

## **E – contracts : The new rights and obligations of the Consumers according to the recent European and Greek framework**

**By**

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### **1. Introduction**

This study aims to present the current European and Greek legal framework on Consumer's obligations and rights, especially Directive 2011/83/EU ( D ), based on Proposal 8-10-2008, COM ( 2008 ) 614 [ 1 ], the implementation of which took place with the Greek law JMD Z1 – 891/2013 ( JMD ), which modifies article 4 Law 2251/1994 and will be in force at 13 June 2014 ( article 10 JMD ).

Instead of former minimum harmonization, Directive 2011/83/EU is a maximal harmonization directive [ 2 ], in a target way [ 3 ]. This means that its scope is not only the approach [ 4 ], but also the absolute unification of Member States legal systems, in some basic aspects, at least, such as the subjects, that are regulated in articles 3 par. 4, 6 par. 7 and 8, 7 par. 4, 8 par. 6 και 9 par. 3 of Directive 2011/83/EU.

However, the full harmonization goal can be succeeded, mostly, by using horizontal application meters [ 5 ], such as accurate implementations in national legal systems, without diversions included more or less stringent provisions [ 6 ] ( article 3 par. 2, 4 D / 3a par. 2 Law 2251/1994 / 3 JMD ).

Moreover, simplifying and updating [ 7 ] the applicable rules, will, definitely, contribute to the European internal market competition [ 8 ] and completion.

Directive 2011/83/EU and JMD Z1 – 891/2013 provide protection to Consumer's economic interests, from the dangers, that exist in the virtual relationship of exchange, between the Trader and the Consumer, in electronic transactions [ 9 ] and distance contracts, with emphasis in contracts via internet [ 10 ], because of the

Trader's negotiating power, that ensured by the organization he affords and the repetitiousness of his occupation.

## **2. Distance contracts – Definitions**

Distance contract means any contract concluded between the Trader and the Consumer under an organized distance sales or service - provision scheme without the simultaneous physical presence of the Trader and the Consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded ( article 2 7) D / 3 7) Law 2251/1994 / 2 JMD ).

For the first time, specific definitions are explicitly set.

The Trader is any natural or legal person, whether private or public law sector, acting himself or through a third person, in his own name or on his behalf, who can be any professional and no longer a businessman or an advertiser, obligatory ( article 2 2) D / 3 2) Law 2251/1994 / 2 JMD ).

The Directive sets « stricto sensu » Consumer definition [ 11 ], according the settled European Parliament and Council opinion. As a result, the Consumer is any natural person, who acts outside trade, exclusively, no necessarily being an advertisement recipient or a guarantee ( article 2 1) D / 3 1) Law 2251/1994 / 2 JMD ).

Nevertheless, according to an opinion, based on preamble recital 17 of Directive 2011/83/EU, for the first time, there is a small turn to « lato sensu » Consumer definition [ 12 ], since in dual purpose contracts, where someone acts partly outside and partly within trade, if the trade purpose is so limited, as not to be predominant in the overall context of the contract, that person can, also, be considered as a Consumer.

The distance contract content is possible to be either sales or services contract ( article 2 7) D / 3 7) Law 2251/1994 / 2 JMD ).

In sales contracts, the Trader transfers or undertakes to transfer the ownership of goods to the Consumer and the Consumer pays or undertakes to pay the price thereof, which does not have to be compulsory pecuniary. Furthermore, sales contracts include any contract having as its object both goods and services ( article 2 5) D / 3 5) Law 2251/1994 / 2 JMD ).

Primarily, apart from restriction in sales, goods are tangible movable items, not sold by execution way or otherwise by law authority. This means that immovable property and intangible rights are excluded, so as unwillingly sales, for example through confiscation. By exception, water, gas and electricity are considered as goods, when they are put up for sale in a limited volume or a set quantity, on condition that are provided by public providers, on a contractual basis ( article 2 3) and 3 1) D / 3 3) and 3 a 1) Law 2251/1994 / 2 and 3 JMD ). Also, now, on the contrary to past thesis, goods can be no – prefabricated goods, made on the basis of an individual specifications choice ( article 2 4) D / 3 4) Law 2251/1994 / 2 JMD ).

On the other side, in services contracts, the Trader supplies or undertakes to supply a service to the Consumer and the Consumer pays or undertakes to pay the price thereof, not needed be in cash, as well ( article 2 6) D / 3 6) Law 2251/1994 / 2 JMD ).

As a result, services contracts can be any contract other than a sales contract, as software copyright sales or movable item donation or loan. Additionally, a contrario, water, gas and electricity are considered as service, when they are not put up for sale in a limited volume or a set quantity.

The distance contract must conclude with the exclusive use of one or more, seriatim or cumulated, distance communication means, par exemple e – mail [ **13** ], telephone, fax, internet ( article 3 7) Law 2251/1994 / 2 JMD ), up to and including the time at which the contract is concluded ( article 2 7) D / 3 7) Law 2251/1994 / 2 JMD ), being the two parts constantly absent. So, if there is any simultaneous, even instantaneous, physical presence between the Trader and the Consumer, also during negotiations, distance contract is not concluded.

According to an opposite opinion [ **14** ], if the Consumer visits in person the Trader's shop or office, in order to negotiate, and, then, sales or services contract is concluded by distance communication means, distance contract is concluded, as well.

Moreover, distance contracts are concluded under the existence of an organized distance sales or service - provision scheme condition. This means that the use of distance communication means has to be fixed and permanent, and not occasionally or exceptionally. However, the proposal initiative can belong both to the Trader and the Consumer ( article 2 7) D / 3 7) Law 2251/1994 / 2 JMD ).

### **3. Scope**

Directive 2011/83/EU and JMD Z1 – 891/2013 are not applied in all types of distance contracts. There is a long catalogue of exceptions ( article 3 par. 3 D / 3 a par. 3 Law 2251/1994 / 3 JMD ).

The first three exceptions are set for first time. The first refers to social services to vulnerable population, such as homeless, indigent persons, people with disabilities, elderly and children. The second to healthcare services, concluding medicine providing, whether or not in private or public sanitary conditions, or at patient's home. The third has to do with every type of gambling, on pecuniary payment condition, exclusively [ 15 ].

Also, it is the first time that the exception of financial services, which are regulated by Directive 2002/65/EC and article 4 h Law 2251/1994, is not implied.

In addition to, acquisition or transfer of rights in immovable property contracts, although are formally concluded, construction or conversion of buildings contracts, and many other established by a public office - holder contracts, are not fall into the application of the relative provisions, after their adoption.

Moreover, rental of accommodation for residential purposes are included, for the first time.

Another direct exceptions are any travel contract, which falls within the scope of Directive 90/314/EEC on package holidays and tours, and its implementation in Greek legislation, P.D. 339/1996, timesharing long – term holidays contracts, which falls within the scope of Directive 2008/122/EC, and its Greek adjustment JMD Z1 – 130/2011, and passenger transport services contracts, as well. What is quite interesting, is that, all these contracts are not excluded from specific provisions, but the total application field of Directive 2011/83/EU and JMD Z1 – 891/2013, for the first time, apart from passenger transport services contracts, in which articles 8 par. 2, 19 and 22 Directive 2011/83/EU and article 3 d par. 2 Law 2251/1994, are the only applied.

While in the previous legal status quo, contracts for the supply of foodstuffs, beverages or other goods intended for current consumption and which are physically supplied on frequent and regular rounds to the Consumer's home, residence or workplace, were regulated by some provisions, exclusively, now, are completely excluded, for the first time, too. However, the present versions, has much more proper syntax and is by far more analytic. The domestic consumption is specified in

household frames and the distributor is clearly defined as the Trader. The only, apparently by accident, fault is the synonymous words « home » and « residence » use, instead of the correct one « temporary stay », that was formerly used. This exception is based on the products' minor cost and theirs' consumable, plus delicate, nature, yet.

Last, but not least, contracts concluded by means of automatic vending machines, such as refreshments or tickets, or automated commercial premises, for instance self - service clothing laundry, or with telecommunications operators through public payphones for their use, are, still, not within the Directive 2011/83/EU and JMD Z1 – 891/2013 scope. The verbal conformation is significantly improved. Contracts concluded for the use of one single connection by telephone, internet or fax established by a Consumer, institute a brand new provision.

Although the upper minimum level protection, the Trader is not prevented from offering the Consumer contractual arrangements which go beyond it, applying all the Directive 2011/83/EU and JMD Z1 – 891/2013 provisions, even to that contracts exceptions, in order to ensure a higher level protection providing to the last one ( article 3 par. 6 D / 3 a par. 6 Law 2251/1994 / 3 JMD ).

#### **4. Information requirements for distance contracts and Formal requirements for distance contracts**

The Trader must provide the Consumer a non indicative, but restrictive catalogue of information ( article 10 par. 10 D ), before the last one is bound by a distance contract ( article 6 par. 1 D / 3 b par. 1 Law 2251/1994 / 3 JMD ), as well as after the distance contract conclusion ( article 8 par. 7 D / 3 d par. 7 Law 2251/1994 / 3 JMD ). This is because of the Consumer's imperative need to take a decision on his own will, after a sufficient time of thinking.

##### **4.1 Information before the distance contracts conclusion**

Among the previous information, primarily, the main characteristics of the goods or services, are included. Next is the identity of the Trader, such as his trading name, the geographical address, at which is established, i.e. the place of business, the telephone and fax number, plus e-mail address, where available and applicable on whose behalf he is acting, to enable the Consumer to contact with him quickly and efficiently, or address any complaints.

Also, the Trader must provide the total goods or services price, including taxes, or the manner in which the price is calculated, as well as, all additional freight, delivery or postal charges, and any other costs [ 16 ]. The informative obligation, relative to the cost of using distance communication means, where is calculated other than at the basic rate, has not altered. Moreover, he has to make known the arrangements for payment, delivery, performance, and, specifically, the time by which the Trader undertakes to deliver the goods or to perform the services.

Regarding to the right of withdrawal, where exists, the conditions, time limit and procedures for exercising it, as well as, the model withdrawal form, where is not provided, the information that the Consumer will not benefit from the right of withdrawal, or the loss circumstances. Additionally, the Trader has to inform the Consumer about the possibility of bearing the goods returning cost, if cannot be returned, normally, by post, due to their nature, and, finally, being liable to pay the Trader reasonable costs, if the first one exercises the previous right, after having made a request.

Directive 2011/83/EU and JMD Z1 – 891/2013 set a vast number of novel information requirements, such as the existence of after sale customer assistance and services, plus commercial guarantees, the existence of conduct codes, specialized information for digital content, i.e. data which are produced and supplied in digital form ( article 2 11) D / 3 11) Law 2251/1994 / 2 JMD ), the possibility of having recourse to an out - of- court complaint and redress mechanism. Nevertheless, most importance has the information enforcement about not only the minimum, but also the whole contract duration, and the existence of financial guarantees to be paid by the Consumer at the Trader's request.

The upper information form an integral part of the distance contract, which means that is upgraded to « essentialia negotii », and cannot be altered, unless the contracting parties expressly agree otherwise ( article 6 par. 5 D / 3 b par. 5 Law 2251/1994 / 3 JMD ), in contrast to the Trader's non impartial previous right.

Furthermore, the Trader must fulfil the former obligation by using distance communication means, in recent legislation, as well. However, there are two new details to be concerned. The information has to be provided in a way appropriate to each specific distance communication means, and, also, made available to the Consumer. Regarding the language, it should be used in a clear and intelligible manner, so as to ensure that results in a plain meaning, comprehensible or easily

understood by the average Consumer [ 17 ] ( article 6 par. 7 D ). There is a criticism that the most widespread language use imposition lack [ 18 ], seems to be an important omission. In so far, as information is provided on a durable medium, it should be legible expressly ( article 8 par. 1 D / 3 d par. 1 Law 2251/1994 / 3 JMD ). According to the, respective to Directive 2002/65/EC and article 4 h Law 2251/1994, definition ( article 2 10) D / 3 10) Law 2251/1994 / 2 JMD ), durable medium is any instrument, which enables the Consumer or the Trader to store information addressed personally to him, in a way accessible for future reference for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored, as for example paper, USB sticks, CD – ROM, DVD, memory sticks, computer hard disc and e – mail ( 3 d 10) Law 2251/1994 / 3 JMD ).

If a distance contract, concluded via internet order, especially, implies the Consumer an obligation to pay, the Trader must ensure that, the first one, explicitly, acknowledges it, and inform him about the main characteristics of the goods or services, the total price, including taxes, charges and any other costs, the minimum and maximum contract duration, in a clear, prominent and legible formulation, precisely nearby the Trader's proposal acceptance activating website button, as well as, directly, before the Consumer places his order ( article 8 par. 2 D / 3 d par. 2 Law 2251/1994 / 3 JMD ).

In addition to, trading websites it is appropriate to indicate, whether any delivery restrictions apply and which means of payment are accepted, clear and legibly, a priori, at the beginning of the Consumer's order, at the latest ( article 8 par. 3 D / 3 d par. 3 Law 2251/1994 / 3 JMD ).

If the contract is concluded through a distance communication means which allows limited space or time to display the information, par example cell – phone sms, the Trader is necessary to inform the Consumer, at least, about the main characteristics of the goods or services, the identity of the Trader, the total price, the right of withdrawal, the contract duration and the conditions for contract terminating. Despite that, the other information are provided in the appropriate way, certainly prior to the conclusion of such a contract ( article 8 par. 4 D / 3 d par. 4 Law 2251/1994 / 3 JMD ).

If the Trader makes a telephone call to the Consumer, with a view to conclude a distance contract, he needs to disclose his identity and the commercial purpose of

the call, at the beginning of the conversation. This does not mean that the Trader is exempted from the rest pre - contractual information obligation. That olden provision is repeated, enhanced with the extra requirement to reveal the identity of the Trader, on whose behalf a third person makes that call ( article 8 par. 5 D / 3 d par. 5 Law 2251/1994 / 3 JMD ).

On the other hand, where a distance contract is to be concluded by telephone, exclusively, the Trader may confirm his offer on a durable medium, while, the Consumer is bound, only once he has signed the offer or has sent his written consent, according to Directive 2011/83/EU ( article 8 par. 6 D ). However, the Greek legislator preferred to set the provision above as an obligation, that the Trader has concerning services or goods and services combination providing, exclusively, in order to ensure the Consumer's protection enhancement from the oral « verbum » and services intangible nature dangers ( 3 d par. 6 Law 2251/1994 / 3 JMD ). This means that the Trader does not need to fulfil such an obligation, if the distance communication means is other than telephone or the providing happens to be goods.

Finally, Directive 2011/83/EU and JMD Z1 – 891/2013 set an innovative regulation, which, wittily, transfers to the Trader the burden of requiring the Consumer's express request, where he wants the services performance, or the water, gas or electricity supply, that are not put up for sale in a limited volume or set quantity, thus, assimilated to services, to begin simultaneously with the period provided for exercising the right of withdrawal ( article 8 par. 8 D / 3 d par. 8 Law 2251/1994 / 3 JMD ). Obviously, this is another pre – contractual obligation.

#### **4.2 Information after the distance contracts conclusion**

The Trader, still, has the burden of providing the Consumer the distance contract conclusion confirmation and all the previous information, on a durable medium, within a reasonable time, after the distance contract conclusion, i.e. the goods delivery time or before the services performance begins, at the latest. The last new addendum makes the regulation to be more accurate and complete.

The upper provision is in force, unless that information has been already provided in that manner, prior. This means that, if a durable medium was used, the information obligation does not need to be fulfilled in « warm – up » and « cool –

down » period, too, but an « uno acto » is enough. Thus, the Trader must repeat it, only if there was a written document use, before the distance contract conclusion.

Moreover, the durable medium use eliminates any doubt [ 19 ] with respect to the written document merely confirmative character.

However, the Trader must provide the Consumer the right of withdrawal loss information, if the performance began with Consumer's prior express consent and acknowledgment, also, after the distance contract conclusion, either the pre – contractual obligation fulfilled by the durable medium use or not, since being the one and only occasion of such a loss, although the Trader did not supply the total digital content ( article 8 par. 7 D / 3 d par. 7 Law 2251/1994 / 3 JMD ).

### **4.3 Infringement effects**

In accordance with Directive 2011/83/EU, each national legislator has to ensure that adequate and effective means exist in order to be complied ( article 23 par. 1 D ). The lack of specific penalties has aroused plenty reactions.

As an information obligation infringement effect, the Greek one prefixed the distance contract avoidance, either before or after its conclusion ( article 3 b par. 9 and 3 d par. 10 Law 2251/1994 / 3 JMD ). Nevertheless, the avoidance can be invoked only by the Consumer, having this possibility, not only in case of totally information default, but also if having been provided partly or erroneously. The compliance with the information requirements burden of proof is, still, on the Trader ( article 6 par. 9 D / 3 b par. 8 Law 2251/1994 / 3 JMD ).

Moreover, if the Trader did not comply with the pre – contractual information requirements on additional charges or other costs, or on the goods returning costs, the Consumer does not bear them ( article 6 par. 6 D / 3 b par. 6 Law 2251/1994 / 3 JMD ). This means that the distance contract validity is not affected, and, also, that an indirect exception in avoidance effect is set, although there is such an infringement, for the first time, which is of major importance.

Furthermore, if the Trader did not inform the Consumer previously, that the via internet order resulting an obligation to pay, the Consumer is not bound by the contract or order ( article 8 par. 2 subpar. 4 D / 3 d par. 2 subpar. 4 Law 2251/1994 / 3 JMD ).

## **5. Right of withdrawal**

The Consumer has a period of 14 days to withdraw from a distance contract, without giving any reason and incurring any cost, other than the direct goods returning cost to the Trader, in their initial state ( article 9 par. 1 D / 3 e par. 1 Law 2251/1994 / 3 JMD ).

The right of withdrawal is the Consumer's most weak part, exclusively, mean of release from a completely concluded distance contract, since, the contracting parties are not prohibited from performing their contractual obligations during the withdrawal period ( article 9 par. 3 D / 3 e par. 3 Law 2251/1994 / 3 JMD ).

Thus, an exception of « pacta sunt servanda » principle and a formative right, according the prevalent view, is constituted.

As a mandatory rule, the Consumer cannot submit his abdication from the right of withdrawal.

### **5.1 Withdrawal period**

The withdrawal period is 14 days. The Greek legislator set 14 calendar days, while other Member States preferred 14 working days.

In spite of the former provision, the recent does not refer to any withdrawal period elongation agreement possibility between the two contractual parts [ 20 ]. In any case, the Trader and the Consumer cannot agree on a shorter one.

On one side, in sales contracts, the withdrawal period expires after 14 days from the day on which the Consumer, or a third party indicated by the Consumer, other than the carrier, acquires physical possession of them ( article 9 par. 2 b) D / 3 e par. 2 b) Law 2251/1994 / 3 JMD ).

A novelty of great importance is the distinguished beginning at different time, depending on the distance contract kind and content.

Thus, in the case of multiple goods ordered in one order and delivered separately, the withdrawal period expires after 14 days from the day on which the Consumer acquires physical possession of the last good ( article 9 par. 2 b) i) D / 3 e par. 2 b) i) Law 2251/1994 / 3 JMD ).

In the case of delivery of a good consisting of multiple lots or pieces, after 14 days from the day on which he acquires physical possession of the last lot or piece ( article 9 par. 2 b) ii) D / 3 e par. 2 b) ii) Law 2251/1994 / 3 JMD ).

Finally, in the case of contracts for regular goods delivery during defined time period, after 14 days from the day on which he acquires physical possession of the first good ( article 9 par. 2 b) iii) D / 3 e par. 2 b) iii) Law 2251/1994 / 3 JMD ).

On the other side, in services contracts the withdrawal period expires after 14 days from the contract conclusion day, so as in water, gas or electricity supply contracts, only if they are not put up for sale in a limited volume or set quantity ( article 9 par. 2 a), c) D / 3 e par. 2 a), c) Law 2251/1994 / 3 JMD ). However, it would be much more equitable to start from the specific moment, when the Consumer realises the contract conclusion, indeed.

Nevertheless, if the Trader has not provided the Consumer with the pre – contractual information on the right of withdrawal, as another infringement effect, the withdrawal period expires 12 instead 3 months [ 21 ], from the end of the initial withdrawal period ( article 10 par. 1 D / 3 f par. 1 Law 2251/1994 / 3 JMD ). This means that, for the first time, the previous consequence concerns only the « warm – up » period and not the total information requirements, while that extended period [ 22 ] does not start from the Consumer’s goods physical possession acquirement day or the services contract conclusion day.

Furthermore, if the Trader provides the Consumer the previous information within not only 3, but 12 already extended months, from the Consumer’s goods physical possession acquirement day or the services contract conclusion day, despite the provision above, also, as infringement effect, the withdrawal period is restricted and reverts to the initial expiration, after 14 days from the day upon which the Consumer receives it ( article 10 par. 2 D / 3 f par. 2 Law 2251/1994 / 3 JMD ). This means that, for the first time, there can be obligation replenishment and distance contract remedy avoidance, a posteriori, in the « cool – down » period, related to the right of withdrawal pre – contractual information, exclusively.

The withdrawal period is a strict one. This means that, if the Consumer does not exercise the withdrawal right on time, he is definitely bounded by the distance contract.

## **5.2 Exercise**

Before the withdrawal period has expired, the Consumer informs the Trader of his withdrawal decision, either using the model form in Annex I B or making any other unequivocal statement ( article 11 par. 1 D / 3 g par. 1 Law 2251/1994 / 3 JMD ).

This means that the right of withdrawal is exercised with a statement. The last one is not required to be explicit or written, necessarily. It is permitted to be oral, par example a phone call, or tacit, for instance using the model form in Annex I B or the product sending back, as well. What is really crucial seems to be the statement's clarity [ 23 ].

The statement is in force since setting out within the withdrawal period, without being essential to be received plus by the Trader [ 24 ], before that period has expired ( article 11 par. 2 D / 3 g par. 2 Law 2251/1994 / 3 JMD ).

In addition, the Trader may give the Consumer the option to fill in and submit, electronically, either the model form in Annex I B or any other unequivocal statement, on his website. In that case, the Trader must communicate to the Consumer withdrawal receipt acknowledgement, on a durable medium, without delay ( article 11 par. 3 D / 3 g par. 3 Law 2251/1994 / 3 JMD ).

The Consumer bears the right of withdrawal exercising burden of proof ( article 11 par. 4 D / 3 g par. 4 Law 2251/1994 / 3 JMD ). Apparently, this is significant, basically, in the case of exercising the previous right, orally and not when using the model form in Annex I B or electronic submission.

As previously referred, the Consumer exercises the right of withdrawal, without be obliged to give any reason or excuse of changing his mind.

### **5.3 Effects of withdrawal**

The right of withdrawal exercise terminates the parties obligation to perform the distance contract ( article 12 a) D / 3 h a) Law 2251/1994 / 3 JMD ). This means that the distance contract legal effects are not overturned since its entry into force, in the past, « ex tunc », but « ex nunc » and then, in future.

In particular, if none providing has been fulfilled, until yet, the Trader has not to transfer the goods ownership or supply the services, and the Consumer has not to pay the price.

Vice versa, the Consumer must send back the goods or return the services value and the Trader must pay back the price, as soon as possible.

Moreover, in case where the Consumer made the offer, exclusively, he does not have to conclude the distance contract ( article 12 b) D / 3 h b) Law 2251/1994 / 3 JMD ).

### **5.3.1 Obligations of the Trader**

The Trader is required to reimburse all payments received from the Consumer, including the delivery costs, unless the Consumer had expressly opted for a supplementary and more expensive type ( article 13 par. 2 D / 3 i par. 2 Law 2251/1994 / 3 JMD ), not later than the shrinking period of 30 to 14 calendar, according the JMD Z1 - 891/2013 days, from the day on which he is informed of the Consumer's withdrawal decision, using the same means of payment as the Consumer, unless the last one had otherwise expressly agreed, provided that he does not incur any fees, for the first time ( article 13 par. 1 D / 3 i par. 1 Law 2251/1994 / 3 JMD ).

Regarding only sales contracts, the Trader may withhold the reimbursement, until he has received the goods back or the Consumer has supplied evidence of having sent them back, such as fax or e – mail [ 25 ], whichever is the earliest, so the 14 days period begins, unless the first one has offered to collect the goods himself ( article 13 par. 3 D / 3 i par. 3 Law 2251/1994 / 3 JMD ).

Since the Trader's upper discretion puts the Consumer under ambiguity in relation with the reimbursement precise beginning, an additional information requirement should be, legislatively, set, about the Trader's « in concreto » choice, immediately after informed the Consumer's withdrawal decision.

### **5.3.2 Obligation of the Consumer**

Pro rata, the Consumer must send back the goods to the Trader, or a third person authorised by the Trader, not later than 14 days, from the day on which he has communicated his withdrawal decision, unless the last one has offered to collect the goods himself ( article 14 par. 1 D / 3 j par. 1 Law 2251/1994 / 3 JMD ). In this case, not only the Consumer is exempted from his obligation, but additionally, the Trader does not have the upper reimbursement withholding right.

It is the first time that the Consumer's obligation is legally regulated and the reasonable returning time is specified at 14 calendar, according the JMD Z1 - 891/2013 days, while there is a possibility to hand the goods over a third person. On the contrary, the Trader has to reimburse all payments to the Consumer, exclusively.

The obligation is considered fulfilled, if the Consumer sends back the goods within the 14 days, without, also, being essential the Trader receive them, before that period has expired.

Moreover, the Consumer must bear the returning cost, but only the direct. This means that Trader is prohibited to charge him with any other additional hidden costs, as preservation or re - packaging costs, neither can impose him any compensation and penalty clause. Only if the Trader has agreed to bear them, the Consumer does not have such an obligation. Similarly, if the Trader failed to provide that pre – contractual information to the Consumer, setting, thus another infringement effect.

However, this cost can be quite high, due to the transaction's international across borders character. Therefore, it should be set at least a « plafond ».

Furthermore, the Consumer has to return the goods in their initial status. Accordingly, he is liable for any goods diminished value, apart from the necessary handling and use in order to establish, check and test their nature, characteristics, properties and functioning [ 26 ], plus, certainly, correspondence to his order.

The Consumer is absolved, in the case that the Trader has failed to provide him the right of withdrawal notice, before the distance contract conclusion ( article 14 par. 2 D / 3 j par. 2 Law 2251/1994 / 3 JMD ).

The European legislator should include in the pre – contractual information catalogue, the Consumer's goods diminished value liability as a withdrawal effect, so that he could release, provided there is an infringement by the Trader.

As regards to the services, or the assimilated water, gas or electricity supply, that are not put up for sale in a limited volume or set quantity, if the Consumer exercises the right of withdrawal after having made a performance request to the Trader, during the withdrawal period, the Consumer must pay the Trader only a proportionate [ 27 ] to the performed service part, until the time the Consumer provided him the right of withdrawal exercise information, amount, calculated on the agreed total price basis, in comparison with the full service coverage. The market

value measure is used only if the agreed total price is extremely expensive or excessive ( article 14 par. 3 D / 3 j par. 3 Law 2251/1994 / 3 JMD ).

Even if it is against the Consumer's protection, as the Trader's service providing expiry, should be concerned the specific moment when he acknowledges the Consumer's right of withdrawal exercise, indeed, since, otherwise, the Trader's cost would be unbearable.

As a conclusion, this provision is not applied if there is a full service providing, or a Consumer's request absence, whether the service provided completely or not, or although, there is such a request, it took place before the outset or after the withdrawal period has expired.

What is more, if the Consumer exercises the right of withdrawal, he does not bear any cost for the services, or the assimilated water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, performance, in full or part, during the withdrawal period, in the case that the Trader has failed to provide him the pre – contractual information on the right of withdrawal. In other words, while the Consumer must reimburse the service value, since the « in natura » return is impossible, according the usual withdrawal procedure, if the Trader does not provide him that specific information, the first one, exceptionally, does not have the former obligation, establishing, in that way, one additional infringement effect ( article 14 par. 4 a) D / 3 j par. 4 a) Law 2251/1994 / 3 JMD ).

A likewise result is set, provided that the Consumer did not make a performance request to the Trader, during the withdrawal period. However, if there is a combination of all previous provisions, the Consumer's release in this case, does not concern the total service price, but the proportionate to its performed part amount, exclusively.

Apparently, this concludes to the fact that the mere Consumer's absolution of total service price return is constituted in the first provision. Doubtless, this can be in force, only without the Consumer's prior express consent existence, due to the right of withdrawal absence, in the inverse case.

Finally, although, normally, the Consumer must return back the not supplied on a tangible medium digital content, in full or part, there is an exception, where he has not given his prior express consent to the performance beginning, before the withdrawal period end, or he gave it without having the right of withdrawal loss acknowledgement ( article 14 par. 4 b) D / 3 j par. 4 b) Law 2251/1994 / 3 JMD ).

However, if the digital content is supplied on a tangible medium, the Consumer fulfils the previous obligation, in any case.

The same consequence is induced when the Trader has failed to provide the ante - contractual information confirmation. Thus, the Consumer does not have to return back the not supplied on a tangible medium digital content. This, also, means that, for the first time, apart from avoidance, the Trader's information obligation infringement, after the distance contract conclusion, provokes a specialized effect.

Except of the previous ones, the Consumer is not permitted to incur any other liability as a right of withdrawal exercise consequence ( article 14 par. 5 D / 3 j par. 5 Law 2251/1994 / 3 JMD ). Whichever different agreement is « erga omnes » invalid.

#### **5.4 Exceptions**

For the first time, a vast number of exceptions from the right of withdrawal is set.

As a result, the Consumer does not have the right of withdrawal in the following distance contracts :

- a) If the performance has begun with the Consumer's prior express consent and with the right of withdrawal loss acknowledgement, once the contract has been fully performed by the Trader
- b) The goods or services supply, for which the price is dependent on financial market fluctuations, which cannot be controlled by the Trader
- c) The supply of Consumer's personalised specifications made goods
- d) The supply of liable to deteriorate or expire rapidly goods
- e) The supply of unsealed after delivery goods, which are not suitable for return due to health protection or hygiene reasons
- f) The supply of after delivery inseparably mixed with other items goods
- g) The alcoholic beverages supply, the price of which has been agreed upon at the sales contract conclusion time, the delivery of which can, only, take place after 30 days, and the actual value of which is dependent on market fluctuations, which cannot be controlled by the Trader
- h) Contracts where the Consumer has specifically requested a visit from the Trader for carrying out urgent repairs or maintenance purpose. If the Trader provides

additional services, or other than necessarily used replacement parts goods, the right of withdrawal shall apply to those additional services or goods

- i) The supply of unsealed after delivery audio, video recordings or computer software
- j) The supply of a newspaper, periodical or magazine, with the exception of subscription contracts for such publications supply
- k) Contracts concluded at a public auction
- l) The accommodation provision, other than for residential purpose, goods transport, car rental services, catering or related to leisure activities services, if the contract provides for a specific date or period performance
- m) The supply of digital content, not supplied on a tangible medium, if the performance has begun with the Consumer's prior express consent and the right of withdrawal loss acknowledgment ( article 16 D / 3 k Law 2251/1994 / 3 JMD ).

The exceptions set above are due to the imponderable financial market factors, which permit profiting margins to the Trader, in b) and g), and, in adverse, the Trader's unbearable economic cost, in d) and contextual j), e) and contextual i), and f), but, also, the public health, in e).

The exceptions are set under conditions in a), l) and m). This means that if they are not complied, the Consumer has the right of withdrawal.

Similarly, as regard to the exemptions' exceptions, which are set in h) j) and l), since words « apply », « with the exception of », « other than », respectively, are used.

Finally, concerning c) and h), although Consumer's personalised specifications made goods or services distance contract conclusion is permitted, however, the Consumer does not have the right of withdrawal.

## **6. Conclusions and final thoughts**

Apart from some positive regulations, that have already referred, the Directive 2011/83/EU contribution to the Consumer's protection « aquis communautaire » was meager, despite the initial expectations.

On the basis of a critical comment, overabundance information maybe result counterproductive in reference to Consumer's protection, since their mass provokes him inevitable confusion, instead of being capable to discrete and evaluate, which are substantial and beneficial for his economic interests.

As regard to JMD Z1 - 891/2013, it does not add any novel regulations, but is merely a translation to Greek language.

The European integration is an irreversible route, having, though, to be marched in largo and steady steps. Even if the full harmonization seems to be the only way towards the legal unification, instead of the approach direction, « how » remains, still, a question.

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## ANNEX I

### Information concerning the exercise of the right of withdrawal

#### A. Model instructions on withdrawal

##### Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day ( 1 )

To exercise the right of withdrawal, you must inform us ( 2 ) of your decision to withdraw from this contract by an unequivocal statement ( e.g. a letter sent by post, fax or e-mail ). You may use the attached model withdrawal form, but it is not obligatory ( 3 )

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

##### Effects of withdrawal

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the costs of delivery ( with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us ), without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement ( 4 )

( 5 )

( 6 )

Instructions for completion :

( 1 ) Insert one of the following texts between inverted commas :

( a ) in the case of a service contract or a contract for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium : ‘ of the conclusion of the contract. ’

( b ) in the case of a sales contract : ‘ on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods. ’

( c ) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately : ‘ on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good. ’

( d ) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces : ‘ on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece. ’

( e ) in the case of a contract for regular delivery of goods during a defined period of time : ‘ on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good. ’

( 2 ) Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

( 3 ) If you give the option to the consumer to electronically fill in and submit information about his withdrawal from the contract on your website, insert the following : ‘ You can also electronically fill in and submit the model withdrawal form or any other unequivocal statement on our website [ insert Internet address ]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium ( e.g. by e-mail ) without delay. ’

( 4 ) In the case of sales contracts in which you have not offered to collect the goods in the event of withdrawal insert the following : ‘ We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest. ’

( 5 ) If the consumer has received goods in connection with the contract :

( a ) insert :

— ‘ We will collect the goods. ’ or,

— ‘ You shall send back the goods or hand them over to us or ... [ insert the name and geographical address, where applicable, of the person authorised by you to receive the goods ], without undue delay and in any event not later than 14 days from the day on which you communicate your withdrawal from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired. ’

( b ) insert :

— ‘ We will bear the cost of returning the goods. ’

— ‘ You will have to bear the direct cost of returning the goods. ’

— If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post : ‘ You will have to bear the direct cost of returning the goods, ... EUR [ insert the amount ]. ’ or if the cost of returning the goods cannot reasonably be calculated in advance : ‘ You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately ... EUR [ insert the amount ]. ’ or

— If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer’s home at the time of the conclusion of the contract : ‘ We will collect the goods at our own expense. ’ and

( c ) insert : ‘ You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods. ’

( 6 ) In the case of a contract for the provision of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, insert the following : ‘ If you requested to begin the performance of services or the supply of water / gas/ electricity/ district heating [ delete where inapplicable ] during the withdrawal period, you shall pay us an amount which is in proportion to what has been provided until you have communicated us your withdrawal from this contract, in comparison with the full coverage of the contract. ’

## **B. Model withdrawal form**

( complete and return this form only if you wish to withdraw from the contract )

— To [ here the trader's name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader ] :

— I / We (\*) hereby give notice that I / We (\*) withdraw from my / our (\*) contract of sale of the following goods (\*) / for the provision of the following service (\*)

— Ordered on (\*) / received on (\*)

— Name of consumer ( s )

— Address of consumer ( s )

— Signature of consumer ( s ) ( only if this form is notified on paper )

— Date

(\*) Delete as appropriate