were purchased, the implication being that there is a relationship of trust between the shop and the customer, created on the strength of the goods in question. The petitioner is consequently seeking the assistance of the European institutions to ensure that the European legislation on standard conditions of sale and terms of warranties applying to consumer goods do not remain a dead letter.

2. Admissibility


The Petitioner appears to have encountered problems with enforcing his rights in respect of a faulty product. He alleges that the producer does not respect the two-year guarantee indicated in the documentation of the purchased product. At European level, the consumer rights in relation to faulty goods (i.e. legal guarantee) are safeguarded by the Consumer Sales Directive (1999/44/EC). According to the Directive, a consumer has a number of rights (i.e. a right to have the product repaired, replaced, to have the price reduced or even get the money back) in case a product is faulty and does not correspond to the contract of sale or to the reasonable
consumer's expectations in respect of the quality and performance of a product. However, a consumer can invoke these rights against the seller only. So far, the EU consumer protection legislation does not provide a consumer with a right to turn directly to the producer of a faulty product (i.e. direct producer liability).

The Commission is aware of the various arguments put forward by the Petitioner in favour of the EU-wide direct producer liability as well as opinions to the contrary. This issue is being considered in the context of the ongoing review of the consumer acquis. In its Communication on the implementation of the Consumer Sales Directive\(^1\) the Commission analyses the laws of these Member States, which have introduced various forms of direct producer liability and examines the case for introducing it at EU level. Moreover, the Green Paper on the review of the consumer acquis\(^2\), adopted by the Commission in February 2007, raises the issue of direct producer liability. On the basis of the outcome of the consultation, the Commission will take a decision on the appropriate follow-up and assess the possibility to introduce an EU-wide direct producer liability.

On top of the legal guarantee, a producer or trader may, without being obliged, offer the consumer a commercial guarantee (e.g. that the goods will remain in conformity with the contract for a period longer than 2 years). With the commercial guarantee the producer may also assume responsibility for defective products vis-à-vis the consumer. The commercial guarantee may be limited to a few Member States.

Assuming that the information presented by the Petitioner is correct, it seems that the particular producer offers the commercial guarantee only in Austria, Greece and Germany and not in Italy. Therefore the Petitioner may not be entitled to remedies provided by the commercial guarantee and should be advised to seek remedies from the seller as provided by the EU-wide legal guarantee.

On the last point raised by the Petitioner, EU consumer law protects only consumers (i.e. natural person who is acting for purposes which are not related to his trade, business or profession). It does not apply to transactions between businesses. The fact that a natural person is a VAT taxpayer may indicate that he is engaged in a professional activity and a such may not be considered as a consumer.

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\(^1\) COM(2007) 210 final
\(^2\) COM(2006) 744 final