

CMS: Romania marks fresh start for consumer sales and warranties

On 1 January 2022, new rules on consumer protection entered into force in Romania with Government Emergency Ordinance no. 140/2021 on certain aspects concerning contracts for the sale of goods (GEO 140/2021), which transposes at the national level the provisions of EU Directive 2019/771 on certain aspects concerning contracts for the sale of goods and repeals the previous law applicable in this sector.

Despite the scope of maximum harmonisation intended by the Directive, the transposed Romanian law contains a few important differences that economic operators should be aware of. Since the law introduces important new features in terms of consumer rights, economic operators involved in the sale of products will need to adapt sales TCs and warranties to the new legal requirements.

Regulation of "goods with digital elements"

GEO 140/2021 largely reflects the provisions of the Directive, regulating statutory and commercial warranties in relation to "goods with digital elements" with special provisions on "digital content" and "digital service" interconnected with other tangible goods. While GEO 140/2021 is not applicable to contracts for supply of digital content or digital services (which are separately regulated under a different piece of legislation), it does contain special provisions impacting the length of the warranty and its terms.

Different warranty periods for types of goods

GEO 140/2021 maintains the same warranty period provided under the old legislation (i.e. two years from the delivery of the good, applicable also for goods with digital elements). Similar to the Directive, the new law also reflects different warranty periods in particular cases regulated for goods with digital elements. Where the sale contract provides for a continuous supply of digital content or digital service over a period of time, the warranty period for the digital content or digital service is two years (if the goods have an average use period shorter than five years); five years (if the goods have an average use period longer than five years); or the period during which the digital content or digital service will be provided (where the sale contract provides for a continuous supply of the digital content or digital service over more than five years).

The law extends the criteria for assessing the conformity of the goods subject to warranty by regulating two types of conformity requirements: subjective requirements (e.g. observance of the contractual clauses in terms of description, type, quantity and quality, fitness of the established purpose of the good, delivery with all accessories and instructions) and objective requirements (e.g. fitness of the purposes for which goods of the same type would normally be used, correspondence with the description or quality of a sample or model that the seller made available, provision of quantity, quality and other features that are normal for goods of the same type and features that the consumer may reasonably expect given the nature of the goods).

Other changes regarding the statutory warranty

Additional changes impacting the statutory warranty include the following:

- a lack of conformity will be presumed to have existed at the time of delivery if it becomes apparent within one year of the time when the goods were delivered (as opposed to the six-month period applicable under the old legislation);
- consumers are given the right to opt for a certain remedy of those provided under the law if the lack of conformity is ascertained within 30 calendar days from the delivery of the good;

□ the period within which consumers are obliged to inform the seller about the lack of conformity was completely removed (under the old legislation, this period was two months from the date on which the consumer found the lack of conformity);

□ special provisions exist on the hidden defects of the goods throughout the average period of use of the goods.

GEO 140/2021 also sets out important changes on the commercial warranty, including:

□ the direct liability of the producer towards the consumers if the producer provided the commercial warranty;

□ the obligation to remedy the defects within 15 calendar days after the consumer informed the seller about the lack of conformity;

□ the content of the commercial warranty certificate has been partially changed (e.g. the provision on the average use period of the good), and contact details of the service units are no longer required under GEO 140/2021.

The legal regime introduced by the new law should be consistent with the EU's consumer law landscape since the Directive was intended to achieve maximum harmonisation among member states. However, as the Directive permits certain differences, businesses engaged in cross-border sale and particularly businesses trading online will need to navigate both Romanian and other national regimes and achieve swift compliance in order to avoid cumbersome sanctions.

Please follow our updates since CMS Romania will soon publish a practical guidance to assist interested stakeholders in amending their warranty certificates and commercial TCs for consumer contracts. And for more information on Romania's consumer products sector, contact your CMS partner or local CMS experts: **Horia Draghici, Laura Grigore, Laura Capata.**