

The Act on the Supply of Digital Content and Digital Services and the Sale of Goods entered into force on 1 January 2022

The Act on the Supply of Digital Content and Digital Services and the Sale of Goods (the Digital Content and Services Act) which was adopted and promulgated in March 2021 entered into force on 1 January 2022. It will bring about changes in the practices of traders supplying digital content or digital services or sell goods to consumers.

This national law transposes the provisions of 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, introducing special requirements for compliance of the digital content and digital services with the contract between the parties. The scope of the Digital Content and Services Act is limited only to the relationships between traders and consumers.

The Digital Content and Services Act contains an imperative provision that the parties shall agree on any arrangements which restrict the existing consumer rights or envisage less favourable terms and conditions, including references to the governing law of a non-EU country.

Regarding the digital content and digital services provided to consumers, the Digital Content and Services Act lays down requirements for conformity with the requirements agreed in the contract with the consumer, provision of remedies in cases of lack of conformity, and mechanisms for amending, improving and upgrading the content/service. These standards apply regardless of whether the service is provided for consideration or in exchange for the consent of the consumer to have his or her personal data used for the purposes of the trader. They are also applicable when the trader acts in accordance with the consumer's specifications and when the content or service are supplied on a tangible medium. The Digital Content and Services Act does not apply to cases in which the content or service is provided free of charge and the trader uses personal data only for the purposes of the supply. The specific standards cover the trader's obligation to supply the content or service without undue delay, unless the contract with the consumer provides otherwise, and to ensure conformity of the content or service with the requirements of the contract, the objective requirements (i.e. those stemming from the nature of the content or service itself)

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and the need for integration with the consumer's digital environment (the issue to be tackled here is, for instance, the operational system). Furthermore, the trader should maintain the content/services, including the supply of updates to consumers, for the period covered by the contract or, in cases of contracts without any fixed term, for the period in which the consumer could reasonably expect such maintenance. Traders are also responsible for lack of conformity in cases of incorrect integration at the trader's fault, including the cases of inaccurate instructions for integration, as well as the cases of restrictions on the supply of content or services resulting from the existence of third-party rights. The burden of proof is always on the trader for the conformity with the requirements or, in the case of lack of conformity, the consumer could request supply of the content or service and, in the event of non-performance, the consumer is entitled to terminate the contract. The alternative options available to the consumer are to request bringing of the content or service into conformity or proportionate reduction of the price.

Where the content/service is accessible for a certain period of time, the trader can change it only within certain limits, i.e. where this is needed for ensuring the objective conformity with what has been agreed and the essence of what is supplied. The conditions are to have the contract stating explicitly this requirement and to prevent any additional costs for the consumer. If the change negatively affects the opportunities for using the content or service, the consumer is entitled to terminate the contract, unless the trader has allowed the consumer to continue the use of the content or service in its version before the change. Any breach of these rules will enable the consumer to seek compensation from the person responsible for the breach, i.e. the liability for damage is not limited only to the trader who has concluded the contract with the consumer.

As far as the sale of goods to consumers is concerned, the new legislation further develops the existing legal framework laid down in the Consumer Protection Act. As from 1 January 2022, the Digital Content and Services Act will apply fully on its own and the provisions of the Consumer Protection Act will cease to apply to its subject matter. The Digital Content and Services Act sets out extended standards for the conformity of the goods with the contract and their objective purpose, as well as requirements to the installation and guarantees that the use of the goods will not be prevented by any third party invoking third-party rights,

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including intellectual property rights. Another conformity requirement is to ensure that the digital content or service included in the goods is in conformity with what the parties have agreed for the period fixed in the contract but not less than two years. In the case of lack of conformity of the goods, the consumer continues to be entitled to file a complaint and ask for the goods to be brought into conformity through repair or replacement, or to ask for proportionate reduction of the price or to repudiate the contract.

The rules concerning commercial guarantees and the complaints and disputes between consumers and traders have been transferred to the Digital Content and Services Act.

Insofar as the Digital Content and Services Act lays down completely new rules on digital content and digital services, these rules should be reflected in the general terms and conditions offered by all traders to whom it applies. As to the sale of goods, it will be necessary to revise the general terms and conditions offered by e-stores and other platforms that have the obligation to comply with the new rules.