

Changes in the Greek Civil Code regarding the sale of goods and amendments to Consumers' Protection Law

New Law 4967/2022 transposes into Greek law EU Directive 2019/770 on the supply of digital content and digital services and EU Directive 2019/771 on certain aspects concerning contracts for the sale of goods.

New Law 4967/2022 (Gov. Gazette 171 A'/09.09.2022), applicable as from 9 September 2022, (hereinafter the "Law") introduces significant provisions with regard to digital services contracts and contracts for the provision

of digital content, while it also amends several articles pertaining to the sale of goods of the Greek Civil Code and Law 2251/1994 on Consumers' Protection.

I. Implementation of Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services.

a. Applicability and scope

The definition of the "contract for the provision of digital content or digital services" is introduced in Articles 3-32 of said Law, under which, the supplier is obliged to provide to the natural or legal person/recipient digital content or a digital service, while the recipient has the obligation to pay in return the respective agreed consideration.

The term "digital content" is defined as the data that are produced and provided in a digital form, while a "digital service" is (a) a service that allows the recipient to create, edit, store or access data in digital form, or (b) a service that allows the exchange of data in digital form or any other interaction with such data, which is uploaded or created by the recipient or other users of said service. It is worth mentioning that the Law is mandatorily applicable when the recipient is a consumer, while in cases of supplier's liability arising from the contract, the sanctions of Law 2251/1994 on Consumers' Protection shall apply. Furthermore, the Law provides for several applicability exceptions, such as indicatively in contracts for the sale of goods with digital

elements, within the meaning of article 513A of the Greek Civil Code, contracts for the provision of financial services, as defined in para. 9 of article 1a of L.2251/1994, contracts for the provision of gambling services, related to games of chance in which the player bets monetary value.

b. Obligations of the Suppliers of Digital content or digital services

By virtue of Articles 6-17, the Law sets the obligations of the supplier of digital content or digital services. Specifically, the supplier is liable in case of non-conformity of the digital content or service regardless of his fault, if the digital service or content does not become available or accessible by the recipient naturally or virtually. In order for the supplier to become liable, both objective and subjective requirements for such conformity are set. In addition, the Law introduces the potential liability of the supplier in case of incorrect integration of the digital content or service when such incorrect integration is part of the contract or it is completed by the supplier himself or under his supervision, as well as in cases where the supplier does not provide

the recipient with the required security updates, and any other updates for the digital content or service that are necessary for the performance of the contract. However, any supplier's liability is precluded in case the recipient was adequately informed about any existed defect but he did not raise any objection.

c. Rights of the Recipient of digital content or digital services

By virtue of Articles 18-29, the Law sets the rights of the recipient in case of defective performance and liability of the supplier of digital content or service. In particular, the recipient is entitled to ask for (a) restoration of the conformity of the digital content or digital service; (b) decrease of the price by partial refund which must be completed within fourteen (14) days as from the

day the supplier receives the respective recipient's declaration for the refund; (c) termination of the contract and (d) compensation for any respective loss that he may have suffered. The recipient's rights due to non-conformity to the contract expire after two (2) years from the provision of the digital content or digital service. The same applies if the recipient discovers the lack of conformity later. In the case of an enforceable contract with continuous provision of the digital content or digital service, the recipient's rights expire after six (6) months as from the termination of the contract. In any case, recipient's rights cannot be limited before the lapse of two (2) months from the time when the lack or defect was ascertained.

II. Implementation of Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods

a. Amendments to Greek Civil Code

The Law defines the sale of goods with digital elements, to which the Civil Code's provisions on sales are also applicable, if the digital elements form part of the sales contract, regardless of whether they are provided by the seller or a third party.

A good with digital elements is any movable good that incorporates or is inter-connected with digital content or a digital service in such a way that the absence of the digital content or digital service prevents the performance of its functions. Furthermore, under new Article 538 of Greek Civil Code, the seller of a good with digital elements is obliged to ensure that the buyer is notified and provided with security updates, and any other information necessary in order for the good to comply with the contract. If the sales contract is enforceable with one or more successive supplies of the digital goods, the seller is responsible for providing updates throughout the time during which the buyer is reasonably entitled to expect updates to be provided, given the nature and purpose of the good and the

digital data, taking into account the circumstances and the nature of the contract.

The Law also introduces several changes as regards the sale of goods contracts. Firstly, the notion of "agreed properties and real defects" that was applicable up to now in order for seller's liability to be established, is replaced by the notion of "conformity" of the goods to the contract, while both subjective and objective conditions are introduced, by virtue of new Articles 535A and 535B of Greek Civil Code, in order for the good to be perceived as "conforming" to the agreed contract.

Any lack of conformity that occurs within one (1) year as from the delivery of the good is presumed to have existed at the time of delivery, unless this is incompatible with the nature of the good or the nature of the lack.

A major amendment introduced by the Law is the hierarchy of the rights of the buyer in case of lack of conformity. By virtue of amended article 542 of the Greek Civil Code, in case of seller's liability, the buyer is entitled to: (a) demand restoration of the good; (b) reduce the price; (c) withdraw from the contract; (d) demand compensation, for the

damage not covered by the exercise of rights (a)-(c) above or to ask for compensation for non-performance of the contract, instead of the above-mentioned rights. However, with regard to the right on restoration, the seller is entitled to refuse the restoration of the conformity of the good, if such restoration is impossible or involves disproportionate costs for him, especially in view of the value of the good and the gravity of the non-conformity. The buyer's rights due to non-conformity to the contract expire after five (5) years for immovables and two (2) years for movables, while in case of sale of goods with digital elements the same provisions as in Part B of the Law (under *section 1. c.* above) with regard to the contracts for the provision of digital content or service applies.

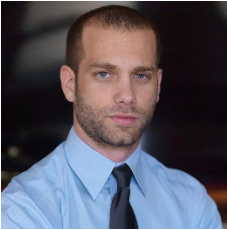
b. Amendments to Law 2251/1994 on Consumer's Protection

Several definitions of the Consumers' Law are amended. For instance, the "Seller" is now defined as "any natural or legal person, regardless of whether private or public law is applied, who in the context of the sales contract acts for purposes related to the exercise of his commercial, business or professional activity".

Furthermore, the provisions on legal and commercial guarantee (i.e. Articles 5 & 5A of L.2251/1994) are amended as follows:

It is expressly provided that articles 534 et seq. of the Civil Code are mandatorily applicable in case of sale contracts as well as in any contract for the supply of goods to be manufactured or produced, while any agreement that introduces a deviation from said articles to the detriment of the

consumer is invalid, if it was drawn up before the time when the lack of conformity became known to the consumer. However, any concluded agreement that may be in favor of the consumer should be perceived as valid and enforceable. Following the above-mentioned amendment, Article 5A regarding commercial guarantee is also amended, as it is added that the seller must inform consumers about the procedure that they have to follow in order to achieve the application of the commercial guarantee. Moreover, two significant additions are made to paragraphs 1a and 1b of the same article. It is mandated that where a producer provides a consumer with a commercial guarantee as to the durability of certain goods for a certain period of time, the producer is directly liable to the consumer, throughout the period of the commercial guarantee as to durability, repair or replacement of the goods in accordance with article 542 of the Civil Code on buyer's rights. The producer may offer the consumer more favorable conditions in the commercial guarantee statement regarding durability. Furthermore, para. 1b of article 5A provides that in case the conditions set out in the commercial warranty statement are less favorable to the consumer than the conditions set out in the respective advertisement of the products, the commercial warranty is binding under the conditions set out in the said advertisement, unless prior to the conclusion of the sale contract, the relevant advertisement had been corrected in the same or in a similar way as that carried out.

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