

Developments in Rules on Sale of Goods to Consumers

Two EU Directives¹ are to be transposed into Bulgarian domestic law by 1 July 2021 and the respective draft law on the provision of digital content/digital services and sale of goods has already been published. The draft law is intended to enter into force on 1 January 2022 and, among others, it will set new requirements concerning the sale of goods to customers.

The draft law introduces various changes to the rules of the Bulgarian Consumer Protection Act (CPA) as regards the sale of goods to consumers. In particular, the existing provisions of the CPA regulating such sales and the related guarantees shall be repealed. The new Provision of Digital Content and Digital Services and Sale of Goods Act will govern the requirements to be complied with by traders of goods as well as the remedies for consumer protection in case of non-compliance. In parallel, the general provisions of the CPA will continue to apply with respect to the sale of goods to consumers, i.e., agreements; sellers will have to comply with both legislative acts.

The existing requirements will be developed within the new law, which will oblige traders to deliver goods to customers that meet specific subjective and objective conformity requirements as well as requirements related to the proper installation of the goods (if applicable).

The subjective conformity requirements relate to the conformity of the goods with the conditions of the sale agreement. In particular, the delivered goods must:

- correspond to the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features as required by the sale agreement;
- be fit for any particular purpose for which the consumer requires them that has been made known to the seller at the latest at the time of the conclusion of the sale agreement, and in respect of which the seller has given acceptance;
- be delivered with all accessories and instructions, including on installation as stipulated by the sale agreement; and
- be supplied with updates as stipulated by the sale agreement.

On the other hand, the objective conformity requirements cover several mandatory features of the goods that are not that closely related to the sale agreement. To name a couple:

- the goods should meet the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the sale agreement;
- the goods should meet the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and other relevant circumstances.

¹ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services and Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

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Any lack of conformity resulting from an incorrect installation of goods shall be regarded as lack of conformity of the goods under certain conditions, including, for example – if the installation is part of the sale agreement and is carried out by the seller or under the seller's responsibility.

The draft law further introduces a specific regulation of the sale of goods with digital elements, i.e., goods that incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions. Sellers will be obliged to provide consumers with information and any needed updates to the digital content or service, including security-related updates.

A seller shall generally be responsible for any unconformity of delivered goods existing at the moment of delivery which appears within two years of the delivery. However, the requirements related to goods with digital elements differ. For example, where a sale agreement of goods with digital elements provides for an uninterrupted provision of digital content within a limited period of time, the seller will additionally be responsible for any unconformity of the digital content which arises within two years of the moment of the start of the provision of the digital content.

In light of the conformity responsibility, another important development introduced by the draft law is the double extension of the term during which an occurred unconformity shall be considered as existing at the date of delivery – this is now intended to be one year.

In terms of remedies in cases of unconformity, the draft law adds some additional clarifications and developments mainly regarding goods with digital elements.

On a separate note, the right of recourse is also developed by the draft law. The law states that the seller has a right of recourse against any person at the previous level in the chain of transactions rather than only against the manufacturer or persons with whom the seller is in a contractual relationship (as currently provided by the Consumer Protection Act).

As regards the commercial guarantee of goods, an important clarification is introduced by the draft law. When the conditions laid down by the commercial guarantee are less favourable than the ones advertised, then the advertised conditions shall generally be binding on the seller.

The final wording of the new provisions remains to be seen after the new law is passed by Parliament, but businesses should be prepared to align themselves in the near future to the new framework, which essentially should be preserved, as it relates to the implementation of EU directives.