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## SUPPLY OF DIGITAL CONTENT & DIGITAL SERVICES, NEW SALE OF GOODS LAW

*(EU Directives 2019/770 & 2019/771 in Greek Law)*

### I. Introduction

Greek Law 4967/2022 (published in Gov. Gaz. A' 171/09.09.2022 and applicable from 09.09.2022 onwards – hereinafter the “**Law**”) implemented EU Directive 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services and EU Directive 2019/771 on certain aspects concerning contracts for the sale of goods.

The Law applies to both consumers and non - consumers. The Law is permissive in cases of contracts with non-consumers, whereas in cases of consumer contracts, the relevant legal provisions are mandatory law only in favor of the consumer, meaning that the parties may only agree on terms more favorable to the consumer.

### II. Contracts for the supply of digital content and digital services (EU Directive 2019/770)

Articles 3 – 31 of the Law are applicable to contracts for the supply of digital content or digital services between a supplier and a recipient (either consumer or not), where the supplier is obliged to provide to the recipient digital content or a digital service, while the recipient has the obligation to pay.

“Digital content” is defined as the data produced and provided in a digital form, while a “digital service” is a service that allows the recipient to create, edit, store or access data in digital form or 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. The Law is not applicable in some cases (article 5), such as contracts for sale of goods with digital elements, contracts for the provision of financial services as defined in article 1a§9 of the Consumer Protection Law No. 2251/1994 (“CPL”).

The Law (articles 6-8) stipulates the supplier’s **main obligation to supply** the digital content or service to the recipient. The supplier is objectively liable (*i.e. regardless of culpability*) in

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case of failure to supply. In case of failure to supply, the recipient's rights are the following and may be exercised by the recipient in the following order:

- (a) Right to demand the supply, by setting a reasonable deadline to the supplier;
- (b) Termination of the contract, along with
- (c) Compensation – only if the supplier was at fault.

The law provides for certain exceptions to the recipient's obligation to first demand the supply and then terminate the contract, such as when the supply was agreed or was meant to take place at a particular time.

The supply of the digital content or service **must fulfil specific requirements of conformity**, objective (article 10) and subjective (article 11), such as that the content or service shall be fit for the particular purpose of the contract, conform to the description, quantity and quality stated in the contract, be fit for the purposes for which digital content or digital services of the same type would normally be used etc.

Other conformity requirements are:

- the correct integration of the content or service to the recipient's digital environment,
- the provision by the supplier to the recipient of necessary updates
- the use of the content or service is not limited by third parties' rights (especially intellectual property rights).

**In case of non- conformity, the supplier is held liable without necessarily being at fault.**

Article 16 provides for specific occasions under which the supplier shall not be held liable for non- conformity (e.g. where the recipient was informed that a specific characteristic of the digital content or service deviates from the objective requirement of conformity and had explicitly accepted it, etc.).

**The recipient's rights in cases of supplier's liability** due to non- conformity are the following:

- (a) Demand that the digital content or digital service is made to conform, and, if this isn't possible,
- (b) A proportionate price reduction or
- (c) Contract termination and
- (d) Compensation for damages suffered due to non- conformity on condition of supplier's culpability.

There is a rebuttable presumption that if the non-conformity is found within one (1) year from the time of supply, it existed at the time of the supply. In contracts where the supply of the digital content or service is continuous, the non-conformity revealed during the term of the contract is presumed to have existed during the whole time prior to said revelation.

The recipient may exercise its rights **within two (2) years** from the time of the supply of the content or service (**limitation period**). In the case of contracts for continuous provision, the limitation period is **six (6) months** from termination of the contract. In any case, recipient's rights cannot be time-barred before the lapse of two (2) months from the time when the non-conformity was ascertained.

### **III. Contracts for the sale of goods (EU Directive 2019/771)**

The Greek legislator decided to transpose the EU Directive 2019/771 on the sale of goods by direct incorporation of the amendments to the current system of sales contracts of the Greek Civil Code. Moreover, transposition of the EU Directive into Greek law entailed some changes to the CPL.

#### **A) Amendments to the Greek Civil Code (GCC)**

##### ***Incorporation of the notion “good with digital elements”***

A “good with digital elements” is defined as a movable good that incorporates or is interconnected 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 such a good's functions.

The amended article 538 GCC provides for the seller's obligation to supply all updates, including security updates, which are necessary to keep the good with digital elements in conformity, for a varying period of time depending on the nature of the sales contract.

##### ***Notion of conformity***

The notion of “defective good” is replaced with the notion of “conformity” when assessing whether the seller fulfills its main obligation to sell the good to the buyer. The notion of “defective good” still applies and creates liability for the seller, however it now becomes just a part of the broader notion of “conformity”.

In particular, amended article 534 GCC foresees that ***the seller shall hand-over to the buyer a good that conforms to the contract***. The conformity conditions are the following:

- (a) the good is handed to the buyer without defects,
- (b) objective requirements of conformity and

- (c) subjective requirements of conformity are met, as per articles 535A – 535B GCC,
- (d) the good is correctly installed, in cases where installation forms part of the contract,
- (e) the use of the good is not limited due to third parties' rights and
- (f) the seller provides the necessary updates to the buyer of goods with digital elements.

***Seller's liability in case of non-conformity***

The seller is objectively liable (*irrespective of culpability*) for non- conformity existing up to the time of the delivery of the good to the buyer, unless the buyer was aware that non - conformity was a result of materials provided by the buyer. If the non- conformity is found within one (1) year from the time of the delivery of the good to the buyer, the presumption is that it was non-conforming at the time of the delivery.

***Buyer's rights in case of non- conformity***

- (a) Bringing the good into conformity and, if this is not possible,
- (b) Price reduction or
- (c) Termination of the contract and
- (d) Compensation for the damages suffered due to non- conformity and which are non-restorable by exercising the above rights; the right of compensation may be exercised only if the supplier was culpable. As an exception, in cases where the seller and the buyer had agreed that the good would have a specific agreed quality and the seller had assumed responsibility for non-conformity thereof, the right of compensation may be exercised without the need to assess seller's culpability.

If the non- conformity is found within one (1) year from the time of delivery of the good, the presumption is that non- conformity existed at the time of the delivery, unless this presumption is not consistent to the nature of the good or the nature of the non- conformity.

The buyer may exercise rights due to non- conformity ***within five (5) years for immovable goods*** and ***two (2) years for movable goods***, starting from the time of the delivery of the good to the buyer. In contracts for continuous provision of digital elements, the buyer's respective rights shall be exercised within six (6) months from contractual termination.

If the seller has provided a voluntary/commercial warranty, the limitation period in case the non- conformity was revealed during such voluntary period starts from the time that the non- conformity was revealed.

***B) Amendments to Consumer Protection Law 2251/1994 (the CPL)***

The most important changes are those related to the legal guarantee and the commercial guarantee in sales contracts with consumers.

More specifically, amended article 5 of CPL, which regulates, next to the GCC, the **legal guarantee** in sales contracts with consumers, mandates that the GCC provisions regulating the seller's liability for non-conformity are of mandatory application, and any agreement detrimental for the consumer, concluded prior to the time when the non-conformity was revealed, is null and void. Any agreement in favor of the consumer shall be valid.

Regarding (voluntary) **commercial guarantees**, amended article 5a of CPL now provides that where a producer offers to the consumer a commercial guarantee of durability for a certain period of time, the producer shall be liable directly to the consumer, for the entire period of such commercial guarantee, for repair or replacement of the goods in accordance with the GCC. The producer is free offer to the consumer more favorable conditions.