

Incompatibility of goods with contractual provisions 1/18/25



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In commercial transactions, there may be cases when a buyer, upon discovering defects in the purchased goods, wishes to cancel the contract or claim damages. However, not every defect identified by the buyer is necessarily considered a legitimate defect. Furthermore, it must be noted that the buyer (the business) is required to take certain actions in order to retain the right to compensation for damages or contract cancellation when defects in the goods are properly identified. This article casts more light on this.

Types of incompatibility

In general, the incompatibility of goods with contractual provisions can manifest in two ways – incompatibility with the subjective requirements of the goods or incompatibility with the objective requirements of the goods.

Case law recognises that the subjective requirements of the goods refer to:

1. Requirements that the parties have explicitly agreed upon in the contract, such as the type, quantity, functionality, application, and quality of the goods;
2. The buyer's requirement for the goods' suitability for a particular purpose, if the seller has agreed to this requirement, that is, if the seller has agreed to individually tailor the goods to the buyer's needs.

See, for example, case SKC-46/2023 regarding the failure to disclose a hidden defect to the person who purchased a used car.

On the other hand, the objective requirements refer to:

1. Various requirements expressed in legislation (laws, Cabinet regulations, etc.), including standards, if such have been issued for the goods;
2. Requirements that the seller introduced to the buyer before the contract was concluded, for example, by indicating them in the sample, description, or elsewhere;
3. Requirements that, from the hypothetical average buyer's point of view, would be attributed to such goods at the time of the contract conclusion, such as regarding the safety, durability, or functionality of the goods.

See, for example, case SKC-3/2025 regarding the safety belt length of a car being suitable for the average buyer; case SKA-90/2017 regarding the misrepresentation of a pearl necklace imitation as an organic pearl necklace.

It is important to note that the concept of the hypothetical average buyer is similar, but not synonymous with the concept of a consumer. Therefore, it applies specifically in cases involving businesses. That is, the hypothetical average buyer is understood as a buyer who is not an expert in the relevant field but is reasonable, cautious, thoughtful, and at the same time relatively well-informed.

The arising of liability

In order to assess the occurrence of liability for defects in goods, it is necessary first to examine the compliance of the goods with subjective requirements and only then with objective requirements.

It must be taken into account that when evaluating the compliance of the goods with the expectations of a hypothetical average buyer, the compliance of the goods should be assessed objectively, meaning that the average buyer of the relevant goods must be identified first, rather than evaluating from the perspective of the specific buyer. This is because the buyer in question may not fall within the scope of the hypothetical average buyer.

However, merely identifying incompatibility is not enough, because, according to Section 411, Paragraph one of the Commercial Law, a merchant is required to “inspect the goods [items] as soon as possible after receiving them” and to “immediately” notify the seller of any defects. If the contractual relationship is governed by the United Nations Convention on Contracts for the International Sale of Goods (more on this in the publication – Application of the UN Convention in Claiming Damages), Section II, Chapter II must be followed.

Case law has recognised that the obligation to notify “as soon as possible after receiving the goods [items]” under Section 411 of the Commercial Law must be evaluated on a case-by-case basis, taking into account the type and characteristics of the goods. For example, goods that require an expert assessment to verify their compatibility with the contractual provision and regulations will objectively take longer to inspect than goods whose defects are immediately noticeable. Only if the buyer has conducted the inspection within a reasonable time and fulfilled the obligation to notify will it be possible to claim liability from the seller for the defects in the goods.

Liability for goods defects

While under the law, it is not prohibited to sell goods that have defects, but the buyer must be informed about the existence of these defects. However, if the goods are sold with defects without the buyer's knowledge, the seller's liability must be assessed according to Section 1620 of the Civil Code.

Under Section 1620, Paragraph one, of the Civil Code “...the transferor, who intentionally withholds or conceals known defects of the goods, or explicitly claims that the goods have certain qualities, must compensate the acquirer for all losses.” Meanwhile, Paragraph two of the same states: “In other cases, the acquirer reserves the right to demand, at their discretion, either the cancellation of the contract or a reduction in the price of the goods.”

Namely, if the buyer wishes to claim full compensation for the losses incurred, the application of Section 1620, Paragraph one of the Civil Code requires the condition that it must be established that the seller acted with malicious intent by withholding or concealing known defects of the goods, or in other words, deliberately sold goods with defects. On the other hand, if the buyer wishes to cancel the contract or reduce the price of the goods, the seller's malicious intent does not need to be established.

It should be remembered that, objectively, the application of Section 1620 of the Civil Code is related to the identification of the goods' incompatibility with the terms of the contract, because without establishing this, there is no basis to demand either the cancellation of the contract, the reduction of the price of the goods, or compensation for any resulting damages.

However, if the buyer has not fulfilled the obligation stated in part one of Section 411 of the Commercial Law to “inspect the goods as soon as possible after receiving them” and “immediately” notify the seller of any defects, the buyer loses the right to claim liability for the defects in the goods, except in cases where the goods have hidden defects that could not have been discovered during the inspection. If these hidden defects are discovered later, the buyer must immediately inform the seller about them; otherwise, it is assumed that the buyer has accepted the goods with hidden defects.

At the same time, in accordance with Section 1613 of the Civil Code, the seller may be exempted from liability if the buyer has been grossly negligent, which is manifested as a basic lack of attention. The existence of such circumstances must be evaluated individually in each case.