

# CERHA HEMPEL CEE NEWSLETTER *Bulgaria*

## Digital trends in Bulgarian consumer protection law

The Bulgarian Parliament recently adopted the Act on the Supply of Digital Content and Digital Services and on the Sale of Goods (the "**Act**"). The Act transposes into law two EU Directives – *Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services* (the "**Digital Content and Services Directive**") and *Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods* (the "**Sale of Goods Directive**"). Besides filling the existing gap in the regulation of digital content and services, the new Act also amends certain aspects concerning the sale of goods. The Act is set to come into force on 1 January 2022. Below we provide insights on some of its key provisions.

### Scope of Application

The material scope of the new law is wide-ranging. The Act encompasses B2C contracts for one of the following: digital content (applications, music files, e-books, etc.), digital services (e.g. file hosting services, storage of data in digital form), or goods with digital elements (such as smart phones). Certain aspects of the sale of goods to consumers are also covered by the Act.

### Payment by Personal Data

The Act applies not only to paid but also to free digital content/services provided in exchange for consumers' data, thus treating certain cases of the provision of personal data as a form of payment. This concept derives from the Digital Content and Services Directive and is new to Bulgarian law. However, the Act will not apply where personal data is processed in order to supply the digital content/service or for the purpose of privacy compliance. It remains to be seen how the

provision of data as quasi-payment and the provision of data for the purposes of supplying the content/service will be distinguished in practice.

### Objective and Subjective Requirements for Conformity

In line with the Directives, the new Act obliges traders and sellers to make sure that the goods and services offered are fit for the purpose made known to and accepted by the trader and match the description, quality and functionality envisaged in the contract (subjective requirements). In addition, the goods/services covered by the Act must also be fit for the purposes for which goods/services of the same type are normally used and be supplied with all necessary accessories and instructions (objective requirements).

### Burden of Proof

Regarding the sale of goods, the new law foresees a reversed burden of proof in favour of the consumer regarding any lack of conformity which becomes apparent within one year of delivery, in line with the requirements of the Sale of Goods Directive. This is an extension of the 6-month period currently foreseen under Bulgarian law. As prescribed by the Digital Content and Services Directive, the Act also introduces a detailed set of rules on the burden of proof for a lack of conformity of digital content and services to the benefit of consumers.

### Legal guarantee

The new Act will replace the current legal guarantee provisions under the Protection of Consumers Act with EU-harmonized rules. The two-year legal guarantee period for goods, including such with digital elements, in principle remains unchanged and will also apply to digital content and services, subject to certain modifications. For instance, in



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the case of the continuous supply of digital content and services where the contractual supply period exceeds two years, the legal guarantee for the digital content/service (whether incorporated in goods or provided separately) will cover the entire term of the contract.

### **Right of Redress for Traders**

The new Act provides for an important legal remedy for traders and sellers as required by the transposed Directives. Whenever a trader/seller becomes liable to the consumer due to the conduct of another entity upstream in the supply chain, the trader/seller is entitled to pursue remedies against that entity. With regard to traders

supplying digital content and services, the right of recourse is mandatory and cannot be derogated from by contractual arrangements.

### **For more information**

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