

# Briefing



## New consumer protection rules for the sale of goods and the provision of digital services

**The rise of online shopping has made it increasingly necessary to modernise and standardise the relevant rules. In order to comply with the Directives 2019/770 and 2019/771 of the European Parliament and of the Council, the No. 373/2021 (30.VI.) Government Decree on the detailed rules of contracts between consumers and businesses for the sale of goods, the supply of digital content and the provision of digital services (hereinafter: Government Decree) was promulgated in Hungary.**

**The Government Decree lays down general rules for these consumer contracts, as well as specific rules for the sale of goods containing digital elements as part of the goods, and for the supply of digital content and digital services. We describe below some of the more important provisions of the Government Decree.**

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### 1. Scope

The Government Decree applies to those consumer contracts that involve:

- the sale of goods or;
- the supply of digital content or the provision of digital services.

The Government Decree will apply to consumer contracts concluded after its entry into force on 1 January 2022 but will also apply to contracts for the provision of digital content or digital services to be performed after its entry into force, even if they were concluded before the entry into force of the Government Decree.

## 2. Requirements to comply with the contractual performance

### 2.1 General requirements for the contractual performance

Performance shall be deemed to be in conformity with the contract if the service which is the subject of the contract:

- complies with the description, quantity, quality and type of the contract;
- is fit for any purpose specified by the consumer;
- has all the accessories and instructions for use specified in the contract;
- provides the updates specified in the contract,
- is fit for the purposes by law or a standard for the same type of service;
- has the characteristics which the consumer could reasonably expect which are common with the same type of services, taking into account any public statement made by the trader or any other person in the distribution chain, in particular in an advertisement;
- has the accessories and instructions which the consumer could reasonably expect;
- corresponds to the characteristics of the service presented as a sample before the conclusion of the contract.

### 2.2 Special contractual performance requirements for the sale of goods containing digital elements

For goods containing digital elements, the business must:

- notify the consumer of digital updates to the goods that are necessary to keep the goods in conformity with the contract and ensure that the consumer receives them;
- the business must provide the updates:
  - for a contract of sale where the digital content or service is a one-off service over a reasonably foreseeable period,
  - for a contract of sale which provides for continuous supply of digital content or digital services for a specified period, for a period not exceeding two years for two years and for the whole duration of the contract if the duration exceeds two years.

## 3. Lack of conformity in case of the contract for the sale of goods

In the event of a business does not comply with the contract, the Government Decree shall be applied in conjunction with the rules of the Civil Code relating to lack of conformity.

The Government Decree extends to one year the current six-month presumption of the lack of conformity for consumer contracts, as currently set out in the Civil Code.

### 3.1 Specific rules on warranty claims for the sale of goods

In addition to the provisions of the Civil Code, the consumer is also entitled to request a proportionate reduction of the consideration or to terminate the sales contract if:

- the business has not carried out the repair or replacement, or has carried out the repair or replacement but has not ensured the repollesion of the replaced goods at its own expense;
- there has been a repeated failure of performance despite the attempts of the business to bring the goods into conformity with the contract;
- the performance failure is of such a serious nature as to justify immediate price reduction or immediate termination of the sales contract; or
- the business has not undertaken to bring the goods into conformity with the contract or it is clear from the circumstances that the business will not bring the goods into conformity with the contract within a reasonable time or without significant detriment to the consumer.

### **3.2 Specific rules for commercial guarantee claims in the case of sale of goods**

The legislator has stipulated that the person who undertakes a commercial guarantee for the performance of the contract is also liable for defective performance under the terms of the related advertising during the commercial guarantee period.

If the producer provides a commercial guarantee of durability for a specific good, the consumer can also claim directly from the producer to have the defect repaired or replaced.

The clearly worded commercial guarantee statement must be provided to the consumer on a storage medium at the latest at the time of delivery of the goods.

## **4. Specific rules for the supply of digital content and the provision of digital services**

**Goods containing digital elements:** movable property that incorporates or is connected to digital content or a digital service in such a way that, in the absence of the digital content or digital service concerned, the goods would not be able to fulfil their functions.

### **Digital service:**

- a service that enables the consumer to create, manage, store or access digital data; or
- a service that allows the sharing of or other interaction with digital data uploaded or created by the consumer and other recipients of the service.

The service is deemed to be completed if:

- the digital content has been delivered to the consumer or to a physical or virtual device chosen by the consumer for that purpose; or
- the digital service has been made available to the consumer or made available to the physical or virtual device chosen by the consumer for that purpose.

The business must ensure that the consumer is notified of and receives any updates that are necessary to keep the contract in conformity.

#### **4.1 Lack of conformity of a contract for the supply of digital content or the provision of a digital service**

A business's performance is defective if the digital-content service or digital service provision is defective due to improper integration of the digital-content service or digital service provision into the consumer's digital environment, provided that

- the integration of the digital content or service was carried out by the business or under the responsibility of the business; or
- the digital content or digital service is to be integrated by the consumer and the unprofessional integration was caused by the lack of integration instructions provided by the business.

The six-month presumption of lack of conformity under the Civil Code is extended to one year.

The Government Decree sets out in detail the cases in which the consumer is entitled to request a proportionate reduction of the consideration or to terminate the contract. It also sets out the obligations of the business in the event of termination of the contract, including:

- The business must fulfil its obligation to reimburse the consideration without delay and at the latest within fourteen days;
- The costs of reimbursement shall be borne by the business;
- The consumer is entitled to download the digital content free of charge in a commonly used and computer-readable data format.

However, the business has the right to prevent the consumer from continuing to use the digital content or service in the event of termination of the contract and may disable the consumer's user account.

The Government Decree also sets out the consumer's obligations in the event of termination of the contract:

- The consumer must refrain from using the digital contract or service after the termination of the contract;
- If the digital content has been provided on a physical medium, the consumer must return it within fourteen days at the expense of the business;
- The consumer must pay the business a proportionate fee for the contractual performance prior to the termination of the contract.

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#### **Contact**

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