



## **CHANGES TO THE DANISH PURCHASE ACT REGARDING CONSUMER PURCHASES AND THE INTRODUCTION OF DIGITAL SERVICES**

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### **Background**

The Danish Purchase Act (in Danish: “*Købeloven*”) has been revised after two EU directives were passed in 2019. The changes were incorporated into a bill, which was passed by the Danish Parliament on 3 June 2021. The following will be a brief overview of the most important changes, as the changes will enter into force on 1 January 2022.

The directives mainly regard the sale of goods and digital services. Including, rules regarding “lack of conformity” when purchasing goods in the EU and the possibility to claim for lack of conformity. The modifications relate to consumer sales.

The other directive mainly concerns itself with contracts for the supply of digital content and digital services, which will be a new addition to the Danish Purchase Act.

### **The Definition of “Lack of Conformity” in Consumer Purchases**

Article 75a regarding the conformity of the goods has been reformed, as it is simply stated that the goods must conform to the requirements stated in Article 75b – 75e. The modifications have kept the known structure and substance of the act, as it differentiates between a subjective and objective assessment of the goods when assessing a defect.

The subjective assessment entails that the goods must conform with what the seller and consumer have agreed, e.g., “suitability” (in Danish: “*egnethed*”) for a specific purpose that is mentioned by the seller.

The objective assessment of the goods entails that the consumer must be able to rely on what “usually can be expected” of that specific good.

Both assessments are already known, but the judgment of conformity shall e.g., hereafter include that the seller must make sure, that the consumer receives a message of necessary updates or requirements to keep the goods conform. Failing to do so will result in a possibility for the consumer to claim for lack of conformity.

The interpretation of the new wording of the act will become clearer once relevant case law is brought to light.

### **Possibility to claim for Lack of Conformity**

Like the aforementioned, Article 78 (the possibility to claim for lack of conformity) has also been reformed, but again the overall structure and substance have been maintained. One noticeable change is that the consumer will not be able to claim for an appropriate reduction in the purchase price (In Danish: “*et passende afslag i købesummen*”). However, it shall be possible to claim for a proportionate reduction in the purchase price (In Danish: “*forholdsmæssigt afslag*”).

The slight change to the wording has a meaningful effect, as the consumer hereafter shall be able to receive a reduction, measured by the value of the good in non-conformity and compare that to the value of the good if it was delivered in conform condition. This change gives the consumer much better protection. An appropriate reduction e.g. could only be a reduction corresponding to the repair costs.

### **The Presumption Rule (In Danish: “*Formodningsreglen*”)**

The presumption rule is well-known and described in article 77a. The provision states that if the consumer discovers a lack of conformity of the good within 6 months after the transfer of risk (In Danish: “*Risikoovergang*”) then the non-conformity is presumed to have been there when delivered and thereby making it possible for the consumer to claim for non-conformity. Of course, the seller can provide proof to the contrary and will be relieved of any costs.

This presumption rule has now been extended to a year, which will have significant repercussions for sellers, as they will have to be prepared to meet a claim if done so within a year. The sellers are also advised to be able to document the state of the good when sold, as failing to do so could have costly repercussions.

### **The Field of Application - Digital Services**

The field of application is described in Article 3 of the current Act. From 1 January 2022 Article 3a will be introduced, as the field of application henceforth shall apply for all purchases of digital services.

A digital service is described as “*any service that makes it possible to create or process data in digital form*”. This extended application will for instance result in the Danish Purchase Act applying even when the consumer is “paying” with personal data. Hereby stating that when a consumer submits personal data to a software (digital service) e.g., then the Act will apply.

### **Our Comments**

These changes will make a significant change to consumer purchases. However, the changes also seem necessary as digital services have an enormous impact on consumers. The extent of the changes to the act will only become more transparent when the act enters into force.

Moalem Weitemeyer will follow the next stages and relevant case law to keep our readers updated.

Moalem Weitemeyer has vast experience in assisting in matters related to the Danish Purchase Act. We continuously advise a wide range of clients in purchase matters related to e.g., compliance, negotiations, or disputes. For further information please do not hesitate to reach out to us.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



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