

Slovenia – it's time to revise your consumer protection compliance

Consumer Protection Act 1.0

October 2022

The new Consumer Protection Act entered into force on 26 October 2022, and it is set to apply as of 26 January 2023

The main legislative changes brought by the new Consumer Protection Act ("CPA-1") relate to the transposition of Directive 2019/771/EU (the Sale of Goods Directive), Directive 2019/770/EU (the Digital Content Directive) and Directive 2019/2161/EU (the Omnibus Directive) into Slovenian law, but the CPA-1 also revises several existing rules.

I. Key changes

The key changes brought by the new CPA-1 include: (i) the determination of the hierarchy of consumer's remedy claims for lack of conformity and (ii) the introduction of a contractual framework for digital content and digital services.

(i) Remedy claims for lack of conformity

In line with the Sale of Goods Directive, the CPA-1 introduces **a hierarchy of consumer's remedy claims** against the trader for non-conformity of the goods. Consumers may now enforce remedy claims for non-conformity in the following order:

- Level 1: the right of the consumer to have the goods brought into conformity either by repair or replacement of the goods.
- Level 2: the right of the consumer to receive a proportionate reduction in the price, or to terminate the contract, in any of the following cases:
 - (a) If the trader has not completed repair or replacement at its expense or the trader has refused to bring the goods into conformity due to disproportionate costs or the repair and replacement is impossible;
 - (b) If the lack of conformity appears despite the trader having attempted to bring the goods into conformity;
 - (c) If the lack of conformity is of such a serious nature so as to justify an immediate price reduction or termination of the sales contract; or
 - (d) If the trader has declared, or it is clear from the circumstances, that the trader will not bring the goods into conformity within a reasonable time, or without significant inconvenience for the consumer.

The trader shall carry out the repair or replacement within a period of **30 days**.

If the non-conformity becomes apparent within one year of delivery of the goods, it is presumed to have existed at the time of delivery. The trader bears the burden of proof to prove that the goods were in conformity at the time of delivery. The CPA-1 has extended this period of reversed burden of proof from six months to one year.

Furthermore, the CPA-1 introduces a **right of rejection** - the consumer's right, irrespective of the hierarchy of remedy claims, to terminate the contract immediately if the lack of conformity of the goods becomes apparent within 30 days of delivery. In such cases, the consumer has the right to terminate the contract without having to ask for the goods to be repaired or replaced first.

Another new provision related to remedy claims is the **right of redress** of the trader. A trader, who was liable to the consumer and settled the consumer's claim for lack of conformity, is entitled to pursue remedies against the person or persons liable in the chain of transactions.

Notwithstanding the changes in the claims for lack of conformity, the CPA-1 retained the legal regime on the **statutory** (i.e. mandatory) **manufacturer's warranty** for the faultless operation of goods. The minimum warranty period is one year. The mandatory warranty is currently required for so-called technical goods, as provided for in the *Regulation on goods, for which conformity guarantee shall be issued* (Official Gazette of the RS, No 14/12). The Minister responsible for consumer protection shall within six months of entry into force of the CPA-1 issue the new regulation specifying the goods for which the mandatory warranty applies.

It should be noted that the CPA-1 no longer requires the mandatory warranty of the trader for faultless operation of second-hand goods sold by it.

(ii) New provisions concerning contracts for the supply of digital content and digital services

The CPA-1 newly regulates contracts for the **supply of digital content and digital services**, thus transposing the provisions of the Digital Content Directive.

To determine which rules of CPA-1 apply, it is important to distinguish between:

Goods	Digital Content	Digital service
(a) any tangible movable items (including water, gas and electricity where they are put up for sale in a limited volume or a set quantity); (b) goods with digital elements - any tangible movable items that incorporate, or are inter-connected with, digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions.	data which are produced and supplied in digital form	(a) a service that allows the consumer to create, process, store or access data in digital form; or (b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service.

Pursuant to the CPA-1, a contract for the supply of digital content or a digital service is contract where the trader supplies or undertakes to supply digital content or a digital service to the consumer and the consumer pays or undertakes to pay a price. It should be noted that the **price** as defined under the CPA-1 is not only a **sum of money**, it may also be a **digital representation of value**. Provisions regulating contracts for the supply of digital content or a digital service are applicable also to contracts where the consumer undertakes to provide **personal data** to the trader.

The new rules among others regulate the performance of a contract for the supply of digital content and a digital service, the conformity of digital content or a digital service and the modification of digital content or a digital service, in particular:

- Due to the nature of digital content and services, the CPA-1 specifies when the trader's obligation to supply is deemed to have been fulfilled;
- The provisions on conformity and remedy claims for lack of conformity follow the general scheme applicable to consumer contracts, while taking into account certain specifics of digital content and digital services;
- The trader's right of redress is also provided for in the context of contracts for the supply of digital content or digital service, where the trader is liable for failure to supply the digital content or digital service, or because of a lack of conformity;
- Furthermore, the CPA-1 regulates the permissible modifications of digital content or digital services during the term of the supply contract and consumers' rights in this respect.

II. Other notable changes

Other notable changes introduced by CPA-1 include:

- New unfair commercial practices

The regulation of unfair commercial practices is now included in the CPA-1, and the Consumer Protection Against Unfair Commercial Practices Act, which regulated the subject until now, will cease to apply. For the most part, the CPA-1 maintains the existing regulation; however, two new prohibitions should be noted. The CPA-1 newly prohibits the misleading practices of:

- publishing customer reviews which do not originate from consumers who have actually used or purchased the product; and
- providing search results as a response to an online search query of a consumer without disclosing paid advertising.

- Broadened scope of assessment of fairness of contractual terms

The CPA-1 includes a new rule on the assessment of fairness of contractual terms. It includes the assessment of the adequacy of the price and remuneration as well as the definition of the main subject matter of the contract, regardless of whether the contractual terms are made in a clear and comprehensible language.

Such a wide discretion on the assessment of the fairness of contractual terms may cause uncertainty in future assessment and may lead to numerous disputes. Hence, court practice and/or an official interpretation of the provision in the foreseeable near future would be more than necessary.

- Changes in the rules regulating sales and price reductions

Under the CPA-1, there is a new rule on marking of price reductions. It requires traders to specify the reduced price and the previous price. As a rule, the price that is indicated as the previous price should be the lowest price used by the trader in the last 30 days prior to application of the reduced price.

The CPA-1 retained the rule providing that where percentage of reduction is advertised in a range, the highest percentage must apply to at least ¼ of the goods on sale. Unfortunately, the CPA-1 has failed to define the term "sale" (*razprodaja*), and as a result, the scope of the term remains ambiguous.

- Increased fines for breaches of the CPA-1

The new CPA-1 has also amended the provisions on sanctions for non-compliance. The maximum fine for **serious offences** has been increased to **EUR 50,000** (previously EUR 40,000).

In line with the Regulation (EU) 2017/2394, the CPA-1 also introduces a fine for so-called widespread infringements. **Widespread infringements**¹ are infringements that cause harm to the collective interests of consumers residing in at least two Member States or infringements that have common features and were committed by the same trader simultaneously in at least three Member States. The fine for such offences ranges between **0,5 % and 4 % of the annual turnover** of the undertaking in the Member State(s) concerned.

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Should you require any further details regarding the new legislative changes or ensuring your compliance with them, please do not hesitate to contact us.

¹ As defined by Article 3(3) of the Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004

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