



ROMANIA – CONSUMER PROTECTION UPDATES IN THE SALE OF GOODS FIELD

1. Background

In May 2019, the European Parliament and the Council of the European Union have enacted Directive (EU) 2019/771 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 (the “**Directive**”).

The Directive aims to contribute to the proper functioning of the internal market while also providing a high level of consumer protection, by laying down common rules on certain requirements concerning sales contracts concluded between professionals and consumers. Moreover, the Directive aims to contribute to the achievement of a genuine digital single market, increasing legal certainty and reducing transaction costs, in particular for small and medium-sized enterprises.

The Directive has been transposed in Romania by the Government Emergency Ordinance no. 140/2021 (“**G.E.O. 140/2021**”).

G.E.O. 140/2021 has been adopted by the Romanian Government on December 28, 2021 and entered into force on January 1, 2022, with the exception of Article 18 concerning the applicable sanctions, which entered into force on January 10, 2022. On the date of entry into force of G.E.O. 140/2021, Romanian Law no. 449/2003 on the sale of goods and associated guarantees has been repealed.

G.E.O. 140/2021 is applicable to sales contracts concluded between a consumer and a seller after January 1, 2022. While this does not normally include contracts for the supply of digital content or digital services, G.E.O. 140/2021 applies to digital content or digital services incorporated in or inter-connected with goods and are provided therewith.

In the sections below, we will analyze the main novelties brought by the Directive and its transposition by G.E.O. 140/2021.

2. Conformity of goods

The Directive contains in-depth provisions regarding the conformity of goods sold to consumers and G.E.O. 140/2021 has transposed the same.

Thus, goods sold to consumers must fulfill certain subjective requirements, such as:

- (i) to be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the sales contract;
- (ii) to be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;
- (iii) to be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and
- (iv) to be supplied with updates if and as stipulated under the sales contract.

In addition, goods must fulfill objective requirements, such as:

- (i) to be fit for the purposes for which such type of goods are normally used;
- (ii) to be of the quality and correspond to the description of the sample/model made available to the consumer before the sale, if the case;
- (iii) to be delivered along with accessories, including packaging, installation instructions or other instructions, as the consumer may reasonably expect to receive, if the case;
- (iv) to be of 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.

In the case of goods with digital elements, the seller must ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep goods in conformity.

3. Liability of the seller

G.E.O. 140/2021 transposes the Directive's provisions on the seller being liable to the consumer for any lack of conformity which exists at the time when the goods are delivered and which is discovered within two years of that time.

The Romanian legislator has taken advantage of its prerogatives under the Directive and thus, for goods with digital elements, when sale contracts provide for continuous supply of digital content or digital services for a certain period, G.E.O. 140/2021 provides that the seller will be liable for any lack of conformity of the digital content or digital service:

- (i) which occurs or is discovered within two years from the delivery date of such goods with an average use duration of up to five years; or
- (ii) which occurs or is discovered within five years from the delivery date for such goods with an average use duration of more than five years.

If the sale contract provides for continuous supply for a period of more than five years, the liability period for lack of conformity of the digital content or digital service will be equal to the one during which the digital content or digital service is to be supplied per the sales contract.

Regarding the burden of proof, in line with the Directive, G.E.O. 140/2021 provides that any lack of conformity which becomes apparent within one year of the time when the goods were delivered will be presumed to have existed at the time when the goods were delivered, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or with the nature of the lack of conformity.

4. Consumer remedies

In line with the Directive, G.E.O. 140/2021 provides consumers with a number of remedies when goods lack conformity, namely the repair and replacement of goods, price reduction and termination of the sales contracts.

Moreover, G.E.O 140/2021 provides a few clarifications/additions in comparison with the Directive, namely:

- (i) consumers may opt for a certain corrective measure (repair, replacement, reduction of price, contract termination) when the lack of conformity is observed shortly after delivery (*ie* up to 30 days);
- (ii) following the expiry of the 30 days, consumers may request the repairing or replacement of goods that cannot be used per their purpose as a result of hidden defects occurring during their average service life;

- (iii) the reasonable repair/replacement period provided cannot exceed 15 days; the same must be agreed by both parties in writing, considering the nature and complexity of the goods, the nature and gravity of the unconformity and the efforts necessary for repair/replacement;
- (iv) if the good is repaired, the warranty periods are extended with the period between the moment when the lack of conformity was notified to the seller and the actual hand-over of the repaired good to the consumer;
- (v) if the good is replaced, the replacement one is covered by the same warranty periods from the moment of replacement.

When the contract is terminated, G.E.O 140/2021 provides that the seller reimburses the price to the consumer by using the same methods of payment as those used by the consumer for the original transaction, unless the consumer has agreed to another method of payment and provided that the consumer does not have to pay any fees on the reimbursement.

5. Commercial guarantees

Any commercial guarantee is binding on the guarantor under the conditions laid down in the commercial guarantee statement and associated advertising available at the time or before the conclusion of the contract. In order to improve legal certainty and to avoid consumers being misled, both the Directive and G.E.O 140/2021 provide that, if the conditions laid out in the commercial guarantee statement are less advantageous to the consumer than those laid down in the associated advertising, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee, unless, before the conclusion of the contract, the associated advertising was corrected in the same way or in a comparable way to that in which it was made.

Per G.E.O. 140/2021 and in line with the Directive, the commercial guarantee certificate must contain the following information:

- (i) a clear statement that the consumer is entitled to corrective measures from the seller, free of charge, in case of lack of conformity of the goods and that those corrective measures are not affected by the commercial guarantee;
- (ii) name and address of the guarantor;
- (iii) the procedure to be followed for the implementation of the commercial guarantee;
- (iv) the designation of the goods covered by the commercial guarantee;
- (v) the conditions of the commercial guarantee.

G.E.O 140/2021 brings a few additions to the Directive. For example, the commercial guarantee certificate must be:

- (i) drafted in Romanian; this however does not exclude its presentation also in other languages;
- (ii) provided on a durable medium at the latest at the time of delivery of the goods;
- (iii) drafted in plain and intelligible language.

6. Consumer information

In line with the Directive, G.E.O. 140/2021 provides that the Romanian National Authority for Consumer Protection (the “NACP”) must take the necessary measures to ensure that consumers are provided with information on their rights and on the means of exercising the same. It is important thus to follow how the NACP will achieve this, for example by issuing secondary norms.

7. Fines

Breaching the relevant provisions of G.E.O. 140/2021 may lead to the NACP imposing fines up to RON 25,000 (approximately EUR 5,000).

This article contains general information and cannot be considered qualified legal advice.



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