



## LAW 4967/2022: NEW RULES ON DIGITAL CONTENT AND SERVICES AND CONSUMER SALES CONTRACTS IN GREECE

### I. INTRODUCTION

The arrival of **Law 4967/2022** on digital services contracts and contracts for the provision of digital content (GGI 171 A' 09.09.2022) (the "**Law**"), which transposed the 'twin' Directives (EU) 2019/770 and (EU) 2019/771 into Greek law, provides a welcome step forward, towards achieving greater protection for consumers by establishing a digital single market on the one hand, and increasing legal certainty with regard to sales contracts on the other.

This has been a rather notable development, given that most provisions were not transposed as a separate legal text, but were directly incorporated to the body of the respective Chapter of the Greek Civil Code on the sale of goods (Articles 513 ff) instead, regulating sales in a uniform manner and rendering the Greek Civil Code fully responsive to the digital economy.

### II. CONTRACTS FOR THE SUPPLY OF DIGITAL CONTENT AND SERVICES

Articles 3 through 32 of the Law set framework for a "*contract for the provision of digital content or digital services*", where the supplier is required to provide to the recipient, who can be either a natural person or a legal entity, digital content or a digital service, while in return the recipient is required to disburse the agreed consideration.

**"Digital content"** is another legal term with novelty elements. More specifically, this is defined as the data which is produced and provided in a digital form. Given this broad definition, it may include computer programs, applications, video files, audio files, music files, digital games, electronic books or other electronic publications as well as any materials, documents or files in digital format. Moreover a **"digital service"** is new defined in the Greek Civil Code as a service that either: (a) allows the recipient to create, edit, store or access data in digital form, or (b) 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 the service. This category includes all cloud computing services provided to consumers (such as SaaS, PaaS and IaaS services), as well as those for audio and video sharing and other file hosting, word processing, or online games also offered through social media or other platforms.

As regards its scope, the Law is not applicable in certain areas, such as contracts for the provision of certain electronic communication services, financial services, healthcare services and gambling services.



### III. SALES CONTRACTS

The Law introduces certain requirements concerning the **sale of goods with digital elements**, whereupon the Greek Civil Code's provisions on sales also apply, if the digital elements form part of the sales contract, irrespectively of whether these have been provided by the seller or a third party.

Under the Law, a good with digital elements is understood as any movable good that either incorporates, or is intertwined, with digital content or a digital service, in such a way that the absence of the digital content or digital service would prevent it from being functional.

Moreover, under the new Article 538 of Greek Civil Code, the seller of a good with digital elements must be making sure that the buyer is notified and provided with security updates, as well as any other information necessary, for the good to comply with the contract.

Another noticeable development has been the concept of **"conformity"** of the goods to the contract, in replacement of the "agreed properties and real defects" that was applicable under the previous wording. So, lack of conformity is no required, for the seller's liability to be established, while new Articles 535A and 535B of Greek Civil Code introduce both subjective and objective conditions, for the good to be perceived as "conforming" to the agreed contract.

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

In case seller's liability is established, 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, as regards the right on restoration the seller is entitled not to comply, if such restoration is impossible, or involves disproportionate costs for them, especially in view of the value of the good and the gravity of the non-conformity.

Finally, with regard prescription terms, the buyer's rights due to non-conformity expire after five years for immovable things, and after two years for movables.

### IV. ENHANCED CONSUMER'S PROTECTION FRAMEWORK

Apart from amending the respective Chapter of the Greek Civil Code, the Law has also enhanced several provisions of Law 2251/1994 (Greek Consumer's Protection Law). One of the most notable has been amending the definition of the 'seller', who is now understood 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"*.

Other than that, the Law amended the provisions applicable to legal guarantees and commercial warranties. Indicatively, Article 5A of the Law 2251/1994 governing commercial warranty now provides that the seller is required to inform consumers about the procedural steps that must be carried out to achieve the application of a commercial warranty.



Moreover, paragraph 1a of the said Article 5A prescribes that where a producer provides a consumer with a commercial warranty as to the durability of certain goods for a certain term, the producer is **directly liable to the consumer**, throughout the term of the commercial warranty as to durability, repair or replacement of the goods, in accordance with article 542 of the Civil Code on buyer's rights.

Ensuing paragraph 1b of the said Article 5A further provides that if the conditions set out in the commercial warranty statement are less favorable to the consumer than the conditions set out in the respective product advertisement, then the commercial warranty shall be binding under the conditions set out in the said advertisement, unless prior to the conclusion of the sale contract, the relevant advertisement had been duly corrected.

## V. CONCLUSION

The Law has been positively received by the Greek legal community, as it is expected to ensure a high level of consumer protection and considerably increase legal certainty for both consumers and traders in thousands of everyday transactions concerning goods, smart goods, digital content and digital services.

In this context, offering and purchasing goods, digital content and digital services shall be henceforth carried out in environment of legal certainty and commercial trust. However, the compliant and steady implementation of the Law by market stakeholders and regulatory authorities remains to be seen.

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