

# GREEK LAW DIGEST

## ■ CONSUMER PROTECTION



NOMIKI BIBLIOTHIKI

# CONSUMER PROTECTION REGULATIONS

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## What is the general legislative framework of consumer protection in Greece?

Law 2251/1994 on the Protection of Consumers as amended by Ministerial Decision YA Z1-629/2005, Law 3587/2007 and Ministerial Decision YA Z1-891/2013 and Law 4177/2013 (the “**Law**”), is the core law for consumer protection in Greece. It regulates various related consumer issues such as general terms and conditions of consumer contracts, unfair contract terms, distance selling, doorstep selling, misleading and comparative advertising, distance marketing of consumer financial services, product liability etc. Except from the aforementioned Law, the following acts need to be mentioned in order to supplement the legislative regime as regards consumer protection in Greece. In particular:

- Joint Ministerial Decision Z1- 699/2010 on credit agreements for consumers implementing Directive 2008/48/EC on credit agreements for consumers;
- Law 3862/2010 as amended by Law 4002/2011 for the implementation of the Payments Service Directive;
- Ministerial Decision Z1-798/2008 as amended-clarified by Ministerial Decisions Z1-21/17.01.2011 and Z1-74/2011 concerning the prohibition of General Terms and Conditions which have been held unfair by court decisions on consumer class actions;
- Law 3869/2010 concerning debt settlement of highly indebted consumers and other rules as amended by Laws 3996/2011, 4161/2013 and 4336/2015;
- Joint Ministerial Decision Z1-404/14.6.2001 for the indication of prices of products offered to consumers;
- Presidential Decree 339/5.9.1996 on the package travel;
- EC Regulation 261/2004 of the European Parliament of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;
- Joint Ministerial Decision Z3-2810/2004 for general product safety; and
- Ministerial Decision Z1-1262/2007 concerning terms on consumer contracts with slimming centers and gyms.

## Who may be deemed as a consumer for the purposes of application of the Greek Consumer Protection Law?

The Law has transposed Council Directive 93/13 EEC of April 1993 on Unfair Terms in Consumer Contracts into Greek Law. Whilst article 2(b) of this Directive defines consumer as

any natural person who is acting for purposes which are outside his/her business, trade or profession, the Law has adopted a wider definition of what constitutes a consumer thus rendering the Law broader in scope. More specifically, pursuant to article 1(4)(a) of the Law, a consumer is a natural person or legal entity for whom the products and services offered in the market are intended and who uses such products or services, as long as such natural person or legal entity is the final recipient thereof. Thus, this definition is wider since:

- It is not restricted only in persons acting for purposes outside their business, trade or profession as long as such persons are the final recipients of the product or the service intended; and
- Legal entities also fall within its scope.

Despite the aforementioned wide definition, it should be mentioned that in subsequent consumer law acts, the Greek legislator has adopted the European narrow consumer definition; in particular:

- In articles 3 – 4(i) of Law regarding doorstep and distance selling and other consumer contracts, as amended and added, respectively, through Ministerial Decision YA Z1-8912013 implementing Directive 2011/83/EU on consumer rights;
- In article 4i of Law regarding distance selling in the field of financial services which has been added through Ministerial Decision YA Z1-629/2005 implementing Directive 2002/65/EC on the distance marketing of consumer financial services;
- In article 9a (a). of the same Law regarding unfair commercial practices added through the Directive 2005/29/EC on Unfair Commercial Practices;
- Joint Ministerial Decision Z1-699/2010 on credit agreements for consumers implementing Directive 2008/48/EC on credit agreements for consumers; and
- Law 3862/2010 as amended by Law 4002/2011 for the implementation of the Payments Service Directive.

### How are the General Terms and Conditions defined under the Law?

Pursuant to article 2(1) of the Law, the General Terms and Conditions (the “GTCs”) are those terms that have not been individually negotiated and have been drafted by the supplier in advance for use in future contracts, thus not allowing the consumer to influence the substance of the terms. It has to be noted that salient terms, such as those determining the price, are not meant to be GTCs. The GTCs are usually found in the context of a pre-formulated standard contract. Article 2(6) of the Law renders GTCs as unfair and consequently void if they cause, a significant imbalance to the parties’ rights and obligations arising under the contract to the detriment of the consumer. The unfairness of a GTC is assessed, by taking into account the nature of the goods or services for which the contract was concluded and the scope of the contract and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all other terms of the contract or of another contract on which it is dependent. In addition, except for the general rule in article 2(6), which determines the criteria for the characterisation of a GTC as unfair, article 2(7) of the Law, entails an indicative, non-exclusive list of thirty-two terms, which

are per se unfair. Moreover, article 2(2) of the Law mentions that GTCs, which are entailed in consumer contracts concluded in Greece, should be drafted in Greek language in a plain and intelligible way. The use of Greek language is also mandatory in cases where GTCs are incorporated in international transactions which take place within the Greek market.

### **Does the Law entail any specific provisions on consumer protection when doorstep and distance selling take place?**

Articles 3 to 3(m) of the Law set out specific provisions in relation to doorstep and distance selling respectively; such provisions also apply to contracts for the supply of water, gas and electricity, but do not apply to financial services contracts.. Relevant provisions includes a list of obligations that the supplier is required to comply with In particular the consumer should be provided with certain information prior to the conclusion of such contract (e.g. the identity, address and contact details of the supplier, the main characteristics of the goods or services, delivery costs, the price of goods or services including all taxes, withdrawal rights etc). In case of doorstep selling the supplier should: (i) provide to the consumer such information in writing or through other durable medium; and (ii) deliver to the consumer a copy of the signed contract or a written confirmation thereof. In case of distance selling the supplier should: (i) provide or make available to the consumer such information in an appropriate way taking into account the communication means used; and (ii) deliver to the consumer confirmation of the executed contract on durable medium. Moreover, regarding distance selling the supplier should procure that the consumer, upon submitting his order, explicitly recognizes that such order entails a payment obligation (article 3(d)(2)). In case of phone calls, the supplier should confirm his offer to the consumer and the latter is bound only after signing such offer or sending his written approval (article 3(d)(6)). Pursuant to article 3(m), any supplier wishing to enter into distance selling contracts must be registered with the General Commercial Register (GEMI). Finally, articles 3e to 3l regulate consumer's withdrawal right in relation to both distance selling contracts and doorstep contracts, providing for the withdrawal period (i.e. 14 days), the exercise of the right of withdrawal and the effects thereof, including the effects on ancillary contracts.

### **Does the Law provide for consumer's rights in further cases other than doorstep and distance selling?**

New articles 4 to 4(h) provide, amongst others, for supplier's pre-contractual information duties, consumer's right to terminate the contract in case of late delivery, the passing of the risk in case goods are dispatched to the consumer and consumer's consent to any additional payment. Moreover, article 4(g) explicitly provides that the consumer is not bound by inertia selling, namely the offering of goods or services to the consumer without being ordered. Finally, article 4(h) prohibits resignation from or contractual infringement of consumer's rights under articles 3 to 4(h).

### **Does the Law provide for any rules as regards distance marketing of financial services?**

Article 4a of the Law regulates distance marketing of financial services, namely any service of a banking, credit, insurance, personal pension, investment or payment nature. Applica-

tion of article 4a of the Law requires that a contract is concluded between a consumer and a financial services supplier, that is, any person, whether public or private, who provides financial services in his/her commercial practices provided however that the parties were not in any physical contact during the preliminary and signing stages of the contract. Both persons must have communicated only by using an organised distance sales or service provision scheme (e.g. telephone, facsimile, courier) run by the supplier.

As a result, if such conditions are met, the supplier is obliged to provide to the consumer certain information on paper or other durable medium that deals with:

- The supplier (i.e. identity, address, registration information, supervision authority);
- The financial service (i.e. description of the main characteristics, total price and costs, special risks etc);
- The distance contract (i.e. early termination, minimum duration, applicable law and withdrawal rights); and
- The redress.

Such information is provided reasonably, before the time the consumer becomes bound by the offer or contract. Exceptionally, the Law allows the supplier to provide information to the consumer after the execution of the contract when, at the consumer's request, the contract has been executed using a means of distance communication which does not enable the provision of information as required by Law. Finally, article 4a enables the consumers to withdraw from the contract without penalty and without giving any reason during a period of 30 calendar days in the case of life insurance, or 14 calendar days in the case of any other financial products. Upon the exercise of the right of withdrawal and expect for insurance contracts, where the consumer shall not be charged any amount, the consumer may only be required to pay for the service actually provided by the supplier with the consumer's approval.

### **Who bears responsibility for product liability and under which circumstances such liability occurs?**

Product liability issues arising from the sale of products is regulated by the provisions of articles 534-552 of the Greek Civil Code as amended by Law 3043/2002 which was introduced for the harmonisation of the national legislation to Directive 44/1999/EC for consumer products. Further, article 6(1)(a) of the Law sets out that the producer of the defective product is held liable for damages incurred to the consumer. Moreover, if the identity of the producer is unknown to the consumer, the latter may still claim compensation as the same liability is also extended to the importer and the supplier of the defective product. This is because the Law deems both the importer and the supplier as producers. The claimant does not have the onus of proving the existence of fault because the test for determining product liability is an objective one. Therefore, since the burden of proving dishonesty or fault on behalf of the importer or supplier is no longer a requirement, the consumer can still claim against defective products if the following three conditions are met:

- (i) The defect exists at the time of sale, namely at the moment when the product has been launched in the market;

(ii) The consumer has suffered damages; and

(iii) There is causal link between the damage the consumer suffered and the defect in the product.

### **Does the Greek legislator provide a specific legislative framework on consumer credit agreements?**

Ministerial Decision Z1-699/2010 transposed Directive 2008/48/EC on credit agreements for consumers into Greek law and applies generally to credit agreements below €75.000 entered into with natural persons for non-business purposes subject to certain exceptions. This new regime regulates among others the following issues:

- It includes certain standard information that should be depicted in the advertisement when the latter gives an indication of an interest rate or other figures relating to the cost of credit;
- It cites a comprehensible set of pre-contractual information that must be provided to a borrower in “good time”, i.e. before the borrower becomes bound by the agreement. The information, which is set out in article 5, must be disclosed in a format known as the Standard European Consumer Credit Information sheet (“**SECCI**”);
- It requires certain information, which is similar to the pre-contractual requirements, to be contained in the credit agreement itself although the manner in which the information must be presented is less prescriptive than the SECCI;
- The lenders are required to provide “adequate explanations” to borrowers before the agreement is concluded so as to enable the borrower to assess whether the loan is adapted to his/her needs and financial situation;
- The lenders are required to assess the creditworthiness of the borrower based on information obtained from the borrower or by consulting a credit reference agency before the conclusion of a credit agreement and before any significant increase in the total amount of credit under an existing agreement; and
- It contains specific provisions in relation to overdrafts and overrunning.

### **Which court actions are available to enforce the Law?**

A court action can be initiated before the Civil Courts by a consumer or/and a consumer association. Pursuant to article 10(16) of the Law, a class action can be filed only by consumer associations that have more than 500 members and have been registered in the consumer association’s public registrar for over than one year. In the latter case the Multi-Member Court of First Instance of the place of residence of the defendant has jurisdiction.

### **What are the possible civil sanctions and remedies in case of infringement of the Law?**

Pursuant to article 9(i) of the Law, a consumer may initiate court action for the following remedies:

- Pecuniary and non-pecuniary damages;

- The termination of an unfair commercial practice and its impediment from being repeated in the future; and
- The publication of a court decision ordering the termination of an unfair commercial practice, as well as, of a recovery statement by the offender.

As regards class actions filed by consumer associations, article 10(16) provides that such associations are entitled to ask for the following remedies:

- The termination of an unfair commercial practice even if it has not taken place yet;
- The publication of a court decision ordering the termination of an unfair commercial practice, as well as, of a recovery statement by the offender;
- The commitment, the withdrawal or the destruction of defective products that may harm the security or/and health of the consumers;
- Non-pecuniary damages;
- The issuance of injunctions that aim to secure the claims of the consumers as regards the deterrence of unfair practices or the damages until the issuance of a final court decision; and
- The recognition of the restitutionary damages in favor of consumers.

### **What are the possible administrative sanctions for the infringement of the Law?**

As per article 13a of the Law, the consumer may report breaches of the Law to the General Secretariat for Consumers. The Minister of Finance, Development and Tourism may impose fines from € 1,500 to € 1,000,000; further, he may order suspension of the supplier's business operation for a period from three months to one year, in case more than three decisions for the imposition of a fine, as per above, have already been issued against the same supplier.

### **What are the possible criminal sanctions for the infringement of the Law?**

There are no direct provisions for criminal sanctions in the Law. However, there are other Greek laws that provide for criminal sanctions in specific cases of unfair trade practices (e.g. Law 146/14 against Unfair Competition). Also criminal sanctions can be imposed pursuant to the provisions of the Greek Penal Code.

### **Are there any mediating services that deal with aspects of the Law?**

In Greece there are several mediating services related to consumer protection. In particular, the following mediating services should be mentioned:

- The Ombudsman of the Consumer which operates as an Independent Administrative Body and acts as an alternative dispute resolution body;
- The Amicable Settlement Committees that function in each Prefecture in Greece under the auspices of the Ombudsman of the Consumer. Pursuant to article 11 of the Law, their role is to enable the amicable settlement of disputes between consumers and

suppliers. However, the committee findings neither have the effect of a court ruling nor they are enforceable; and

- The Hellenic Ombudsman for Banking-Investment Services which deals, among other things, with the unfair trade practices of banking (such as deposits, loans, cards) and investment services (such as shares, mutual funds, bonds) towards consumers.

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