

## CONSUMER PROTECTION ACT (ZVPot-1)

### Transposition of the European Union rules

#### **Which European Directives are newly transposed into the Slovenian legal order?**

- **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;
- **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;
- **Directive (EU) 2019/2161** of the European parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

### Non-conformity of goods – Indemnity claims

#### **What was the hierarchy of indemnity claims in the case of non-conformity of goods under the "old" ZVPot?**

According to Article 37.c (1) of the ZVPot, a consumer who has duly notified the seller of a defect may have chosen which indemnity claim to pursue. Thus, the consumer could choose between the following indemnity claims:

- rectification of the defect (repair) **or**
- return of part of the amount paid in proportion to the defect, **or**
- replacement of the defective goods with new, faultless goods, **or**
- refund of the amount paid.

#### **What is the hierarchy of indemnity claims in the case of non-conformity of goods under the "new" ZVPot-1.**

The ZVPot-1 establishes a clear hierarchy between indemnity claims. According to Article 81(1) of the ZVPot-1, in the event of non-conformity of the goods that were notified to the seller, the consumer will be entitled to assert indemnity claims in order of priority.

1. The consumer will first be able to claim from the seller the restoration of the conformity of the goods free of charge, either by repair or by replacement with new, faultless goods.
2. Only if the seller fails to restore conformity in this way will the consumer have the right to claim a proportionate reduction of the purchase price or to withdraw from the contract of sale and to claim reimbursement of the amount already paid.

#### **Is the hierarchy of indemnity claims under the ZVPot-1 absolute?**

No. If the non-conformity occurs less than 30 days after delivery of the goods, the consumer may withdraw from the contract and request a refund of the amount paid, without first requesting the

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goods to be repaired or replaced. This is the so-called right of refusal, which is regulated in Article 83(3) of the ZVPot-1.
<b><i>Is the time limit for claiming defects in goods any different under the "old" ZVPot and under the "new" ZVPot-1?</i></b>
No. Under both the old and the new law, a consumer can claim rights under a material defect if he or she notifies the seller of the defect within two months of discovering it (the subjective deadline), however the seller is no longer liable for material defects after two years from the date of purchase (the objective deadline).
<b><i>What is the new period during which the non-conformity of the goods is deemed to have existed at the time of supply of goods?</i></b>
Under the "old" ZVPot, a defect in goods was deemed to have existed at the time of delivery if it occurred within <b>six months</b> of delivery (Article 37.b (3) ZVPot). However, under the "new" ZVPot-1, a lack of conformity of the goods is presumed to have existed at the time of delivery if it appears within <b>one year</b> of the delivery of the goods, unless the seller proves otherwise or unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity (reversed burden of proof - the seller has the burden of proving that the lack of conformity of the goods did not exist at the time of delivery).
<b><i>What is the time limit for repair or replacement?</i></b>
The consumer may require the seller to bring the goods into conformity free of charge within a reasonable period, not exceeding 30 days, from the time he or she notifies the seller of the lack of conformity. The 30-day period may be extended to the shortest time necessary to complete the repair or replacement, but by no more than 15 days. Under the previous regime, there was no time limit for repair.
<b><i>What does the new right of recourse mean?</i></b>
Article 88 of the ZVPot-1 sets out the conditions under which the seller will be entitled to assert warranty claims for non-conformity of the goods against a predecessor in the downstream chain (e.g. the manufacturer).
<b>Non-conformity of the goods - Warranty</b>
<b><i>What types of warranties are regulated in the ZVPot-1?</i></b>
The ZVPot-1 maintains two types of warranties, i) a voluntary (commercial) warranty and ii) a mandatory warranty for fault-free operation. However, the new regime abolishes the mandatory one-month warranty in the case of second-hand goods.
<b><i>To whom can a consumer assert their claim under the statutory warranty?</i></b>
Under the new system, the beneficiary of a mandatory warranty will only be able to assert his or her claims under a warranty for fault-free operation against the manufacturer as the grantor of the warranty, and not against the seller, as was possible under the old system.

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**What is the time limit for rectifying defects if the consumer is asserting claims under a mandatory warranty?**

If the goods covered by a mandatory warranty do not meet the specifications or do not have the characteristics stated in the warranty or advertising, the consumer may first request that the defects be rectified. If the defects are not rectified within a total of 30 days from the date on which the manufacturer or the authorised repairer received the consumer's request for rectification, the manufacturer must replace the goods free of charge to the consumer with identical, new and faultless goods. The 30-day period may be extended to the shortest time necessary to complete the repair or replacement, but by no more than 15 days.

Under the old regime, there was only one time limit, a total of 45 days.

**Digital World - Contract for the supply of digital content or a digital service**

**What is a contract for the supply of digital content or a digital service?**

A contract for the supply of digital content or a digital service is a contract whereby a company undertakes to supply digital content or a digital service to a consumer and the consumer undertakes to pay the company a purchase price. The rules on the supply of digital content or a digital service largely follow the rules on the sale of goods.

It regulates:

- performance of the contract for the supply of digital content and services;
- a mandatory guarantee of conformity of the digital content or service;
- and the modification of the digital content or digital service.

The obligation for the company to provide the necessary updates to the digital content and digital service, including security updates, is also set out as a requirement for the conformity of the digital content and digital service.

**What is a digital service?**

The term »digital service« means (i) a service that allows a consumer to create, process, store or access data in digital form, or (ii) a service that allows the sharing of data in digital form or any other form of interaction with that data uploaded or created by the consumer or other users of the service (e.g. social networks).

**What is digital content?**

»Digital content« is data that is created and delivered in digital form (e.g. mobile apps).

**The rules on the supply of digital content or services largely follow the rules on the sale of goods**

The so-called goods with digital elements will be subject to the rules on the sales contract - regardless of whether such digital content or digital service is supplied by the seller or by a third party. This is the case in particular for smart TVs, smart phones, smart watches, etc., which already contain certain (pre-installed) applications in order to be able to perform their functions at all in accordance with the sales contract. However, in order to leave consumers and also companies (sellers) in no doubt as to whether or not the supply of digital content or digital services



is part of the sales contract, it will always be presumed in case of doubt that it is part of the sales contract.

A mandatory warranty of conformity of digital content and an obligation for providers to provide necessary updates to digital content and digital services, including security updates, are newly introduced. Similarly to the sale of goods, the supply of digital content or digital services is subject to a system of warranty claims for the restoration of conformity, a proportionate reduction of the purchase price or withdrawal from the supply contract. It also provides for the introduction of a right of recourse for suppliers against the upstream supplier.

Under the ZVPot-1, the contract provisions will also apply where the consumer provides or undertakes to provide personal data as »«payment«, except where the personal data provided by the consumer is processed solely for the purpose of supplying the digital content or service or for the company to comply with any legal requirements imposed on it by law, and the data is not processed for any other purpose.

### Advertising and unfair commercial practices

#### **How is advertising defined in the ZVPot-1?**

Advertising is any form of representation made in the course of a business or self-employed activity, the purpose of which is to promote the sale of goods, services or digital content, including real estate, rights and obligations.

#### **Visibility of advertising**

In addition to the information referred to in Article 7 of ZVPot-1, all advertising communications forming part of, or constituting an information society service shall, insofar as this is not already regulated to the same or a greater extent by other legislation, ensure that it is clearly identifiable that the communication is an advertising communication and which the company is the recipient of the communication, in addition to the information referred to in Article 7 of ZVPot-1.

#### **What does the ZVPot-1 provide for with regard to dual quality of goods?**

A commercial practice shall also be regarded as misleading if, in a particular case, taking into account all its characteristics and circumstances, it causes or is likely to cause the average consumer to take a transactional decision which he or she would not otherwise have taken, and includes, inter alia, any marketing of goods in one Member State as being identical to goods marketed in other Member States which have substantially different compositions or characteristics, unless justified by legitimate and objective factors. The ZVPot-1 therefore prohibits dual advertising.

#### **Extension of unfair commercial practices, which are in any case considered to be misleading**

It is also newly considered to be a misleading business practice, which is unfair in all circumstances, if a company:

- provides search results in response to a consumer's search query online without clearly disclosing paid advertising or payment specifically designed to achieve a better ranking of products among the search results;

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<ul style="list-style-type: none"> <li>- resells event tickets to consumers if the company has obtained them by using automated means in order to circumvent any limit on the number of tickets that an individual may purchase or other rules applicable to the purchase of tickets;</li> <li>- states that the product reviews were provided by consumers who actually used or purchased the product, without taking reasonable and proportionate steps to verify that the reviews were in fact provided by those consumers;</li> <li>- provides false consumer reviews or recommendations or solicits such reviews or recommendations from other legal or natural persons, or misrepresents consumer reviews or recommendations on social media in order to promote products.</li> </ul>
<b>Additional novelties introduced by the ZVPot-1</b>
<b><i>What are online marketplaces?</i></b>
Online marketplaces are services using software, including a website, part of a website or an application, operated by or on behalf of a company, allowing consumers to conclude contracts at a distance with other companies or consumers (e.g. Facebook Market Place, Mimovrste, Bolha, etc.).
<b><i>Additional specific information obligations for contracts</i></b>
Before a consumer commits to a distance contract or any other similar offer on an online marketplace, the online marketplace provider has to provide the consumer with the following information in a clear and comprehensible manner and in a manner adapted to the means of distance communication: <ol style="list-style-type: none"> <li>1. general information on the main parameters determining the ranking of offers presented to the consumer as a result of a search query and on the relative importance of those parameters in relation to other parameters;</li> <li>2. whether or not the third party offering the goods, services or digital content is a company, based on a declaration by the third party concerned to the online marketplace provider;</li> <li>3. where the third party offering the goods, services or digital content is not a company, the fact that the consumer does not have any rights under the ZVPot-1 in relation to the contract;</li> <li>4. where applicable, how the obligations relating to the contract are divided between the third party offering the goods, services or digital content and the online marketplace provider.</li> </ol>
<b><i>Sanctions in case of infringements</i></b>
For cross-border infringements, the fine is set at a percentage of the annual turnover of the company, with the maximum amount of such a fine being at least 4 % of the annual turnover of the company and the percentage will be adjusted according to the prevalence of the infringement.

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