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# Consumer Rights in the Context of the Amendment Resulting from the Implementation of the Digital and Goods Directives

## Abstract

Consumer protection and raising product safety standards are treated by both the European and Polish legislators as priority values. Consumer rights are universal in the sense that each of us is a consumer at some stage. Due to the transformations that the global economy is undergoing, which currently no longer consists solely of national markets operating without mutual connections, it is becoming necessary to develop common legal solutions of a supranational nature. These changes include in particular the growth of e-commerce. The European Union has developed a digital single market strategy for Europe, which in its assumption is to comprehensively address the elimination of significant barriers to the development of cross-border e-commerce in the Union, so that its potential is unleashed. European consumers are to be provided with better access to digital content and services, and European entrepreneurs are to be able to provide them with this content and services more easily. These actions are intended to strengthen the EU's digital economy and stimulate overall economic growth. In Poland, consumer rights are guarded by the President of the Office of Competition and Consumer Protection, Trade Inspection authorities and relevant consumer protection organisations. The high level of protection also results from the activities of international bodies, including in particular European legislative institutions. Legal acts issued by EU bodies aim to unify the level of protection and law within the EU. In this respect, two directives in the field of consumer contract law implemented into Polish law at the beginning of 2023 should be cited as examples – the Goods Directive and the Digital Directive, which have significantly affected consumer rights. The purpose of this paper is to provide an in-depth assessment of the provisions on consumer rights, with particular emphasis on the legal status before and after the amendment of the provisions by the Act of 4 November 2022 implementing the directives of the European Parliament and of the Council (EU), and the impact of the above changes on consumer rights.

KEYWORDS: consumer rights, warranty, non-conformity of goods with the contract, Directive 2019/770, Directive 2019/771

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# 1 Introduction

On 20 May 2019, the European Union adopted two new directives in the field of consumer contract law as part of the Digital Single Market programme, namely the Digital Directive[1] and the Goods Directive.[2] By 1 July 2021, Member States were required to adopt the implementing provisions and to apply them from 1 January 2022.[3] The Polish legislator fulfilled the above implementation obligation by the Act of 4 November 2022,[4] which entered into force on 1 January 2023. Although the basic assumption of the Polish legislator is to strive to implement EU consumer contract law into the Civil Code,[5] the implementation of the Digital and Goods Directives into the national legal order, similarly to the implementation of Directive 1999/44,[6] took place by separating the content of the directive, adapting it to the national legal system. It was not decided to introduce the regulations of the Digital Directive into either the new Act or the Civil Code, because "in the opinion of the drafters, the implementation of the provisions of the DGD into the sales contract of the Civil Code is not possible without profound changes to the entire Title XI, both substantive and systematic […]".[7]

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1 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 (OJ L 136, 22.5.2019, p. 1), hereinafter: Directive 2019/770.

2 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 (OJ L 136, 22.5.2019, p. 28), hereinafter: Directive 2019/771.

3 For more on the work on the directives, see *EU Digital Law: Article-by-Article Commentary*, ed. Reiner Schulze, Dirk Staudenmayer (Baden-Baden: Nomos, 2020), 1–8, 91–94.

4 Act of 4 November 2022 amending the Act on consumer rights, the Civil Code and the Act – Private International Law (Journal of Laws of 2022, item 2337).

5 *Green Book. An Optimal Vision of the Civil Code of the Republic of Poland*, ed. Zbigniew Radwański (Warsaw: Ministry of Justice, 2006).

6 Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12), hereinafter: Directive 1999/44.

7 Maciej Siwicki, "Kilka uwag na temat nowelizacji ustawy o prawach konsumenta i ustawy – Kodeks cywilny w związku z implementacją dyrektywy cyfrowej" *Monitor Prawniczy*, No. 5 (2024): 275–283; doubts as to the correctness of the implementation of the Goods and Digital Directives were raised at the consultation stage by, among others, the President of the Office of Competition and Consumer Protection (UOKiK) –

The assumptions of both directives and the implementing act are undoubtedly the result of the progressive development of modern technologies and the related dynamic digitalization of the economy, which makes it possible to reach a wide range of consumers and offer them new, increasingly complex services or products. The implementation of the Digital and Goods Directives is of significant importance to both sellers and their customers. Sellers have had to adapt their practices and documents, including regulations and contract templates.

The Goods and Digital Directives concern in particular changes in the area of consumer complaint rights. The Act of 4 November 2022 therefore amended the Act of 30 May 2014 on consumer rights and the Civil Code. The Polish legislator decided to "extract" the principles of handling consumer complaints (concerning movable goods) from the Civil Code and regulate them separately in the Consumer Rights Act. This marks a return to the pre-2014 model, i.e. to the separation of consumer warranty from that in bilateral professional relations, as it was under the Act of 27 July 2002 on special conditions of consumer sale. In addition, the amendment also covered the provisions of the Civil Code regarding guarantees. Importantly, the provisions of the Civil Code on warranty for sale will still apply to defects in real estate purchased by consumers.

The justification for the draft act states that implementing the Goods and Digital Directives into the Act of 30 May 2014 on consumer rights creates a coherent and basically closed regulation, which in turn translates into "stabilising" the legal situation of entrepreneurs and consumers. According to the legislator, such an approach eliminates, to the necessary minimum, the need to use references to other legal provisions, including those concerning guarantees and warranties. Implementing both directives in the Civil Code would negatively affect the readability of this act.[8]

Consumer rights are one of the fundamental regulations in the private law system. The emergence and dynamism of the consumer rights regulations, especially today, cannot be overlooked. On 1 January 2023, an amendment to the Civil Code and the Consumer Rights Act entered into force, implementing the Goods Directive and the Digital Directive into the Polish legal system.

see the Opinion of the President of UOKiK of 15 January 2021, DOZIK-5.0240.2.2021. https://legislacja.rcl.gov.pl/docs//2/12341810/12752756/12752759/dokument487479.pdf.

8 Siwicki, "Kilka uwag," 278.

Due to the introduction of a specific duality of legal regimes regarding sellers' liability for the sale of defective goods, the changes were widely commented on in the legal literature.[9] The article aims at a comprehensive presentation of the legal status from the time before and after the amendment and how the aforementioned regulations affected consumer rights. Furthermore, the article is based on the thesis that the regulations implementing consumer rights protection are of utmost importance in terms of limiting abuses by businesses, thus ensuring fair functioning of the market, especially in the age of online shopping.

For reasons of scope and genre, this paper does not attempt to provide and outline a full analysis of all the changes implemented in the consumer rights regulations based on the aforementioned directives, but it does seek to point out the selected issues that are bound to sellers' liability for the sale of defective goods. The analysis is based mainly on the dogmatic-legal method.

## 2 Consumer Rights: General Characteristics

When presenting detailed principles concerning the protection of consumer rights, it is necessary to start with general issues – first of all, by characterizing the sales contract itself (including consumer sales), then the institution of warranty, and then presenting the definition of a consumer. As for the substantively significant elements of the sales contract itself, they are regulated in the Civil Code.[10] According to the established case law of the Supreme Court, the validity of the sales contract is the basic criterion for the creation of liability, including under warranty.[11]

According to art. 535 of the Civil Code, under a sales contract the seller undertakes to transfer ownership of a thing to the buyer and deliver it to him, while the buyer (purchaser) undertakes to accept the thing and pay the price. The essence of such a contract is the transfer of ownership in exchange for

9 Wojciech Dybka, "Odpowiedzialność sprzedawcy z tytułu rękojmi w świetle Dyrektywy Parlamentu Europejskiego i Rady 2019/771 w sprawie niektórych aspektów umów sprzedaży towarów" *Internetowy Przegląd Prawniczy TBSP UJ*, No. 3 (2019): 7; Fryderyk Zoll, *Rękojmia. Odpowiedzialność sprzedawcy* (Warsaw: Wolters Kluwer, 2018), 363–365.

10 Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2023, item 1610, as amended), hereinafter: CC.

11 Judgment of the Supreme Court of 10 August 2005, I CK 760/04, Legalis.

a price expressed in money (as a carrier of "universal" economic value).[12] The subject of the sales contract is a thing within the meaning of art. 45 of the Civil Code; however, in practice, the parties very often use the concept of goods, which comes from economic sciences and occurs in particular, for example, in consumer law. Another term, also coming from the field of economics and occurring in the meaning of a thing, is "product,"[13] for example in the Consumer Rights Act[14] or more broadly in financial services (financial product next to financial service). The law also distinguishes consumer sales, which have been included in the Civil Code in the part concerning sales. The relevant provisions of the Consumer Rights Act, which implements Directive 2011/83/EU,[15] apply to contracts concluded with consumers outside business premises and at a distance. The indicated act applies to various contracts concluded with consumers, in particular to sales contracts, and establishes a catalogue of protective instruments in relation to the consumer.[16] The consumer cannot waive the rights granted by the act, and the provisions of contracts that are less favourable to him than the statutory solutions are invalid and the provisions of the act apply instead. The provisions of the Consumer Rights Act impose on entrepreneurs concluding consumer contracts (including the sales contract) many obligations that constitute a modification of the general principles. First of all, it is necessary to indicate here the extensive information obligation of the entrepreneur in relation to the consumer (about

12 Wojciech J. Katner, [in:] *System Prawa Prywatnego*, vol. 7: *Prawo zobowiązań – część szczegółowa*, ed. Jerzy Rajski (Warsaw: C.H. Beck, 2018), 8.

13 The general concept of goods in the sales contract was presented by Marta Pecyna, "Sprzedaż konsumencka de lege ferenda" *Transformacje Prawa Prywatnego*, No. 2 (2012): 163.

14 Act of 30 May 2014 on consumer rights (consolidated text: Journal of Laws of 2023, item 2759, as amended).

15 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64), hereinafter: Directive 2011/83/EU.

16 Marta Pecyna, "Commentary on Art. 1," [in:] *Ustawa o prawach konsumenta. Komentarz*, ed. Marta Pecyna (Warsaw: C.H. Beck, 2025), Legalis; Agnieszka Grzesiok-Horosz, Piotr Horosz, "Commentary on Art. 1," [in:] *Ustawa o prawach konsumenta. Komentarz*, ed. Bożena Kaczmarek-Templin, Piotr Stec, Dariusz Szostek (Warsaw: C.H. Beck, 2024), Legalis; Wojciech Kocot, Adam Olejniczak, [in:] *System Prawa Prywatnego*, vol. IX, ed. Wojciech J. Katner (Warsaw: C.H. Beck, 2023), Legalis.

the main features of the service, his identifying data, the total price or remuneration, the method and date of performance of the service by the entrepreneur, the procedure for handling complaints, the entrepreneur's liability for the quality of the service, guarantee, duration of the contract). The provisions of the act also provide the consumer with protection against the occurrence of additional payments related to the concluded contract.

Additional rights granted to buyers are of fundamental importance for strengthening their position in the relationship with the entrepreneur, in particular the warranty for physical and legal defects of the goods. These provisions play an important role in a situation where the buyer is a consumer, because in the legislator's assumption, they are the weaker party to the legal relationship.[17] The subject of the sales contract should be of the quality agreed upon by the parties, in particular, be suitable for use, so that the other party has the possibility of using the goods in accordance with their intended purpose. If the goods delivered to the buyer do not meet these conditions, they are entitled to specific claims, including, in addition to the basic claims resulting from the failure to perform the contract in accordance with the contract, additional rights of the buyer, in particular when they are a consumer.[18]

Since the beginning of the systemic changes that took place in the 1990s, the Polish legislator has seen the need to strengthen the protection of the consumer as the objectively weaker party in contractual obligations.[19] The definition contained in Article $22^1$ of the Civil Code has been in force in Polish law since 25 September 2003, when the amendment to the provisions of the Civil Code came into force. As for the definition adopted in the Polish Civil Code, in accordance with Art. $22^1$ of the Civil Code, a consumer can only be a natural person, not a legal person or a so-called defective legal person.[20] Polish legal

17 Monika Jagielska, *Słabsza strona kontraktu i jej ochrona* (Warsaw: C.H. Beck, 2024), 35.

18 Wojciech J. Katner, "Wstępne uwagi na temat nowych przepisów o ochronie praw konsumenta w zakresie rękojmi i gwarancji przy sprzedaży," [in:] *Ustawa o prawach konsumenta*, ed. Monika Namysłowska, Dorota Karczewska, Tadeusz Skoczny (Warsaw: C.H. Beck, 2015), 263–270; Monika Jagielska, "Nowelizacja przepisów o odpowiedzialności za wady fizyczne rzeczy," [in:] *Ustawa o prawach konsumenta*, ed. Monika Namysłowska, Dorota Karczewska, Tadeusz Skoczny (Warsaw: C.H. Beck, 2015), 275–285.

19 Łukasz Węgrzynowski, "Przejrzystość umowy konsumenckiej, rozliczenie stron w razie nieważności umowy konsumenckiej" *Monitor Prawniczy*, No. 5 (2024): 314.

20 Act of 14 February 2003 amending the Civil Code and certain other acts (Journal of Laws of 2003, No. 49, item 408); Piotr Mikłaszewicz, "Commentary on Art. $22^1$,"

science adopts three main approaches to defining the concept of a consumer: constitutional, EU and code-related.[21] The concept of a consumer appears in Art. 76 of the Constitution of the Republic of Poland, according to which public authorities protect consumers, users and tenants against actions that threaten their health, privacy and safety, as well as against unfair market practices.[22] This concept, like other constitutional concepts, has an autonomous meaning and cannot be interpreted as a reference to the concept of a consumer appearing in ordinary acts, including the Civil Code.[23] Under Art. 76 of the Constitution of the Republic of Poland, "the protective obligations incumbent on public authorities include the need to provide specific, minimum statutory guarantees to all entities, in particular natural persons, who [...] occupy a weaker economic position in their relations with professional participants in the market game."[24] Consequently, constitutional consumer protection may, in certain circumstances, also cover legal persons. The analyzed provision of the Constitution of the Republic of Poland protects entities that, in relations with other entities, in particular with professionals, are the structurally weaker party in terms of their market, economic, negotiating position and in terms of access to information.[25]

The concept of a consumer appears in both primary law and EU secondary law.[26] As regards primary law, pursuant to Article 169 TFEU,[27] the

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[in:] *Kodeks cywilny. Komentarz*, vol. ed. Wojciech Borysiak (Warsaw: C.H. Beck, 2026), Legalis.

21 A. Sosna, "Prawa konsumenta po nowelizacji – charakterystyka, zmiany, znaczenie prawne" *Monitor Prawniczy*, No. 1 (2024): 35.

22 Piotr Mikłaszewicz, "Commentary on Art. 76," [in:] *Konstytucja RP*, vol. I, *Komentarz do art. 1–86*, ed. Marek Safjan, Leszek Bosek (Warsaw: C.H. Beck, 2016), Nb 20.

23 Judgment of the Constitutional Tribunal of 2 December 2008, K 37/07, OTK-A 2008, No. 10, item 172; judgment of the Constitutional Tribunal of 13 September 2005, K 38/04, OTK-A 2005, No. 8, item 92.

24 Judgment of the Constitutional Tribunal of 13 September 2005, K 38/04, OTK-A 2005, No. 8, item 92.

25 Lech Garlicki, "Commentary on Art. 76," [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. III, ed. Lech Garlicki (Warsaw: Wydawnictwo Sejmowe, 2003).

26 Geraint Howells, Christian Twigg-Flesner, Thomas Wilhelmsson, *Rethinking EU Consumer Law* (London–New York: Routledge, 2018), 168–169.

27 Treaty on the Functioning of the European Union (consolidated version: OJ C 202, 7.6.2016, p. 47), hereinafter: TFEU; Robert Stefanicki, "Prawo uczciwej konkurencji a ochrona konsumentów w świetle ustawy o przeciwdziałaniu nieuczciwym praktykom rynkowym" *Studia Prawa Prywatnego*, No. 2 (2011): 40.

Union contributes to protecting the health, safety and economic interests of consumers and to promoting their right to information, education and to organize themselves in order to pursue their interests.[28] As part of the legislative procedure for the approximation of the laws of the Member States (harmonisation) in the field of consumer protection, the EU institutions adopt a high level of this protection (Article 114(3) TFEU).[29] There is no legal definition of the concept of a consumer with general meaning in EU law. However, similar definitions of this concept function in many EU legal acts. The EU legislator defines the concept of a consumer each time for the purposes of a given EU legal regulation. According to Article 2(1) of Directive 2011/83/EU,[30] a consumer is any natural person who, in contracts covered by the directive, is acting for purposes outside his or her trade, business, craft or profession. A similar definition is contained in Article 2(a) of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market,[31] where a consumer is any natural person who, within the framework of commercial practices covered by the directive, acts for purposes unrelated to his or her trade, business, craft or profession. The EU legislator does not deprive Member States of the possibility of extending the scope of the definition of a consumer, and consequently also consumer protection.

The case law of the CJEU on the concept of consumer within the meaning of Directive 93/13/EEC indicates a functional and objective approach to the circumstances in which a person may be considered a consumer.[32] A person who carries out a commercial or professional activity will not be a consumer in the scope of the activities he or she performs within that framework, but will be considered a consumer if he or she acts outside that framework, for

28 Monika Szwarc-Kuczer, "Commentary on Art. 169," [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, vol. II, ed. Andrzej Wróbel, Krystyna Kowalik-Bańczyk, Monika Szwarc-Kuczer (Warsaw: Wolters Kluwer, 2012).

29 Mikłaszewicz, "Commentary on Art. 76," 1717.

30 Directive 2011/83/EU (see footnote 15).

31 Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive") (OJ L 149, 11.6.2005, p. 22).

32 Sosna, "Prawa konsumenta po nowelizacji," 36.

purposes unrelated to his or her commercial or professional activity. For example, a lawyer who performs a legal act unrelated to the exercise of the legal profession, in particular where there is no connection between the act and the activity of that lawyer's office, is a consumer within the meaning of the aforementioned directive. It is considered that, in relation to such an act, a lawyer, despite having expert knowledge in the field of law, is – like other consumers – in a weaker position vis-à-vis a trader, whose advantage vis-à-vis consumers is manifested both in being better informed and in a stronger bargaining position.[33] The recognition of a person as a consumer in a given legal relationship does not depend on the specific state of knowledge of the person concerned or on the information at their disposal – the decisive factor is the structural weakness assessed in relation to a specific type of situation in the relationship with the trader.[34]

## 3 | Digital Directive and Goods Directive: Scope of Regulation

On 1 January 2023, the act amending the act of 30 May 2014 on consumer rights entered into force, implementing two important acts of EU law into the Polish legal system: the Digital Directive (2019/770) and the Goods Directive (2019/771). The assumptions of both directives and the implementing act are undoubtedly the result of the progressive development of modern technologies and the related dynamic digitalization of the economy, which makes it possible to reach a wide range of consumers and offer them new, increasingly complex services or products.[35] The Digital Directive aims to provide consumers with better access to digital content and digital services and to make it

33 Judgment of the Court of Justice of the European Union of 3 September 2015, C-110/14, Costea, EU:C:2015:538, paragraphs 25–27. The judgment concerns a lawyer who, despite his knowledge of the law, may be treated as a consumer; the dispute concerned a loan agreement secured by a mortgage.

34 Ibidem, paragraph 21.

35 Aneta Wiewiórowska-Domagalska, Fryderyk Zoll, *Akademicki Projekt Kodeksu Cywilnego. Ocena założeń projektu implementacji dyrektywy Parlamentu Europejskiego i Rady UE 2019/771 z dnia 20 maja 2019 w sprawie niektórych aspektów umów sprzedaży towarów* (2019), 2. https://www.projektkc.uj.edu.pl/dokumenty/Ocena_projektu_r_2019_771_Wiewiorowska_Zoll.pdf [accessed: 21.06.2026]; Monika Namysłowska, Agnieszka Jabłonowska, Filip Wiaderek, "Implementation of the Digital Content Directive in Poland: A Fast Ride on a Tandem Bike Against the Traffic" *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 12 (2021): 241–248.

easier for entrepreneurs to provide this content and services, which can contribute to strengthening the EU digital economy and to stimulating overall economic growth.[36] European consumers often feel uncertain when making cross-border purchases, especially online. One of the main factors behind this lack of consumer confidence is the uncertainty about their fundamental contractual rights and the lack of a clear legal framework for contracts for digital content or digital services. Many consumers encounter problems with the quality of, or access to, digital content or digital services. This is because, for example, they receive incorrect or defective digital content or digital services or cannot access them. As a result, consumers suffer both financial and non-financial harm. In order to address these problems, both traders and consumers should be able to rely on fully harmonised contractual rights in certain key areas of the supply of digital content or digital services across the Union. Full harmonisation of certain key regulatory aspects would significantly increase legal certainty for consumers and traders. According to Article 3(1), the Directive applies to contracts under which a 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. The Directive also applies where a trader supplies or undertakes to supply digital content or a digital service to a consumer and the consumer supplies or undertakes to supply personal data to the trader, except where the personal data provided by the consumer are processed by the trader solely for the purpose of supplying digital content or a digital service in accordance with this Directive or for the purpose of enabling the trader to comply with legal requirements to which he is subject, and the trader does not process this data for any other purpose. The purpose of the Digital Directive is to introduce provisions on the conformity of so-called digital content (e.g. games and computer programs) or a digital service (e.g. e-mail, social media, internet search engines) with the contract - this is regulated, among other things, in Articles 7 and 8 of the Directive, i.e. subjective and objective requirements for conformity with the contract.[37] The

36 Namysłowska, Jabłonowska, Wiaderek, "Implementation of the Digital Content Directive"; Howells, Twigg-Flesner, Wilhelmsson, *Rethinking EU Consumer Law*, 168–169.

37 Hugh Beale, "Digital Content Directive and Rules for Contracts on Continuous Supply" *Journal of Intellectual Property, Information Technology and E-Commerce Law*, No. 2 (2021): 96–110. https://www.jipitec.eu/issues/jipitec-12-2-2021/5286 [accessed: 17.06.2026].

Directive further regulates the remedies in the event of a lack of conformity of digital content or a digital service with the contract or its failure to be supplied to the consumer and the methods of using these remedies (e.g. software updates), as well as by establishing provisions on the conformity of goods with the contract, protective measures (e.g. liability for defects in a computer program, files). The Act introduced an explicit obligation to update software, which is accompanied by specific information obligations towards users. The entrepreneur should inform about the availability of updates, as well as the consequences of not installing them. Until now, issues related to contracts for the supply of digital content or digital services have not been regulated in Polish law.

The second act implemented into the Polish legal system as of 1 January 2023 is Directive 2019/771 (Goods Directive). The purpose of the directive is to contribute to the proper functioning of the internal market and at the same time ensure a high level of consumer protection by establishing common rules on certain requirements for sales contracts concluded between the seller and the consumer, in particular provisions on the conformity of goods with the contract, remedies in the event of lack of such conformity, methods of exercising these remedies, and commercial guarantees.[38] It applies to contracts for the sale of goods, including goods with digital elements. It also applies to contracts for the sale of such goods in which the absence of digital content or service would mean that these goods would not have full functions, as well as when the content or service is to be supplied on the basis of the sales contract itself - regardless of whether the digital content or services have already been installed in the goods or are to be downloaded to them.[39] The European Union's Goods Directive provides sellers with uniform rules, primarily in the field of warranty, in all EU member states, which allows them to operate on the European market without having

38 Aneta Wiewiórowska-Domagalska, Fryderyk Zoll, Katarzyna Południak-Gierz, Wojciech Bańczyk, "Transpozycja dyrektywy Parlamentu Europejskiego i Rady UE 2019/771 z dnia 20 maja 2019 r. w sprawie niektórych aspektów umów sprzedaży towarów" *Kwartalnik Prawa Prywatnego*, No. 4 (2021): 917–920; Marek Radwański, "Implementacja dyrektywy 2019/771 do polskiego porządku prawnego – wybrane problemy," [in:] *Reklamacje, mediacje i inne postępowania w sprawach konsumenckich*, ed. Zbigniew Długosz, Krzysztof Podgórski, Elżbieta Sługocka-Krupa (Warsaw: C.H. Beck, 2021), Legalis, passim.

39 Małgorzata Sieradzka, *Niektóre aspekty umów sprzedaży towarów*. LEX/el. 2019, point 3.

to adapt to different national regulations.[40] In addition, this directive introduces uniform standards for sellers in terms of informing consumers about their warranty rights, which increases transparency and predictability for both parties.[41] Finally, this directive allows sellers to cooperate with manufacturers to solve problems related to product defects, which can lead to better product quality and increased consumer confidence. From 1 January 2023, the provisions of the law on warranty have been included not in the Civil Code, as was previously the case, but in the Consumer Rights Act. The aim of this change is to ensure consistency and order in the relationship between the seller and the consumer. Both the Digital Directive 2019/770 and the Goods Directive 2019/771 are part of broader EU strategies aimed at modernising consumer protection law, filling gaps in this law and thus creating a better market for businesses and consumers.[42] The aforementioned directives are part of the Digital Single Market strategy, which aims to eliminate barriers to the exchange of digital content and services within the EU and improve consumer protection standards in transactions concerning digital content and services.[43] These directives constitute another stage in the harmonisation of EU contract law, or more precisely, consumer sales contract law.[44] One of the main objectives of this process is maximum harmonisation.[45] This means that national legislators cannot introduce changes in the framework of transposition, including in the scope of provisions more favourable to consumers. This results from the desire to maintain a balance between a high level of consumer protection and a reduction in the costs of doing business for

40 Konrad Garnowski, "Wpływ implementacji dyrektywy 2019/771 (SDG) na spójność regulacji prawa cywilnego dotyczących odpowiedzialności sprzedawcy w stosunku do konsumenta i innych kupujących za wady rzeczy" *Studia Prawnicze KUL*, No. 1 (2024): 53–55.

41 Elias Van Gool, Anaïs Michel, "The New Consumer Sales Directive 2019/771 and Sustainable Consumption: A Critical Analysis", draft version submitted to *Journal of European Consumer and Market Law*, 9. https://ssrn.com/abstract=3732976 [accessed: 24.06.2026].

42 Piotr Jurczyński, "Comments on the Implementation of the Sale of Goods Directive into the Polish Legal Order" *Studia Iuridica Lublinensia*, No. 5 (2023): 181–183.

43 Sosna, "Prawa konsumenta po nowelizacji," 36; Siwicki, "Kilka uwag," 278.

44 Katarzyna Południak-Gierz, "Wpływ dyrektyw 2019/770 oraz 2019/771 na poziom ochrony konsumenta w ramach reżimu rękojmi w prawie polskim" *Prawo w Działaniu. Sprawy Cywilne*, No. 54 (2023): 185.

45 Sosna, "Prawa konsumenta po nowelizacji," 37.

businesses.[46] Moreover, as intended by the EU legislator, Directive 2019/770 and Directive 2019/771 should complement each other.[47]

## 4 Warranty Against the Background of Previous Regulations

The institution of warranty in a sales contract determines the seller's liability towards the buyer for defects in the subject of sale, consequently protecting the buyer's interests in a special way. The entry into force of the Act on special conditions of consumer sales from January 2003 ended the period of basically uniform legal regulation of warranty and guarantee in sales contracts for goods in trade between professionals and between a professional and a consumer. The entry into force on 30 March 2017 of the amendment to the Act on Consumer Rights[48] resulted in the application of the provisions of the Civil Code to consumer sales, which means that the regulation regarding so-called consumer sales was modified and included in the code regulation (previously the provisions of the Civil Code did not apply on the basis of the no longer applicable art. $535_1$ of the Civil Code[49]). This issue was originally regulated in art. 556–576 of the Civil Code, which were significantly changed as a result of the aforementioned amendment to the Consumer Rights Act of 2017, and then as a result of another amendment in 2023.[50] In 2017, the provisions of the Consumer Sales Act were "taken over" by the Civil Code, and the Consumer Sales Act was repealed. This change resulted in the expiration of a separate system of seller's liability in consumer sales relations, which, due to its imperfections, often offered the consumer solutions that were less favorable than those offered by the Civil Code in the form of a warranty for defects in the sold item. It should be emphasized that the consumer, both in the old and new legal status, cannot waive the rights granted to him by the Act. Contract provisions that are less favorable than the statutory provisions are invalid and

46 Wiewiórowska-Domagalska, Zoll, Południak-Gierz, Bańczyk, "Transpozycja dyrektywy," 916.

47 Recital 20 of Directive 2019/770 and recital 13 of Directive 2019/771.

48 Act of 2017 amending the Act on consumer rights and certain other acts (Journal of Laws of 2017, item 683).

49 Jerzy Jezioro, [in:] *Kodeks cywilny. Komentarz*, ed. Edward Gniewek, Piotr Machnikowski (Warsaw: C.H. Beck, 2021), 1094.

50 Act of 2022 amending the Act on consumer rights and certain other acts (Journal of Laws of 2022, item 2581).

are replaced by the provisions of the Act, which indicates the semi-imperative nature of these regulations.[51] The provisions on warranty for defects in effect prior to 1 January 2023, established a specific regime of liability for improper performance of an obligation.[52] By delivering a defective item, the seller fulfilled its obligation, but in a manner inconsistent with what the parties had agreed upon.[53] The regulations establishing the warranty allowed for the restoration of equivalence between the parties' performances under the contract.[54] In this respect, these provisions differed from the remedies arising from non-performance or improper performance of an obligation, which require the creditor to compensate for damages.[55] The restoration of equivalence of the goods could be achieved by reducing the price, remedying the defect, or replacing the goods with defect-free ones. At the same time, the buyer had the right to terminate the legal relationship by rescinding the contract.[56] The ability to exercise these rights depended on proving the existence of a physical or legal defect in the sold item. Thus, the buyer was not required to prove that they had suffered damage as a result of improper performance of the contract.[57]

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51 Jezioro, [in:] *Kodeks cywilny. Komentarz*, ed. Edward Gniewek, Piotr Machnikowski, commentary on Art. 556, 1289.

52 Article $556^1$ § 1 CC: A defect is the lack of conformity of the item sold with the contract. The item sold lacks conformity with the contract in particular if: 1) it fails to have a property, which a thing of that kind should have regarding the purpose stipulated in the contract or arising from the Supreme Court took the position that the concept of non-conformity of goods with the contract also includes legal defects.

53 On the relationship between the concept of non-conformity of goods with the contract and the concept of defects, cf. Aneta Wiewiórowska-Domagalska, "Refleksje na tle orzecznictwa sądów powszechnych w zakresie sprzedaży konsumenckiej" *Prawo w Działaniu. Sprawy Cywilne*, No. 20 (2014): 247–254.

54 A.M. Juranek, Magdalena Tulibacka, "Commentary on Art. $556^1$," [in:] *Kodeks cywilny. Komentarz*, ed. Wojciech Borysiak (Warsaw: C.H. Beck, 2026), Legalis; Agnieszka Kubiak-Cyrul, "Commentary on Art. $556^1$," [in:] *Kodeks cywilny. Komentarz*, ed. Mariusz Załucki (Warsaw: C.H. Beck, 2024), Legalis; Piotr Stec, "Commentary on Art. $556^1$," [in:] *Kodeks cywilny. Komentarz*, ed. Bożena Kaczmarek-Templin, Piotr Stec, Dariusz Szostek (Warsaw: C.H. Beck, 2024), Legalis.

55 Sosna, "Prawa konsumenta po nowelizacji," 39.

56 Katarzyna Kryla-Cudna, Magdalena Tulibacka, A.M. Juranek, "Commentary on Art. 556," [in:] *Kodeks cywilny. Komentarz*, ed. Konrad Osajda, Wojciech Borysiak (Warsaw: C.H. Beck, 2022), Legalis, chapter B, Nb 4.

57 Ibidem, chapter G, Nb 10.

The seller's liability was based on the principle of risk, which meant that the seller could not exempt himself from liability by proving the absence of fault.[58] Consequently, even a seller who was unaware of a defect and could not have discovered it even with due diligence could be required to satisfy a claim under the warranty. The only cases in which a seller could be exempted from liability were when the item sold did not possess the characteristics implied by public representations, and the seller was unaware of the deficiencies and could not have known about them; or when the deficiencies could not have influenced the buyer's decision; or when the content of the representations was corrected before the contract was concluded. Under both the old and new legal systems, a consumer may not waive the rights granted to him or her by law. Contractual provisions that are less favorable than statutory provisions are void and are superseded by the provisions of the law, which attests to the semi-mandatory nature of these regulations.[59]

Under the old wording of Article $556^2$ of the Civil Code, if a physical defect became apparent within one year of the date of delivery of the item, there was a presumption of defectiveness of the sold item, which generally applied only to consumer contracts, and thus did not cover either bilateral professional or bilateral non-professional contracts (the seller's liability covered only defects that arose before the risk passed to the buyer, or those whose cause already existed at that time).[60]

## 5 | Changes in the Regulations on Warranty and Liability for Defects in Goods Sold After 1 January 2023

Through the Act of 4 November 2022, already cited in this study, the Sejm adopted amendments regarding the warranty, thereby transposing the provisions of the directives outlined above. The fundamental change introduced by the amendment results in excluding the seller's liability to

58 Stefan Buczkowski, [in:] *Kodeks cywilny. Komentarz*, vol. II, ed. Zbigniew Resich (Warsaw: Wydawnictwo Prawnicze, 1972), 1299.

59 Jezioro, [in:] *Kodeks cywilny. Komentarz*, ed. Edward Gniewek, Piotr Machnikowski, commentary on Art. 556, 1289.

60 Piotr Stec, [in:] *Ustawa o prawach konsumenta. Kodeks cywilny (wyciąg). Komentarz*, ed. Bożena Kaczmarek-Templin, Piotr Stec, Dariusz Szostek (Warsaw: C.H. Beck, 2014), 410–411.

the consumer for non-conformity of the goods with the contract from the Civil Code regime, implementing these provisions in a separate legal act, and thereby creating two liability regimes, one under the Civil Code and one under the Act. The establishment of these provisions results in a change in terminology, as for contracts concluded after 1 January 2023, there will be no "warranty," and claims may be asserted on the basis of "liability for non-conformity of goods with the contract".[61]

One of the fundamental changes is the removal from Article 556 of the Civil Code of the distinction between physical and legal defects. The term "physical defect" has been replaced by the term "defect." Consequently, the concept of non-conformity of goods with the contract applies to both of these categories of defects.[62] However, there is no definition of the concept of a defect itself although a legal defect has been defined.[63] The definition of a defect (so-called contractual non-conformity) is regulated in detail in Articles 6–10 of the Digital Directive. It has a subjective-objective nature.[64] This means that, in addition to meeting the subjective requirements for conformity with the contract, the assessment will also take into account the objective criteria specified in Article 8 of the Directive.[65] The conformity of goods with the contract is determined by, among other things, their description, type, quantity, quality, suitability for a specific purpose, and, in the case of goods with digital elements, also compatibility, interoperability, and availability of updates. Additionally, the goods must also meet other requirements, including being supplied with accessories and instructions and being of the same quality as the sample or model. Issues concerning the conformity of digital content or digital services are regulated in a similar manner, but with due regard to the differences arising from their specific nature.[66]

Article $556^1$ of the Civil Code has been amended to remove the limitation that non-conformity of the sold item with the contract applies exclusively to physical defects. This stems from the desire to ensure terminological

61 Jurczyński, "Comments on the Implementation," 185.

62 Sosna, "Prawa konsumenta po nowelizacji," 40.

63 Agnieszka Kubiak-Cyrul, "Commentary on Art. 556," [in:] *Kodeks cywilny. Komentarz*, ed. Mariusz Załucki (Warsaw: C.H. Beck, 2024), Nb 5.

64 Siwicki, "Kilka uwag," 280.

65 On the basis of the directives analysed, the term "defect" is not used, but rather "non-conformity of the goods with the contract".

66 M. Łobocka-Szok, "Procedowane są zmiany podyktowane koniecznością wdrożenia tzw. dyrektywy cyfrowej", Legalis.

consistency between the Civil Code and the Act, which uses the concept of non-conformity of goods with the contract.[67] According to the position adopted in legal doctrine, a non-conformity of the sold item with the contract occurs when the sold item lacks the characteristics that an item of that kind should have in light of the purpose of the contract, or when the item is delivered to the buyer in an incomplete state.[68] Due to the amendment, the limitation period for claims has also changed, extending it to 6 years. This stems from the non-application of the Civil Code's warranty provisions in consumer transactions and the lack of separate regulations on this issue. Therefore, the limitation period from 1 January 2023 is determined based on the general principles of Article 118 of the Civil Code. The justification for the bill emphasizes that this solution will ensure an adequate level of consumer protection and, according to the bill's authors, will reduce the introduction of defective goods to the market.[69] The amendments also covered the Consumer Rights Act, which introduced Chapter 5a on contracts requiring the transfer of ownership of goods to the consumer, and Chapter 5b on contracts for the supply of digital content or digital services. This means that the provisions of the Civil Code no longer apply to contracts concluded between businesses and consumers concerning movable goods, water, gas, or electricity (if offered in a specific quantity or volume).[70] However, the provisions of the Civil Code apply to sales contracts concluded between businesses and consumers concerning real estate or rights. The provisions of the Civil Code continue to apply to contracts concluded between businesses or when the buyer is not a consumer. The exclusion of the application of the Civil Code provisions regarding warranty, established by the provisions of the Consumer Rights Act, applies to contracts for the sale of goods.[71] The definition of goods is established in the new Article 2, point 4a of the Consumer Rights Act, which defines "movable goods, as well as water, gas, and electricity, if offered for

67 Sosna, "Prawa konsumenta po nowelizacji," 40; Garnowski, "Wpływ implementacji dyrektywy 2019/771," 56.

68 Dominik Bierecki, "Commentary on Art. 556," [in:] *Kodeks cywilny. Komentarz aktualizowany*, ed. Jerzy Ciszewski, Piotr Nazaruk (LEX/el., 2023).

69 Explanatory memorandum to the government bill, Sejm print No. 2425 of 29 June 2022, 14–16. https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2425 [accessed: 14.06.2026].

70 Sosna, "Prawa konsumenta po nowelizacji," 40; Bierecki, "Commentary on Art. 556".

71 Ibidem.

sale in a specific volume or quantity." The condition for this liability is the non-conformity of the sold item with the contract.Due to the aforementioned amendment, new definitions have been added to the Consumer Rights Act, including the aforementioned definition of goods, but also those related to digital services, goods with digital elements, and the digital environment.[72] The Act also expands the definition of an off-premises contract to include contracts concluded during a trade show organized by a trader, attended by a specified number of consumers – invited directly or indirectly – during which a promotion or offer for the sale of goods or services takes place. The concept of an online trading platform and an online trading platform provider has been established. In particular, the regulations regulate information obligations, including general information, information about the trader, and issues relating to the division of obligations related to the contract. The consumer must be informed of these terms no later than the moment they express their intention to be bound by a distance contract.[73] If the goods are found to be non-conforming with the contract, the consumer may first file a complaint and request their repair or replacement. Only if the seller refuses to repair or replace the goods, fails to comply with the customer's request at all, attempts to repair or replace the goods, but they are still non-conforming, or declares that they will not repair or replace the goods within a reasonable time or without undue inconvenience to the consumer, will the consumer have the right to demand a price reduction or, in the case of a significant non-conformity, to withdraw from the contract.[74] Consumer rights related to digital content and services are similar. In the first stage, they may demand that the goods be brought into conformity with the contract, and only then demand a price reduction or withdrawal from the contract. However, the time limit for assuming that a certain non-conformity existed at the time of purchase is different: for digital content and services, this is one year (Article 43l of the Consumer Rights Act). For goods, this period is assumed to be two years (Article 43c of the Consumer Rights Act). Another difference arising in the context of issues related to digital content or services is the possibility for the trader to be released from liability if the consumer fails to install updates within a reasonable time after delivery, about which the trader is obliged to

72 Siwicki, "Kilka uwag," 282.

73 Sosna, "Prawa konsumenta po nowelizacji," 41.

74 Reiner Schulze, Fryderyk Zoll, *European Contract Law*, 3rd ed. (Baden-Baden: Nomos, 2021), 49.

notify.[75] An update obligation that extends beyond the warranty period and is indefinite in terms of time and content will lead to legal uncertainty and new liability risks for entrepreneurs.[76]

## 6 Conclusions

The implementation of Directive 2019/770 and Directive 2019/771 introduced new regulations into the Polish legal system, creating a "split" between code and statutory regulations, contributing to a return to the dualism that had not been favorably viewed in previous years.[77] This led to considerable controversy at the drafting stage, with accusations that the proposal had been prepared without public debate, without the involvement of legal scholars and lawyers specializing in civil and EU law. This led to criticism of the draft's "low substantive level" and a potential lack of consistency between the provisions.[78] The selected regulations of the Digital and Goods Directives cited above also lead to the conclusion that many of the aforementioned provisions may lack coherence and transparency. The amendments in question have led to separate regulation of contracts for the provision of digital content and services to consumers (chapter 5b of the Consumer Rights Act) and regulate inconsistently the subject of protection for non-conformity with the contract. Consequently, despite its relatively extensive content, the amendment in question will probably not contribute to the consolidation of Polish consumer legislation. At the same time, this demonstrates the legislator's difficulties in finding a common ground for regulating consumer transactions in Polish civil law.The Digital and Goods Directives represent another significant step towards the harmonization of consumer protection regulations. The new regulations have significant consequences for businesses providing various services electronically, stemming from the need to adapt contracts to the new regime. In particular, the consumer will not be bound by any contractual provisions that, to the consumer's detriment, exclude the application of

75 Witold Chomiczewski, "Najważniejsze zmiany w ochronie konsumentów, czyli implementacja dyrektyw Omnibus, towarowej i cyfrowej", Legalis.

76 Siwicki, "Kilka uwag," 283.

77 Sosna, "Prawa konsumenta po nowelizacji," 42.

78 Wiewiórowska-Domagalska, Zoll, *Ocena założeń projektu implementacji*, 1. https://www.projektkc.uj.edu.pl/dokumenty/Ocena_projektu_r_2019_771_Wiewiorowska_Zoll.pdf, [accessed: 16.06.2026].

national measures transposing this directive. A detailed definition of a defect, which, in addition to subjective assessment, will be linked to objective criteria, will undoubtedly improve the level of consumer protection.

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