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Topic 1: Internal market and digital economy
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Greek Report
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1.Internal Market and electronic commerce: Internet and e-commerce

1.1. Electronic commerce, liability of Internet intermediaries

Q1.1.1. Greece like most Member States has transposed literally the definitions of the E-Commerce Directive (ECD) as well as the activities and exemptions set in Articles 12 to 14. Therefore no specific liability exemptions have been adopted (e.g. for search engines, hyper-linking, blogs and social networks). This may lead to a regulatory uncertainty, taken into account other legal texts referring to ISS providers[3]. Apart from that there is no further clarification on the definition and the content of activities understood as intermediary services and those covered by the E-Commerce Directive exemptions[4].

Up to date Greek Courts dealt with ISS providers in few cases, mostly referring to copyright and personality rights infringements. In these cases the Courts considered the companies involved to be ISS providers and Articles 12, 14 ECD generally applied without proceeding to any further specification or delimitation of their activities (mere conduit, caching or hosting) and liability.

Internet access provider (telecommunication service provider): The Civil Court of Athens (First Instance, Cases 1639/2001, 2110/2002) considered the companies involved to be ISS

1 Responsible for answering questions 1.2.1.-1.2.7. on Consumer protection in relation to the internet and E-commerce, internet purchase and contractual rights, consumer protection and dispute resolution, 1.3.1. on geo-blocking, 1.4.1.-1.4.6. on Collaborative Economy and 4.1., 4.2. and 4.4. on Data in the Digital Economy.

2 Responsible for answering questions on 1.1.-1.4. on Electronic Commerce, liability of internet intermediaries, 2.1. -2.8. on Digital Media, 3.1.-3.4. on Digital Infrastructures and 4.3. on Internet of Things.

3 Copyright Law No. 2121/1993 (Article 64A) provides for injunctions against "intermediaries" whose services are used by a third party to infringe a copyright or related right. Article 64A is transposing Article 11 of Directive 2004/48 (Enforcement Directive) and Article 8 (3) of Directive 2001/29 (Infosoc Directive) to Greek Law. Trade Mark Law No. 4072/2012 (Article 150 sec. 4) and Patent Law No. 1733/1987 (Article 17 sec. 1) provide for injunction against "intermediaries", transposing Article 11 of Directive 2004/48 (Enforcement Directive) to Greek Law. For telecommunication Law No. 3431/2006 (Article 2 sec. λα) (implementing Article 2 (m) of 2002/21/EC - Framework Directive) a provider of an electronic communication network is the entity establishing, operation, controlling or making available of an electronic communication network, or simply providing electronic communication services. According to Gambling Law No. 4002/2011 (Article 51 sec. 5) ISS providers shall deny access to on line gambling providers not subject to a priori permission through the competent National Regulatory Authority (Hellenic Gaming Commission).

4 See also 3.4.2.1. Working Paper Commission, 2012.

providers without any further specification or delimitation of their activities (mere conduit, caching or hosting) and liability. In case 4658/2012 the Civil Court of Athens (First Instance), following the reasoning of CJEU in case C-557/07[5], considered that a mere internet access provider should be regarded as "intermediary" within the meaning of Article 8 (3) of Directive 2001/29 (Infosoc Directive).

Hosting: The Civil Court of Athens (First Instance, Case 457/2016) in a case concerning personality right infringement through offensive comments in blogs considered the company hosting such blogs (Google) as an ISS provider, supplying its clients with service of creating and managing blogs. In this case *the ISS provider was considered liable, although having already taken-down upon notice the illegal content, because it did not remove from the net all files stored containing the infringing text*. This additional measure[6], ordered by the Court ruling injunctions, is to ensure that the offensive text will not be reposted, *but results in disproportionate demands on intermediaries. This means that monitoring systems should have been implemented by the ISS provider searching all user – submitted information, which leads to the filtering of the whole content transmitted* (general filtering forbidden by Article 15 ECD).

File sharing services: The Penal Court of Athens (Court of Appeal, Case 6613/2016) initially considered a peer to peer file sharing service as a hosting service provider. Finally it did not apply the liability exemption considering that the owners and administrators of the file sharing service were fully aware that the files shared had been infringing others' copyright.

Search engines: The Civil Court of Athens (First Instance, Case 11339/2012) on a case dealing with personality infringement considered Google (providing search engine services) to be an ISS provider and ordered it to take adequate technical measures in order to disconnect defamation keywords from the name of the applicant.

Blogs and social networks: The Court of Thrace (Court of Appeal, Case 91/2012) did not consider the blog owner – administrator falling under the liability exemptions of Articles 12-14 ECD. In this case the real identity of the blog owner – administrator could not be proven since its disclosure should conflict with privacy rules.

Q1.1.2. In case c-324/09 (L'Oreal) the Court specified further some conditions under which an ISP must be considered not to have played a "neutral role"[7] (by providing a merely technical and automatic processing of data), and therefore not to be subject to the general exemption of article 14 of e-commerce directive. The ISP plays an "active role" and therefore is deprived of the exemptions from liability provided for in Directive 2000/31, when it

5 LSG v. Tele2, Case C-557/07, para. 46.

6 Notice – and – stay down procedure, see Angelopoulos, https://www.ivir.nl/publicaties/download/Notice_and_Fair_Balance.pdf, page 17.

7 "It is necessary to examine whether the role played by that service provider is neutral, in the sense that its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data which it stores…" (Case C-236/08, Google Adwords, para. 114. "… That is not the case (neutral) where the service provider … plays an active role of such a kind as to give it knowledge of, or control over, those data …" (Case C-324/09, L'Oreal v. eBay, para. 113).

provides assistance which entails, in particular, optimizing the presentation of the offers for sale in question or promoting those offers (L'Oreal para 116, 123).

Even when having an operator who has not played an active role[8], it would not be exempt from liability, if it was aware of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality, and in the event of being so aware, failed to act expeditiously in accordance to Article 14(1)(b) of Directive 2000/31 (C- 324/09 L'Oreal v. eBay, para. 120, 122, 124).

As to the notice required for the awareness of an illegal activity or information the question remains on when a ISS provider is on notice of the illegal activity or information. The E-Commerce Directive requires no particular formalities leaving it to Member States and parties concerned on the basis of voluntary agreements (Recital 40 of Directive 2000/31/EC). In L'Oreal v. eBay the Court broadens the definition of awareness required by the ISS provider, as covering every situation in which the provider concerned becomes aware, in one way or another, of such facts or circumstances. In this perspective even a notification insufficiently precise or inadequately substantiated[9] may represent a factor taken into account to determine that the operator was actually aware of facts and circumstances (through the information transmitted to it) so to react as a "diligent economic operator" and identify the illegality (para. 122). The awareness required as a result of an investigation undertaken on its own initiative (para. 122) as well as a result of the identification of the illegality undertaken by the operator himself, based on simple information transmitted to him, imply a monitoring obligation for ISS providers.

It is also expected by the Commission that ISS providers hosting content should be in the future more preventive. This narrowing of immunity for service providers is also set out in Digital Single Market Strategy 2015 (par. 3.3.2.): "… the Commission will analyze the need … whether to require intermediaries to exercise greater responsibility and due diligence in the way they manage their networks and systems … a duty of care".

Furthermore a "diligent economic operator" may not just rely on the content of the notification received (which may be insufficient or inadequate) but furthermore should proceed to make an assessment about the legitimacy of the notice. Whether the activity or information concerned is indeed illegal or not, is not always so obvious and should be first answered by the national Courts.

The way the CJEU approaches the question of awareness of ISS providers being that of a "diligent economic operator" implies a general monitoring obligation and therefore requires a further clarification. To our opinion CJEU should nevertheless insist on the position taken in previous case (C-70/10 Sabam v. Scarlet) that filtering of all content constitutes general

8 According the criterion set by CJEU in Cases C-236/08 Google Adwords, para.114, C-324/09 L'Oreal v. eBay, para. 113, 123.

9 The need to provide specific URL's makes it difficult for claimants, especially those who seek orders for infringing content to be taken down.

monitoring, and clarify that any investigation or identification undertaken by a ISS provider should be reduced to a particular content.

The precise factors and circumstances that will guide eventual liability for on line operators have been left to the national courts to determine. This may lead to different interpretation and implementation of this responsibility test, which put in to danger the legal uniformity required for the development of single digital market.

Q1.1.3. In addition to a notification and take-down procedure, action against repeat infringements as well as preventive measures are required[10]. As the information society expands and new forms of digital economy and activities appear, it has been shown that notice and take-down measures (Article14 ECD) may not be used uniformly but require diversification. In case of protection of minors (e.g. child pornography) inspection and automatic take-down by a ISS provider as well as additional measures to avoid any future distribution may be taken[11]. Apart from a general monitoring in the area of protection of minors (child pornography), as to the measures undertaken the fair balance of rights in conflict should applied. In cases of severe harm or repeated harm a possible solution (oriented to the end user) could be the banning of the infringer from the intermediary's service.

In case of measures taken by the ISS provider without a prior judicial assessment on the illegality of a content or an activity, these measures should be more moderated[12], not so definitive and easy to recall in case that the assessment on illegality made by the ISS provider itself proves to be wrong[13]. Furthermore, since a previous judicial order is often time-consuming, a viable solution may be the setting of a competent Control Body (Committee for the notification of online copyright infringements[14]) as the one implemented by the Greek Copyright Law Amendment (Article 52 of Law No 4481/2017, which was transposed into the Greek Copyright Act (Law No 2121/1993) as Article 66E)[15]. Still the possibility to initiate judicial proceedings against the end – user may not be realistic since an injunctive order

10 See Commission Staff Working Document, On line services including e-commerce, in the single market, 11/1/2012, SEC(2011), 1641 final. The commission will adopt a horizontal initiative on notice and action procedures.

11 See also e.g. AVMSD Amendment Proposal, Article 28A sec. 2, below under Q.2.2.

12 See also Proposal for a Directive on Copyright in the Digital Single Market (COM 2016, 593), Article 13 sec. 1 ("appropriate and proportionate").

13 E.g. copyright or personality rights infringements, where the assessment on the illegality of a content or an action is more complicated for an ISS provider.

14 Three –member Committee consisting of the chairman of the board of the Hellenic Copyright Organization, a representative of the Hellenic Telecommunications and Post Commission and a representative of the Hellenic Data Protection Authority.

15 Although the time length of the proceeding set in Article 66E of Greek Copyright Law risks making the procedure uneffective.

against the intermediary to disclose the end-user's identity should clash with data protection and (telecommunication) privacy issues.
In cases of hate speech the regime of notice-and-take down has already been adopted by the Commission and four major IT companies in a form of Code of Conduct and has been proven to be quite efficient[16].

Q1.1.4. In a copyright infringement case initially the court has pointed out (e.g. Court of Athens – First Instance – Case 4658/2012) that the application of Article 12 sec. 3 ECD (relevant Article 12 sec. 3 Presidential Decree No. 131/2003), does not conflict with Article 15 ECD (no general obligation to monitor) in case of injunctions ordered by national authorities or courts to ISS providers to terminate a particular and dully specified infringement. In contrary the notion of "prevention" is not clarified as to its content and extent. According to the above Court decision the notion of prevention leads to the application of technological measures "filtering" the information transmitted in order to detect and prevent infringements. The Court follows the Recital 47 of ECD: monitoring obligations are accepted only in a specific case. Therefore deterioration or total block of access to peer to peer services in general may not be accepted since they may involve not only infringements but lawful uses as well. In this first case involving ISS providers the court held that the block of access to a particular and dully specified content (e.g. a specific site) is to be considered lawful (Court of Athens – First Instance – Case 4658/2012).
Apart from that as to the ordering of injunctions procedure, the request for a "take down" procedure has lead to controversial decisions. The most recent tendency is that courts deny a "take down" procedure[17]. Blocking in whole the access to specific sites where also legal content may be distributed is not compatible to the principle of proportionality[18] and clashes with the freedom of information, the freedom to conduct a business and the right to participate in information society. Any technical measure applied to protect a right should result from an ad hoc fair balance and it should take into account Article 1 of Directive 2002/21/EC (Framework Directive), as amended by Article 1 of Directive 2009/140/EC and (transposed in Telecommunication Law No. 4070/2013 Article 3 sec. 2 subsec. ζ')[19].

16 European Commission – Press Release (Brussels, 1 June 2017), Countering online hate speech – Commission initiative with social media platforms and civil society shows progress, available at http://europa.eu/rapid/press-release_IP-17-1471_en.htm. See also European Commission, 'Code of Conduct on Countering Illegal Hate Speech Online', available at http://ec.europa.eu/justice/fundamental -rights/files/hate_speech_code_of_conduct_en.pdf

17 Civil Court of Athens, First Instance, Cases No 13478/2014, 10452/2015.

18 In Case No 13478/2014 the Civil Court of Athens (First Instance) following CJEU in case C-557/07 (LSG v. Tele2) points out that a consistent interpretation of relevant directives (2000/31, 2001/29, 2002/58 and 2004/48) must not conflict with fundamental rights and general principles of Community Law, such as the principle of proportionality.

19 For the scope of net neutrality and the nature of the measures taken, see below under Q.3.1.

1.2. Consumer protection in relation to the Interent and E-commerce, internet purchase and contractual rights; consumer protection and dispute resolution

Q1.2.1: The Greek Law 3043/2002[20] has transposed almost all provisions of Directive 1999/44/EC (hereafter referred as CSD-Consumer Sales Directive) of minimum harmonization, in the old Civil Code of Greece (hereafter CC), by amending articles 534-537 CC, 540-561 CC and 332 and 334 CC. The Greek Law *did not differentiate between any types of contracts* since the legislator did not want to create any confusion or market fragmentation[21]. Only the provisions on commercial guarantees were separated and transposed with art. 5 par. 3-5 of the Consumer Protection Law 2251/2994.[22]

Two Greek provisions were found not to be in conformity with the Consumer Sales Directive (CSD) and were abolished in 2010: a) the *exclusion of the liability of the seller* in case the buyer received the product without reservation in knowledge of non-conformity (art. 545 CC) and b) the *exclusion of the buyer's rights if the seller* had set a reasonable period for the buyer to ask for replacement or for the rescission of the contract and the buyer had missed the deadline (art. 546 par. 2-3 CC).[23]

When Greek courts examine disputes on remedies, they confront the following problems:

A.The concepts of material defect and promised quality which are equivalent to non-conformity: According to art. 534 CC "the seller has the obligation to deliver the product with the qualities agreed without any material defects". According to art. 535 CC "the seller does not comply with the above oligation if the product delivered to the buyer is not in conformity with the product and in particular" presents the four problems (criteria of non-conformity) mentioned in the Directive 1999/44/EC (art. 3). Thus the Greek courts continue to have to define the concepts of material defect and lack of promised quality "at the time of passing of risk to the buyer" (art. 535 CC) without using the non-conformity criteria of the Directive[24], since the abovementioned concepts are considered to be synonym with non conformity[25]. There is no need to prove the fault of the seller (objective liability) according to art. 537 CC.

Material defect is "any imperfection on the composition or the position of the product that deprives or diminishes its value or usefulness in a substantial degree"[26] (art. 534 CC). In order to determine that there is a material defect, the court has to take into account the

20 Published in Official Journal (FEK) A' n° 192 dated 21 August 2002 p. 3745.

21 See Preamble of the Law, A.I.3.

22 Published in Official Journal (FEK) A' n° 191 dated 16 November 1994.

23 In 2010, the Law 3043/2002 was amended by article 16 of Act 3853/2010 under the title "the correct transposition of Directive 1999/44/EC".

24 See judgment 2256/2015 One Member Court of Appeal of Thessaloniki.

25 Christianopoulou, op.cit., p. 86.

26 See Judgments of the Supreme Court no 29/1990 (Plenary Session), 1544/2008, 2216/2014, 1596/2014 and 267/2015. See also Judgment of the Court of Appeals of Athens 6910/2007, published at Elliniki Dikaiosyni, tome 49, p. 618.

common understanding in the particular trade and not the subjective opinion of the buyer, except if the parties have already defined themselves the concept of material defect in their contract[27].

The *agreed quality* (or promised quality) refers to a certain physical attribute or advantage of a product and any relationship that, by its nature and duration, will positively affect its value or usefulness in accordance with the contract and the objective perception of transactions. The concept of "agreed quality" is based on the explicit or implicit agreement between the parties[28] that the buyer gives particular importance to certain and specific technical properties or qualifications of the object of the contract and the seller guarantees their existence and is liable for their eventual lack.[29]

B. The free choice of the buyer on remedies: Art. 540 of the Greek Civil Code on "Buyer's rights" describes the rights among which the buyer can freely choose against the seller. In contrast to all other member states, three states (Greece, Portugal and Slovenia) have opted not to follow the "Hierarchy of Remedies" model, which consists of two stages: At the first stage, the buyer asks the seller to correct or replace, and if this is not possible, then he/she proceeds to the second stage to ask for price reduction or rescission of the contract (art. 3 of the Directive). Art. 540 CC provides that if the seller is liable for a defect or lack of an agreed quality, the buyer has the right, according to his/her free choice[30] to request from the seller any remedy provided by CSD 1999/44/EC (art. 3 par. 3-6): to repair or replace the product with another one except if such action is impossible or demands disproportional expenses by the seller; *or* to reduce the price; *or* to proceed to the rescission of the contract, if there is a *major* material defect or *any* lack of agreed quality[31]. This is called a selective accumulation of claims (eklektiki syrroi)[32]. The Supreme Court of Greece recognizes that the national provision is more favourable to the buyer than the CSD[33] and that the buyer has a free choice to exercise any of the above rights, even in case that the seller asks him to pay the price and the buyer *objects* by invoking price reduction.[34]

Under the prevailing opinion and the case law of the courts, the buyer had the right to choose only once which remedy to exercise and such declaration was considered

27 Judgments of the Court of Appeals of Thessaloniki 1710/2003, published in Armenopoulos 2004, p. 1665, and no 1085/1995, Armenopoulos 1995 p. 760.

28 Judgments of the Supreme Court of Greece no 267/2015, 1381/2013, 575/2013, and 654/2012.

29 Judgments of the Supreme Court of Athens 267/2015, 1381/2013, 575/2013, 654/2012.

30 Judgment of the Court of Appeals of Thessaloniki, 2256/2015.

31 The buyer may proceed to the rescission of the contract in case of lack of promised quality without having to prove that this lack was substantial. See P. Kornilakis, Concise Special Contract Law, 2nd Edition, Thessaloniki 2013, Sakkoulas publishers, p. 109.

32 P. Kornilakis, op.cit., p. 117.

33 Judgment of the Supreme Court 1636/2014.

34 Judgment of the Supreme Court 596/2015.

"irrevocable" except if the repaired product was still not in conformity and the buyer proceeded to rescission of the contract[35]. The irrevocable character of the buyer's declaration was based on the general provision of art. 306 CC applied on accumulation of claims stating that the choice of the creditor can be made only once. In 2016 however, the Supreme Court invoked the provisions of the Directive 1999/44/EC in order to rule that the buyer's declaration is revocable[36]. The Supreme Court ruled that in case "the first request of the buyer is the replacement of the defective product, his/her choice, *as interpreted under the light of the Directive,* is not "irrevocable" and does not eliminate without any consideration his/her right to request price reduction or the rescission of the contract, in case that the seller refuses or does not proceed to the replacement in reasonable time".[37]

C. Review of the Greek courts of the right to rescission and its abusive exercise: The buyer's choice of rescission of the contract may be reviewed by the courts either by art. 542 CC or by art. 281 CC: a) Art. 542 CC limits the right of the consumer to proceed to rescission: Even though the buyer has exercised the right to have the contract rescinded, the court has the power to order only a price reduction the replacement of the product instead of contract rescission if it considers that the circumstances [of the specific case] *do not justify the rescission*". Circumstances that are taken into account by the court's own motion are the size and the importance of the defect or the lack of promised quality, the possibility of reselling the product and the disproportion between the benefit of the buyer to the loss of the seller.[38] This provision reflects the principle of good faith and honesty that must prevail in transactions.[39]

b) The Greek courts have the authority to refuse rescission of the contract in case that the buyer abuses this right in violation of *bona mores* and good faith according to art. 281 CC.[40] For the purposes of that general provision for any civil right, the long period of inactivity of the buyer, even if he has given the seller the impression that he will not exercise his right, does not render abusive his subsequent exercise unless it is accompanied by special circumstances that justify the sacrifice of the buyer's claim in order to avoid burdensome consequences for the seller according to good faith and bonas mores[41].

D. Review of the Greek courts of the right to replacement and its abusive exercise: There is a solid case law approved by the Greek Supreme Court that article 542 CC can be used by analogy

35 Judgment of the Supreme Court 243/2009 and One Member Court of Ioannina, 69/2011.

36 Judgment of the Supreme Court 1636/2014. See also art. 3 par. 5 of the Directive 1999/44/EC.

37 The Supreme Court based its argument also on art. 541 CC providing thta in case the buyer discovers *another defect,* the buyer is entitled to exercise *ab novo* one of the rights of art. 540 CC. See also Judgment of the Supreme Court 575/2013.

38 P. Kornilakis, op.cit., p. 142.

39 Judgment of One Member Tribunal of Thessaloniki no 2722/2014.

40 Art. 281 CC provides that the exercise of a right is prohibited if it manifestly exceeds the limits imposed by good faith or the bonas mores or the social or economic purpose of the right.

41 Judgments of the Supreme Court of Greece 8/2001 (Plenary session), and 1799/2006.

in case that the buyer asks the replacement of the product, since the replacement of the contract resembles the rescission of the contract. Thus the Courts may order reduction of the price instead of replacement.[42]

E. The right to price reduction: There is a consolidated case law that the buyer must prove: a) the existence of the contract of sale, b) the existence of the material defect or lack of agreed quality, c) the liability of the seller, irrespective of the seller's fault, for the defect existing when the risk passes to the buyer, i.e. at the time of delivery of the product, d) the reduced value of the product and how it was calculated.[43] In particular, the decrease in the value of the defective product is calculated on the basis of the proportional relation existing at the time of the passing of risk between the market value of the defective and non-defective goods.[44] The Supreme Court in its judgment 796/2015 has ruled that the buyer has to clarify all various types of defects on all types of products which were found to be defective and state the original market value and the value of the defective products in order to calculate the proportion in which the price will be reduced. The amount of expenses paid by the buyer in order to repair the defective products cannot substitute the value of the defective product.

F. The right to compensation: "If the promised quality of the product is absent at the time the risk passes to the buyer, the buyer may instead of the usual remedies based on art. 540 CC, demand *compensation for non execution* of the contract or, in accumulation, demand compensation for the *damage not covered* by the exercise of the buyer's rights. The same applies in case of a defective product, *due to the seller's fault"* (543 alinea a and b CC). In addition, the prevailing opinion argues that in case of rescission, the buyer may ask for *compensation for non performance without having to prove lack of interest* in keeping the product.[45] The buyer can also replace or repair the product himself/herself and ask for compensation of the expenses in case that the buyer has refused to repair the product or failed to do so[46].

G. Tort liability (in conformity with art. 8 par. 1 of CSD): The Greek Courts accept the extracontractual (tort) liability of the seller in case of a material defect of lack of the promised quality if these are attributed to the wrongful conduct of the seller by which he intentionally seeks to produce, strengthen or maintain a misconception or impression on the buyer in relation to the lack of property or the existence of the defect, irrespective of whether such conduct consists of a representation of false facts as true or a concealment or a silence or incomplete communication of the true facts whose disclosure to the buyer who ignores them was imposed by the good faith or from the existing relationship between seller and buyer. This conduct is considered illegal according to article 914 CC on tort liability because the

42 Judgment of the Supreme Court of Greece 996/2015. See also Judgment of One Member Tribunal of Thessaloniki no 2722/2014.

43 Judgment of the Supreme Court no 574/2001.

44 Judgments of the Supreme Court 860/2014, 1442/2012, 1373/2010, 1468/1998, and 642/1992.

45 Pouliadis Ath., The liability of the seller, 2003, p. 188, Valtoudis, A., Compensation of the Buyer for material defect, Efarmoges Astikou Dikaiou, 2010, p. 267 and Kornilakis, op.cit., p. 141 (in Greek).

46 Kornilakis, op.cit., p. 123-124.

seller intentionaly causes damages to the buyer.[47] Claims arising from the contract may be accumulated with claims arising from tort liability and may be exercised at the same time, but they cannot overlap, since the satisfaction of one renders the other superfluous, unless the provisions on tort liability grants the buyer additional legal protection, not provided by the provisions on non-conformity.[48]

H. Exemption of the seller's liability: The seller is exempted from liability only in case that the *buyer was aware* of the lack of an agreed quality at the time that the contract was concluded (art. 537 CC). Grave negligence of the buyer is not necessary[49]. However, the Supreme Court of Greece has ruled that if the buyer participated in a pre-sale testing of the product (sea vessel) without stating any reservation, he is deprived of the possibility to claim his rights because of lack of an agreed quality of the engine reaching a certain speed[50].

I. Time limits: Greece does not impose the two months deadline that most states have[51].The time for the buyer to notify the seller of the defect or the absence of the agreed quality is "reasonable". The usual time limit for prescription is two years for sale of goods (art. 5 par. 1 of the Directive 1999/44/EC) and five years for sale of real estate (art. 559 CC). The seller cannot invoke the time limit of 2 years if the *defect or promised quality* was hidden/concealed or not duly notified or deliberately silenced by the seller at the time when the risk passed to the buyer. In such fraudulous cases the usual prescription of 20 years applies (art. 557 CC). In addition, the buyer may exercise his/her rights when sued by the seller to pay the price even if the time limit has elapsed, only if he/she has notified the seller of the lack of conformity within the 2 year time limit (art. 558 CC). An attempt to repair the product by the seller interrupts the 2 year time limit only in respect of the specific defect until the seller repairs it.

Q1.2.2: The aim of the proposed Directive on certain aspects concerning contracts for the supply of digital content (COM(2015)634) to fully harmonise the rules for the supply of digital content (DCD) presents pros and cons. Its advantages include that: a) it is a full harmonisation Directive with *specific rules adapted to the reality* of digital content sales while there is no relevant specific legislation in the majority of states except for the United Kingdom and the Netherlands[52]; b) it will not be confusing to consumers on the geographical source of their entertainment, networking or knowledge since it will apply in both domestic

47 Judgment of the Court of Appeals of Thessaloniki, no 2256/2015.

48 Judgments of the Supreme Court of Greece 1190/2007 and 737/2011, published at Chronika Idiotikou Dikaiou with observations by K. A. Christakakou 2012 p. 120.

49 Before the transposition of the Directive 1999/44 in 2002, the Civil Code had provided that grave negligence of the buyer could result in the exemption of the seller's liability. See Christianopoulou, p. 43. The Directive 1999/44/EC provides that the buyer should not reasonably be unaware of the lack of conformity (art. 2 par.3).

50 See judgment of the One Member Court of Appeals of Piraeus (maritime disputes) 769/2014.

51 Art. 5 par. 2 of the Directive 1999/44/EC: Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity. 16 member states have imposed this obligation, while Greece did not submit the rights of the consumer in such a short deadline. See Christianopoulou, op.cit., p. 38.

and cross-border contracts; c) it will extend the definition of "digital content" to cover digital services and for the first time will include contracts for cloud computing and social media; d) it will clarify the rights and obligations of the parties in case of non conformity of the digital content to the contract (art. 5); e) it will specific rules for the trader's right to modify digital content that is to be supplied over a period of time and the consumer's rights to terminate the contract if the consumer is not satisfied with the modification (art. 15).[53]

However there are certain problematic areas : a) the inclusion in its scope of the supply of digital content in exchange not for a price but for *data as counter-performance* in the form of personal data or any other data (art. 3) has triggered the request of the EU Council for an opinion by the European Data Protection Supervisor (EDPS). In his Opinion, dated 27 June 2017, [54] the EDPS warned that "personal data cannot be considered as a mere commodity" while the DCD will upset the "careful balance negotiated by the EU legislator on data protection rules" and will put at risk the coherence of the Digital Single Market;[55] b) the retainment of data after the termination of the contract.[56] Though there is the right of the consumer to retain back his data which he has supplied or the trader has kept after the contract has been terminated (Art 13).

The Council of the European Union has already agreed in its common position for some flexibility taking into account the reactions of the national parliaments[57] and the member states. Therefore total harmonization will not be provided for a) the hierarchy of remedies (art. 12) which causes problems in certain states like Greece and b) time limits for seller's liability with minimum 2 years. The European Parliament will also make amendments

52 European Commission (2015d) p. 3.

53 Beale, H. The future of European contract law in the light of the European Commission's proposals for Directives on digital content and online sales. IDP. Revista de Internet, Derecho y Política. 23:3-2015, p. 9.

54 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), O.J. L119/1 (4 May 2016). In addition, the current Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), O.J. L201/37 (31 July 2002) will be repealed by the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC, COM (2017) 10 final (Regulation on Privacy and Electronic Communications), 10 Jan 2017.

55 Fryderyk Zoll, Personal Data as Remuneration in the Proposal for a Directive on Supply of Digital Content in Reiner Schulze / Dirk Staudenmayer / Sebastian Lohsse (eds), Contracts for the Supply of Digital Content: Regulatory Challenges and Gaps – An Introduction, 2017.

56 Rolf H. Weber, Data Protection in the Termination of Contract in Reiner Schulze / Dirk Staudenmayer / Sebastian Lohsse (eds), Contracts for the Supply of Digital Content: Regulatory Challenges and Gaps – An Introduction, 2017.

57 E.g. the Dutch Eersten Kamer der Staten-Generaal, Opinion on the application of the Principles of Subsidiarity and Proportionality, ST 13742 2016 INT – 2015/0287 (OLP).

during the legislative procedure so that the DCD will contain efficient rules for the Digital Single Market.

Q1.2.3: The scope of application of the proposed Directive on certain aspects concerning contracts for the online and other distance sales of goods in COM(2015)635 (hereafter referred as OSG proposal) is less broad than the scope of the 2011 CESL proposal. The draft OSG will *not* apply to Business to Business (B2B) transactions or Business to SMEs; to the sale of physical carriers such as DVDs and CDs incorporating digital content in such a way that the goods function only as a carrier of the digital content and to distance contracts for provision of services.[58]

Its scope covers only cross-border Business to Consumers (B2C) sales (art. 1 par. 1) and thus coincides partly with the Consumer Sales Directive 1999/44/EC (CSD) and the Consumer Rights Directive 2011/83/EU (CRD) which both cover online sales as well.[59] The only differentiation of the OSG proposal is that it will apply *exclusively* to online sales and distance contracts. Therefore, what is an online or distance sales contract is an essential criterion for the application of the draft OSG. According to Art 2 (7) of the draft OSG,[60] this concept requires an organised distance scheme with no simultaneous physical presence of seller and consumer and an exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded until the contract is concluded. However, the consumer is unable to ascertain whether the offer he/she received is part of a broader scheme.[61] In addition, interpretation problems have already arisen with the implementation of the CRD which had included the same concept.[62]

The OSG Proposal provides for a full harmonisation of: the conformity criteria for the goods; the hierarchy of the remedies, available to consumers; the periods for the reversal of burden of proof, extended from six months to two years; and the "legal guarantee", i.e. consumer rights vis-à-vis the seller in the case of non-conformity of the goods which exists at the time of delivery;[63] the "commercial guarantee" which is, however, subject to minimum harmonisation only, as in the CSD.[64] The commercial guarantee is offered by the seller or the

58 However, it applies to goods like household appliances and toys where the digital content operates as an integral partof the goods (smart television sets). In addition, where a sale contract provides both for the sale of goods and the provision of services this Directive will apply only to the part relating to the sale of goods (mixed contracts). See European Parliament, summary of the proposal, p. 2.

59 Smits, The New EU Proposal for Harmonised Rules for the Online Sales of Tangible Goods (COM (2015) 635): Conformity, Lack of Conformity and Remedies (February 12, 2016). European Parliament Committee on Legal and Parliamentary Affairs, briefing note PE 536.492, European Union Publications Office, February 2016; Maastricht European Private Law Institute Working Paper No. 2016/01. (2016a) p. 7.

60 The provision duplicates the definition in Art. 2 par. 7 of CRD 2011/83.

61 Smits, op. cit., p. 7.

62 European Commission (2017) Evaluation, p. 6 where the European Commission found difficulties in interpreting some provisions such as "the notion of outside the 'business premises' in off-premises contracts (Art.2 par. 8), the distinction between a digital content contract and a contract for paid online services…".

producer on a voluntary basis, above the standard set out by the legal guarantee, which must be legally binding and provide consumers with certain information.[65]

The European Commission itself declares that the new OSG rules is based on the minimum harmonisation rules of CSD 1999/44/EC.[66] In fact, the new OSG proposal is a new version of the CSD with certain amendments, added rights and clarifications,[67] which will apply uniformly to all Member States. In the words of Professor Beale,[68] the OSG proposal is a "CSD+". As a new version of the CSD, the OSG proposal does not change the criteria for establishing conformity with the contract and requirements for conformity of the goods, i.e. establishing whether the goods are "fit for purpose" and free of fault, as Art. 2 (2) of the CSD 1999/44/EC provides. The OSG proposal follows also the innovative "hierarchy" introduced by the CSD on the remedies to be chosen by the consumer according to the principle of the primacy of *in natura* performance before the right of price reduction or termination (Art.3 par. 3 CSD). This hierarchy of remedies is not foreseen in the CISG[69] and is similar to the German rule on specific performance.[70] Such hierarchy has been accepted in many Member States following the adoption of the CSD[71], but not e.g. in Greece.

Clarifications of the consumer rights provided by CSD are given by the OSG proposal e.g. on the obligation of the seller to take back the replaced goods at the seller's own expense (Art.10 par. 1) and the non-obligation of the consumer to pay for any use made of the replaced goods prior to replacement (Art.10 par. 3)[72], except if it exceeds regular use and only up to the price

63 For the distinction between the legal guarantee and the commercial guarantee see European Commission (2007) Communication, on the implementation of 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 including analysis of the case for introducing direct producers' liability, COM(2007) 210 final, 24 April 2007, p. 6 and 9.

64 Mańko, R. (2016) Contracts for Online and Other Distance Sales of Goods (February 16, 2016). PE 577.962, EPRS Legislation in Progress Briefing, p. 6. Preamble of the Draft OSG, par. 14.

65 European Commission (2007) p. 9.

66 European Commission, Communication, Proposal for a Directive of the European Parliament and of the Council "on certain aspects concerning contracts for the online and other distance sales of goods", COM(2015) 635, 2015/0288 (COD), Brussels, 9 Dec 2015, p. 3 and European Parliament, Summary Content, 2015/0288(COD) – 09/12/2015 Legislative proposal, p. 1.

67 European Parliament, Summary Content, 2015/0288(COD) – 09/12/2015 Legislative proposal, p. 1.

68 Beale (2016) p. 12.

69 See Christopoulou (2008) p. 411.

70 Schulte-Nölke, Zoll, Charlton (2016) p. 16-17. Schmidt-Kessel M, Silkens E (2016) Breach of Contract. In: Plaza Penades J, Martines Velencoso L (eds), European perspectives on Common European Sales Law, Springer International, p. 132-133.

71 ECC-NET, Summary of facts on the legal guaranty of conformity and commercial warranties. https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/tableau_EN_Legal_commercial.pdf.

72 Smits, op.cit., p. 6.

originally paid.[73] This draft provision reflects also the case law of the Court of Justice of the European Union.[74] However, there are many doubts expressed for this consumer obligation by the European Economic and Social Committee Opinion[75] and by the European Commission in its 2017 evaluation of the CRD 2011/83/EC.[76]

The aim should be to strike a fair balance between the interests of the sellers and the consumers. On the one hand, the OSG proposal deteriorates consumer protection in many Member States which have enacted stricter measures due to the previous authorisation by CSD. It would be unfair to lower the standards and thus minimum harmonisation must be allowed in one or two very important issues, at least for some transition period. Instead of lowering the high protection of the consumer in those Member States, there could be less burdensome measures, according to the principle of proportionality (art. 5 par. 3 TEU). For example, *a data basis in the e-justice portal* of the European Commission could inform sellers of such national measures.

On the other hand, some of the draft provisions of the OSG proposal "raise consumer protection standards to an unjustified level", e.g. the extension of the period of reversal of the burden of proof in case of non-conformity from six months to two years or the right to terminate the contract even for minor defects[77] or the abolition of the Member States' discretion to oblige the consumer to notify the seller of the defect within two months after detecting it. These "counterbalance" provisions are not supported by consumer organisations and deteriorate the interests of the seller in an unjustified way. Therefore they should not be included in the final Directive.

Q1.2.4: It is a great advantage for the enforcement of consumer protection law that the draft DCD will oblige the Member States to grant rights to certain bodies to take action before the national courts, such as national bodies, consumer organisations, or professional organisations (art. 18). Concerning however the choice of the European Commission to proceed with separate Directives of total harmonization, this may bring a lot of fragmentation on consumer rules in the internal market since according to the type of the contract, similar but different rules will apply. For example, the OSG Proposal focuses on key rights and remedies that are already set out in CSD 1999/44/EC, but in a different way. The DCD proposal includes different time limits for the reversal of the burden of proof than other Directives (the Council has decided for one year instead of six months). Also the choice

73 Mańko, op.cit., 6.

74 CJEU Case C-404/06, *Quelle AG v Bundesverband der Verbraucherzentralen und Verbraucherverbände,* ECR 2008, p. I-2685, ECLI:EU:C:2008:231.

75 EESC Opinion, par. 4.2.5.10.

76 European Commission (2017) Evaluation, p. 6: In CRD the Commission found that there were difficulties in interpreting some provisions such as "the calculation of the diminished value of goods in cases consumers exercise their right of withdrawal after having used the goods more than necessary to establish their nature, characteristics and functioning (Art. 14 par. 2)".

77 Council of the European Union, Opinion of the Austrian Federal Council of 30 March 2016 (7758/16), p. 5.

for total harmonization of certain rules of the OSG will deteriorate consumer protection in many Member States which have enacted stricter measures due to the previous authorisation by CSD. Flexibility must be allowed in one or two very important issues, at least for a transition period.[78]

Q1.2.5: The Directive 2005/29/EC on unfair commercial practices (hereafter UCPD) ensures the same level of protection to all consumers irrespective of the place of purchase or sale in the EU. As the European Commission has recognised, consumers may be protected from unfair commercial practices also in their dealings with online platforms.[79] Social networks are increasingly becoming platforms where traders can use the 'network effect' (with shares and likes) to their online advertising. The European Commission promises to ensure that the new advertising models remain compliant with the UCPD, especially as regards 'hidden advertising' and product information.[80] In Greece, the UCPD 2005/29/EC has to be distinguished from the 1914 law on unfair competition[81]. In Greece there was such a case with a Greek platform "Airfasttickets" which caused the reaction of many e-travel platforms (pamediakopes.gr, viva.gr, airtickets.gr and travelplanet24.com) accusing the platform as infringing fair competition. Because since May 2014 its constant "aggressive" practice was to sell airtickets at a price, below cost even below taxes contrary to any business logic[82].

Directive 1993/13/EC seems also well adapted to the digital environment reinforced by Directive 2011/83/EU (hereafter CRD). The Greek government proposes to extend the scope of art. 2 of Consumer Protection Law 2251/1994 (which has transposed the Directive) on any contract which has not been individually negotiated between the parties. Thus, a small or very small enterprise which is considered the weaker party when it negotiates a contract with a larger firm, will be able to make use of the rights conferred by the provisions of the new art. and defend itself against a contract containing abusive general terms and conditions of trade.[83]

78 D. Anagnostopoulou, The Withdrawal of Common European Sales Law Proposal and the new European Commission Proposal on certain aspects concerning contracts for the online and other distance sales of goods, in Maren Heidermann, The formation of Commercial Contract, Springer, London 2017.

79 Commission Staff Working Paper on 'Bringing e-commerce benefits to consumers'.

80 See First Report on the application of 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') , COM(2013) 139, Brussels, 14.3.2013, par. . 4.3.8.

81 M.Th. Marinos, The modernization of the law on unfair competition after the introducation of the Directive 2005/29/EC for illicit commercial practices and the judgments of the Supreme Court 1125/2011 and 991/2014, Elliniki Dikaiosyni 2015, p. 321 (in Greek).

82 http://www.tovima.gr/finance/article/?aid=610431.

83 http://www.capital.gr/oikonomia/3220682/upo-anamorfosi-o-n-2251-1994-gia-tin-prostasia-tou-katanaloti.

The Directive 2011/83/EC can be used for digital platforms[84] since it provides that traders can use online platforms to market their products and conclude contracts. In case the provider of the platform does not only share information but acts in the name of or on behalf of the trader, the platform must comply with the Directive.[85] In fact, the use of online platforms for auction purposes is not defined as "public auctions".[86] Online trading platforms providers have the obligation to make sure that information about other traders as content providers is duly displayed.[87]

Q1.2.6: In Greece, it seems there is not any action before national courts on the basis of consumer law against online providers' terms and conditions. No such information was traceable.

Q1.2.7: For the Greek legislator it would be necessary to expand the scope of the rules on Business to Consumers (B2C) to Business to Business (B2B) and Consumers to Consumers (C2C), since in Greece the CSD 1999/44/EC has the broadest scope possible in Greece including sales real property, medicinal equipment and professional machinery, rights, sale of an enterprise as a whole[88] etc. Therefore the rules of the Directive cover not only consumer sales (B2C), but also business sales (B2B) and even peer-to peer (C2C) sales and second-hand products. Regarding B2B transactions Greece is a member state of the Vienna Convention on International Sales of Goods, which is the regulatory model for CSD 1999/44/EC. However some member States have not signed the CISG (UK, Portugal and Malta).

Regarding C2C transactions, the same rules apply since Greece has used its discretion to submit the sale of "second-hand goods", e.g. used cars[89] to the same 2year deadline as new goods (art. 7 par, 1 b of the Directive).[90] According to the 2016 OECD report, the transposition of Directive 1999/44/EC into earlier legislation such as the Civil Code, especially for legal guarantees has the consequence that the relevant provisions apply not only to B2C but also B2B and between consumers ("C2C"), which potentially hampers sales of C2C goods through e-commerce platforms, including second-hand goods, primarily sold through e-commerce platforms[91].Therefore, the OECD is of the opinion that consumers acting as sellers are not able to guarantee the conformity of the product.

1.3. Geo-blocking

84 Transposed in Greece by the Joint Ministerial Decision no KYA Z1-891/30.8.2013.

85 See par. 20 of the Preamble and art. 2 (2) for the Directive. See European Commission, DG Justice Guidance Document concerning Directive 2011/83/EU, June 2014, p. 30-31.

86 European Commission, op.cit. p. 12.

87 European Commission, op.cit. p. 24.

88 Judgment of the Court of Appeals of Athens 3778/2008.

89 See for example Judgment of the Court of Appeal of Pireus no 45/2015.

90 Christianopoulou, The rights of the buyer due to lack of conformity to the contract terms, 2010, p. 32.

91 OECD, op.cit.

Q1.3.1. There is an interlink between the proposed Regulation on Geo-blocking and Regulation 1215/2012 since if the trader is considered "directing activities to another Member State where the consumer has its domicile", any dispute will be dealt by the courts of the member state where the consumer is domiciled, thus creating more costs for the unwilling trader. The criteria for determining whether a trader is « directing activities in a member state » are not clear neither in art. 17 of the Brusssels 1a Regulation 1215/2012 nor in art. 6 of the Rome I Regulation 593/2008 for the applicable law. Some cases are clearly included under this concept, e.g. advertising or offers addressed to consumers of a certain state, or catalogues and emails sent to consumers of that state, or announcing national telephone numbers or evaluations from nationals of that state.[92] Other criteria, e.g. language or currency used from the trader's website, are not usually considered adequate per se to demonstrate the direction of trader's activity, except if they are different from the usual ones used in the trader's state. However, a conditio sine qua non is that the contract is concluded without however having to prove a causal link between the e.g the advertisement and the conclusion of the contract.[93]

In Greece 65% of the Greek online consumers choose Greek websites.[94] Greek consumers use websites that «direct their activities» to Greece like amazon.com, booking.com and use the Greek language accompanied by «index.el.html».

In order to clarify the situation, it would be advisable that the criteria would be more clear so that traders are confident about their obligations and rights especially since geo-blocking will be prohibited. Further assistance in interpretation of the concept could be used in case of traders that belong to a certain system of exclusive or selective distribution by considering «passive sales » as not « directing activities » since the prohibition of passive sales would constitute a serious infringement of competition rules on art. 101 and 102 TFEU.[95]

1.4. Collaborative economy (COM(2016)356)

Q1.4.1: In December 2016, Greece has adopted Law 4446/2016[96] in which it has defined sharing economy («oikonomia tou diamoirasmou») as "any model where digital platforms create an open market for the temporary use of goods or services that are often provided by individuals". The Law has defined also digital platforms as "electronic, bilateral or

92 Nikas N./Sachpekidou E., European Political Procedure, Commentary of the Articles of Regulation Brussels 1a 1215/2012, Sakkoulas Publishers, 2016, p. 296-298, referring inter alia to the judgments of the CJEU C-190/11, Muhlleitner (6.9.2012) and C-218/12, Emrek (17.10.2013) as well as the judgment of the Federal Court of Germany BGH 17.9.2008, IPRax 2009.258, which has also decided that it is not enough that the name e.g. of a laywer exists in a certain webpage, if the webpage is not his and the contract cannot be concluded via that webpage.

93 Nikas N./Sachpekidou E., p. 297 referring to par. 24 of the Preamble of Regulation 1215/2012.

94 See OECD observations referring to the survey of the Laboratory on E-commerce and Business of the Economic University of Pireus.

95 See the analysis of the concepts of active and passive sales, N. Zevgolis, Vertical agreements and Competition, Sakkoulas Publishers, Athens-Thessaloniki 2012, p. 125-128.

96 Official Journal (FEK) A' no 240 dated 22 December 2016.

multilateral markets where two or more user groups communicate via an internet platform to facilitate a transaction between them" (art. 111 par. 1)[97].

In Greece, activities of shared economy exist especially in the tourist sector (e.g. Airbnb and homeaway for renting accommodation through internet or mobile), and the transport sector (e.g. Uber for taxi services, hopinside.com for sharing the same itinerary, Etsy for online market place etc.). Some platforms have been established by Greek companies such as EasyBike.gr (for renting bicycles), StayInAthens.com (accommodation of exchange students in Athens, jamjar.gr (for selling hand manufactured goods)[98] and Beattaxi (taxi services).

In such a situation, the Greek legislator has taken measures in order a) to establish clear boundaries between the *business* activity developed through the exploitation of small-scale tourist accommodation and the *occasional* exploitation by private individuals of real estate they own to increase their income; b) to ensure a minimum level of protection for users and third parties while ensuring the quality of the tourism in Greece; and c) to address the phenomena of "black economy" and tax evasion resulting from the absence of a regulatory framework[99]. This is why the tax authorities in Greece have paid particular attention in cross-checking the platforms and social media in collaboration with the Police Unit for Persecuting E-crime in order to discover tax evaders who post their announcements in digital platforms.[100] The measures taken are:

A.For tourist accommodation (Law 4446/2016 as amended by Laws 4472/2017 and 4487/2017): In the framework of sharing economy the Greek legislation regulates short-term lease *concluded through digital platforms for a specific period of less than one year*. In its definition of such accommodation, the law has included not only apartments and houses, but also any form of accommodation with structural and functional autonomy. However, in 2017 the law was amended in order to also include *rooms inside apartments and houses.*[101]

In order to confront tax evasion and regulate the current sharing economy activities in Greece[102], art. 83-84 of Law 4472/2017[103] have inserted art. 39 A in the Income Tax Code[104]. It clarified the taxation of short-term rental income in the context of the sharing economy as

97 For further information see Galateia Kalouta, Sharing Economy, Digital platforms and national laws, Efarmoges Astikou Dikaiou 2016 p. 679.

98 See http://www.newsbeast.gr/technology/arthro/800973/ta-mesa-enishusis-tou-sharing-economy.

99 Informative note of the Minister of Deveropment, September 28, 2016.

100 Savvaidou K., Challenges for modern tax authorities (in Greek), Union of Greek Legal Scholars E-Themis, 2006, p. 3 at 10.

101 Art. 111 par. 1 case d as amended by Law 4472/2017.

102 See Pomida at https://www.pomida.gr/touristikes_misthoseis.php.

103 Law 4472/2017, published at Official Journal (FEK) A 74 dated 19.5.2017.Before that art. 111 was amended by article 36 of the Law 4465/2017 FEK A 47/4.4.2017.

104 Law 4172/2013, Official Journal (FEK) A 167 dated .2017. See Circulars of the Secretary of the Independent Authority for Public Revenue G. Pitselis, no ΠΟΛ.1069/23.3.2015 and ΠΟΛ 1112/2017.

regular income from immovable property for individuals, taxed by 15% up to 12.000 euros or 35% up from that amount to 35.000 euros[105] provided that the property is *rented furnished* without the provision of any service other than the provision of bed linen. Income received is exempt from VAT[106]. If any other services are provided, this income is taxed as derived from a *business activity (including VAT)*.[107]

Under law 4487/2017 proprietors were allowed to designate a manager for the short-term lease of their accommodation who can be either an individual (the proprietors or one of the proprietors, a lessee or a third party) or a legal person or any other entity. The manager uploads the information on the property in digital platforms and is responsible for the short-term lease[108]. For the moment, real estate brokers seem not to be prohibited in becoming property managers and in exploiting appartments in this way[109].

The new law has also abolished some of the pre-conditions for short-term lease in the context of the sharing economy such as the restriction on the area leased (at least 9 m² with natural ventilation and heating) and on the number of accomodations to be let per person.

These new rules deviate from the usual Greek legislation for tourist accommodation[110] and satisfy the mandatory requests of the Union of Hotel businesses for regulation of the sector[111], since the accommodation market was deregulated[112]. The new Greek legislation imposes the following obligations: a)The obligation of registration of each leased property by the property manager with the "Short Term Real Estate Registry" kept with the Independent Public Revenue Authority of Greece;[113] and b) the obligation that the registration number in the Short Term Residence Register must visibly accompany posting the availability of the

105 Or 45% for the excess of 35.000 euros according to the provisions of art. 39 and par. 4 of art. 40 of Law 4172/2013, as in force.

106 Art. 111 par. 3 of Law 4446/2016.

107 Art. 21 of Law 4172/2013.

108 The owner of the property or the sub-tenant when assigning a third party to the management of his / her real estate for the purpose of short-term lease, has the obligation to submit a Real Estate Lease Information Declaration in which he / she will record the details of the property manager. In the event of failure to submit it, he / she shall be deemed to be the manager of the property (art. 111).

109 See Deutsche Welle for a survey by Suddeutsche Zeitung on Airbnb (a-39999277).

110 For touristic furnished accommodations see art. 1 par. 2 of Law 4276/2014 which must be of 40 m2 at least, as well art. 46 of Law 4179/2013.

111 Chamber of Hotels in Greece, Sharing economy and the position of the hotel sector (2015) at http://www.grhotels.gr/GR/BussinessInfo/News/Lists/List/Attachments/592/Sharing_Economy_%CE%9E%CE%95%CE%95.pdf (in Greek).

112 Indeed, the third Memorandum between Greece and the Lendors (IMF, European Commission and European Central Bank) has abolished law 4276/2014 (FEK A' 155) art. 2 par. 1 and law 2160/1993 (A' 118), art. 7 par. 2. Everybody could rent his house without any control and evading the earned income from tax authorities. See http://www.fortunegreece.com/article/nikiazete-to-spiti-sas-meso-airbnb-erchete-mitroo-ipochreotikis-engrafis.

113 In case of non-submission of Short term Residence Decalration, the manager will pay a fine equal to the double of the price appearing in the digital platform at the day of the control.

property for short-term leasing on the digital platforms, as well as on any other medium. In case of violation, the Independent Public Revenue Authority may impose a penalty of 5000 euros to the property managers, who have to comply with the law within 15 days.
The Independent Public Revenue Authority may request from any digital platform operating in the sharing economy any information necessary for the identification of accommodation managers and property that they hosted. In addition, the Minister of Finance and Tourism and the Minister of Economy and Development have the authorization, by joint decision, to define:
a) the terms of cooperation of the Greek State with the digital platform are defined and b) the geographical areas, where restrictions for reasons related to the protection of housing sector on the short term rent will *not allow*: i) the short-term lease of more than two (2) properties per proprietor; and ii)The rental of each property to exceed ninety (90) days per calendar year and for islands of less than ten thousand (10,000) inhabitants sixty (60) days per calendar year. This rule on maximum duration of short-term lease will not apply in case that the total income of the lessor or the sub-tenant from real estate property does not exceed 12,000 euros during the tax year concerned.
Finally, the Government has announced its intention to impose a tax of 3% per transaction on a digital platform[114], something which seems to be in line with the proposals to be discussed at EU level by December 2017.[115]
B. For transport: Urban transport was highly regulated with rules on taxi vehicles, taxi drivers, taxi licences and tariffs[116]. Taxi drivers are professionals regulated by law and the relation with their customers is not an employment contract.[117] Cases where taxi drivers urged customers who waited for public buses on bus stops to choose them instead or private buses "stole" customers from taxi drivers were designated as illicit practices against public morals[118]. However, in the era of the Memoranda of Greece with the Troika and in particular since 2012, the public transport passenger cars are classified to a) taxis for public use (seats with taximeter) and b) passenger cars for public use – special lease with 6 to 9 seats without taximeter.[119]
In 2011, a Greek digital intermediary platform under the name of Beat (a former Taxibeat) started operating in Greece. It currently employs 8.000 drivers, reaching almost 1 million

114 http://www.fortunegreece.com/article/nikiazete-to-spiti-sas-meso-airbnb-erchete-mitroo-ipochreotikis-engrafis/

115 http://www.fortunegreece.com/article/gallogermaniki-simmachia-enantion-airbnb-google-ke-amazon/, posted at 11.08.2017.

116 See for example Opinion of the Legal Council of State no 266/2016, dated 20 October 2016.

117 Judgment of the Council of State no 2771/2013.

118 See for example judgment of the Supreme Court no 1125/2011, published at Chronika Idiotikou Dikaiou 2012 p. 304 and Armenopoulos 2012, p. 171.

119 Art. 82 of Law 4070/2012, Official Journal A' no 82.

customers. The company has expanded to Peru and Chile and was bought out by Mytaxi (established in Germany and operated by Daimler) in February 2017.
The international digital plaform under the name of Uber was established in Athens in 2014 as UberTAXI and collaborated with licenced taxi drivers conforming with the tariff regulations imposed by the Ministry of Transport. Having to confront two already established opponents of Greek interests (Taxibeat and Taxiplon) Uber has changed its model. Since September 2015, drivers (not taxi drivers) are hired by licensed car rental companies that work with Uber or have a licence for car rental with a driver.

Q1.4.2: On the basis of similar inquiries from other European Competition Authorities, in consultation with the European Commission as well, the Greek Commission for Competition has exempted the agreements of booking.com and expedia.com with their suppliers from free competition rules. These online platforms promised to modify their co-operation agreements with managers of hotels and appartments on a pan-European basis in order to allow greater flexibility when booking and pricing and when communicating with their clients. Therefore, the cooperating hotel businesses operating in Greece are allowed according to the amended agreement of cooperation with the platforms to: a) set different room rates and offer different terms and availability between online travel agents; b) offer lower prices and / or better terms to non-online channels (such as telephone reservations, or customers coming directly to the accommodation reception or reservations within closed user groups), provided that they will not publish or advertise online those prices; and c) make free promotions to all previous guests of their accommodation, even if they have closed their stay through the above-mentioned online companies.[120]
The Competition Commission, after assessing the new modified contracts of these two online travel agency companies with cooperating hotel businesses in Greece, considered that there are currently no grounds for further investigation.[121]
Q1.4.3: In Greece there is no problem with market access requirements. As demonstrated by our answer to Q1.4.1. Service providers in the collaborative economy may easily operate since the Memoranda of Greece with the Troika of lendors and the complying legislation have opened all regulated professions. De-regulation was also the request of the OECD which provided us with the first «toolkit» for opening up the professions. In addition art. 113(3) of Law 4314/2014 allowed, at the request of the Consumer Ombudsman, the consumer's right of access to products and services as an individual right and, in particular, as an expression of the right to economic freedom, the right to free personality development and the right to equality. The confirmation came with the representation of the Independent Authority "Consumer Ombudsman" at the National Commission on Human Rights.

120 http://www.tanea.gr/news/economy/article/5277088/egkrithhkan-oi-oroi-synergasias-twn-booking-kai-expedia-me-ksenodoxeia/.

121 Commission of Competition, Bulletin of Press, 22 September 2015.

In September 2017 the Greek Ministry of Infrastructure, Transport and Networks has revealed its intention to submit a draft law to regulate the sector. Beat accused the Ministry that the Draft Law on Urban Transport will transform Beat from an intermediary platform to a public transport company, and will force drivers into a 3year exclusive employment as the company claims for the citizens to sign a petition in its favour. In an interview, the Minister revealed that the sector of intermediaries including digital platforms must be regulated in collaboration with the European Commission, in order to request from foreign companies to have a seat and legal representative in Greece, supervision of their tax and social insurance coordinates, supervision of their transactions, tax payments, driver and vehicle controls etc.[122]

Q1.4.4: There is no information on legal challenges for consumer protection neither in Greek case law nor on the Consumer Ombudsman site. However, in Greece, sales law is the same for everybody and it applies also in sales C2C even for accomodation services (see Q1.2.). This means all have the rights and obligations (legal guarantee for 2 years) of the Consumer Sales Directive and its remedies. Greece has not opted out for used products, so the same rules apply on sales of used products between C2C.

Q1.4.5: In a peer-to-peer provision of services the provider of the underlying service qualifies as a trader according to Greek law under the following conditions : First, under the Consumer Sales Directive, the concept of 'seller' also covers a trader acting as an intermediary on behalf of a private individual if the trader has not duly informed the consumer of the fact that the owner of the goods sold is a private individual[123].

Second, in Greece, the law makes the differentiation between renting activity and business activity.

Q1.4.6: The TaxiBeat platform uses an online selection and evaluation system for each professional driver using his/her photo with his/her consent. The Ministry of Transport has recently insinuated that this practice may be an infringement of data protection of the professional drivers that collaborate with the platform and may lead to an evaluation based on racist motives or motives based on sex discrimination. The Minister promised that a relevant question will be submitted to the Independent Authority for Data Protection in Greece.

2. **Digital media**

Q.2.1: The Presidential Decree on Audiovisual Media Services No. 109 of 2010[124], in Article 2 (1) (b) literally transposes the definition of "programme" as set in Article 1 (1) (b) of AVMSD: "a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of

122 Interview of the Minister Mr. Spirtzis to journalist Nikos Evangelatos on September 30, 2017, posted by the Ministry of Transport at http://www.yme.gr/?getwhat=7&tid=21&aid=5692&id=0.

123 Case C-149/15, Sabrina Wathelet v Garage Bietheres & Fils SPRL, 9 November 2016.

124 Available in English in https://www.epra.org/articles/media-legislation#GREECE

which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama".

In Greece publishers of newspapers in printed form or online are subject to a specific regulation. Apart from that, neither the National Regulating Authority (National Council of Radio and Television) nor the Courts have dealt yet with the question, whether a broader definition of programme, covering the delivery of online audiovisual material through digital platforms, is to be applied. Furthermore the legal questions arising from the on line delivery of audiovisual content are open and require a specific regulation[125].

Q.2.2: Although Internet platforms may not be subject to the same rules as those followed by traditional broadcasters their serious impact on users justifies their falling under a certain number of duties. This extend of responsibility may not be seen as quite far-reaching, as long as it focuses only on content harmful to minors and hate speech. To this perspective Article 28a of the AVMSD Amendment Proposal requires from video-sharing platform providers to take appropriate measures against content harmful to minors and hate speech. Paragraph 2 of Article 28a of the AVMSD Amendment Proposal is expressly defining the "appropriate measures" and therefore is not primarily clashing with Articles 14 and 15 of the ECD.

A sector-specific rule is imposed to all ISS providers localized in Greece concerning on line gambling. According to Article 51 sec. 5 of Law No 4002/2011 on gambling services, ISS providers shall deny access to on line gambling providers not subject to a priori permission through the competent National Regulatory Authority (Hellenic Gaming Commission)[126].

Q.2.3: No dispute regarding providers established in another Member State or outside the EU has been brought to the National Regulatory Authority (National Council of Radio and Television).

Q.2.4: Ensuring the independence of NRA combined with the collaboration among European NRAs would facilitate the creation of a single market for audiovisual media services. Nevertheless the regulation regime governing traditional broadcasting services presents particularities. In Greece, electing the members of the competent NRA (National Council of Radio and Television) presupposes an agreement of the unanimity or the vast majority (4/5) of a special parliamentary body (Conference of Presidents) were all political parties of the Parliament are represented (Greek Constitution, Article 101A)[127]. This means that the NRA is

125Kousouni-Pantazopoulou A., Hybrid-TV and its Regulation (in greek), Dikaio Meson Enimerosis & Epikoinonias 2014, p. 500.

126 On the question of the compliance of this rule with the principal of net neutrality, see Kanellos L., Net neutrality: personal freedoms at stake?, (in greek), Nomiko Vima 2014, p. 816.

127 This particularity (vast majority of 4/5 of deputies) has caused serious delays and problems to the efficiency of NRA, see Vlahopoulos S., Comment to the Decision No 95/2017 of the Council of State, Theoria & Praxi Dioikitikou Dikaiou 2017, p. 133. See also below under Q.3.4.

not really independent and setting further independence requirements could clash with constitutional provisions.

In the years of economic crisis the Greek media market is going through a turbulent period of time starting with the sudden closure of the television services of the Greek public service broadcaster ERT[128]. In 2016 with a very controversial Ministerial Decision (No. 4297 of 1/3/2016) the Minister of State deprived the National Regulatory Authority (National Council of Radio and Television) from some of its competences[129], transferring them to the government (Secretariat General of Information and Communication)[130]. This transfer of competences came as a result to the impossibility of formatting a new Regulatory Body for a long period of time. The Supreme administrative Court with its decision No. 95/2017 of 13/1/2017 (Council of State, Plenary Session) annulled the Ministerial Decision stating that only the National Regulatory Authority (National Council of Radio and Television) is competent for the licensing of broadcasting services (Article 15 para. 2 Greek Constitution) and any transfer of these competences is a direct clash to the Constitution.

Q.2.5: One of the most contentious issues in Greek broadcasting law has been the role of public service broadcasters[131]. The debate has initially focused on the lawfulness of their funding system based on a fee paid by all electricity consumers[132]. As in other countries the main issue on the independence of public service media remains active. Greek public broadcaster has always been accused of being a State broadcaster, tightly connected to the government.

To this perspective AVMS Directive could further proceed to the harmonization of legal measures guaranteeing editorial and journalistic independence. Apart from that it remains to

128 IRIS – Yearbook 2013, Volume 1, The television market in Greece available in http://www.obs.coe.int/en. See also below under Q.2.5.

129 These competences referred to the authority to license high definition, nationwide, free on air, DTT providers. See Economou A., Greece:Council of State decision on digital television licences, IRIS 2017-3:1/1, available in http://merlin.obs.coe.int/iris/2017/3/article19.en.html.

130 European Regulators Group for Audiovisual Media Services (ERGA), 8th April 2016, Statement of the European Regulators Group for Audiovisual Media Services (ERGA) on alarming developments for the independent and effective functioning of media regulators in Europe, available in https://ec.europa.eu/digital-single-market/en/news/erga-statement-alarming-developments-independent-and-effective-functioning-media-regulators.

131 On the most extreme act by the Greek government of closing down the public service broadcaster (ERT S.A.) in 2013, see Commissioner for Human Rights, "Public service broadcasting under threat in Europe", 2/5/2017, available in https://www.coe.int/en/web/commissioner/-/public-service-broadcasting-under-threat-in-europe. Economou A., Greece: Crisis over the Public Service Broadcaster, IRIS 2013-6/24, available in http://merlin.obs.coe.int/iris/2013/6/article24.en.html.

132 Giannopoulos K., Comments to the decision No 2909/1988 of the Council of State (in Greek), Bulletin of Tax Law 1988, p. 1013. Mintzira K., The public broadcaster's fee (in Greek), Nomiko Vima 1995, p. 673. Theocharopoulos K., On the lawfulness of the public broadcaster's fee (in Greek), Bulletin of Tax Law 1991, p. 1651.

Member States' initiative to implement all principles and standards contained in the recommendations of the Council of Europe on the independence and pluralism of media.

Q.2.6: The Greek NRA (Hellenic Data Protection Authority – HDPA) has issued a range of Opinions and Guidelines referring to online targeted advertising and behavioral advertising[133]. No other initiatives have been referring targeted advertising on television. Targeted advertising presupposes collection of personal information about the user (e.g. gender, age, preferences). Although we don't see a need for an immediate EU-wide harmonization the effects of targeted advertising on privacy issues should be regularly reviewed and analyzed.

Q.2.7: Greek Copyright Law (No. 2121 of 1993 as lastly amended with Law No 4481 of 2017, Article 54 para. 5) provides for a mandatory collective administration in case of retransmission through cable, whereas the relevant right can only be exercised by a collective administration organization. Similar rules have not yet been applied to online transmissions of broadcasting organizations, where the respective rights may be subject to collective administration on a contractual basis[134].

Q.2.8: One of the main issues posed by cross-border portability is connected with the clearing of rights on a EU-wide scale. This problem aims to be solved by the New Portability Regulation[135] which simulates the temporary place of staying with the place of residence of the subscriber (Regulation 2017/1128 Article 3 sec. 1). In order not to turn to an infringement of legal interests of rightholders involved, cross-border portability requires a thorough verification of the subscriber's residence, so as to prove that it is a Member State resident and can enjoy the benefits of cross-border portability. This verification by the provider can be made by the conclusion of the contract[136] (which in any case is already occurring) and can be based on a minimum documentation proving its residence.

3. Digital infrastructures

Q3.1: In April 2012 the Telecommunication Law No 4070/2012 ("Regulations of Electronic Communications, Transport, Public Works and other provisions", OGG Issue 82/A/10-4-2012) transposed European Directives 2009/140/EC and 2009/136/EC of the European Parliament and Council into Greek law. Article 3 paragraph 1 section γ, paragraph 2 section ζ introduced a rule on net neutrality, which repeats the rule of Article 1 paragraph 3a of the Framework Directive[137]

133 Opinions and Guidelines of the HDPA available in http://www.dpa.gr/portal/.

134 With webcasting by a broadcasting organization dealt the Civil Court of Athens (First Instance) in the cases No 7865/2002, 9332/2002, 8084/2009.

135 Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14/6/2017 on cross-border portability of online content services in the internal market (OJ of 30/6/2017, L 168/1).

136 So Regulation (EU) 2017/1128 Article 5 sec. 1.

For the scope of net neutrality set in Article 3 paragraph 1 section γ of Law 4070/2012, objective, transparent, non discriminatory and proportionate regulatory measures shall apply, mainly through the respect of fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law when Measures shall be taken regarding end-users access' to, or use of, services and applications through electronic communications networks.

Any of these measures (regarding end-users' access to, or use of, services and applications through electronic communications networks) liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process (Article 3 paragraph 2 section ζ subsection ζα of Law 4070/2012)[138].

These measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. In any case the right to effective and timely judicial review shall be guaranteed to the person affected (Article 3 paragraph 2 section ζ subsection ζβ of Law 4070/2012).

It is obvious that the net neutrality principle has rather the character of a general principle and abstract scope with no further enumeration of specific rights for internet users and obligations for internet providers and national regulatory authorities.

Zero – rating as one of the commercial practices mentioned in Article 3(2) of the Regulation 2015/2120[139] is not prohibited as long as it does not limit the exercise of end-users' rights laid down in Article 3(1)[140]. As long as zero rating is not applied for access to certain applications

137 Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive") (OJ L 108, 24.4.2002, p. 33), as amended by Article 1 paragraph 1 section b of the Directive 2009/140/EC.

138 It is questionable whether the restrictions posed to service providers in relation to provide access to internet gambling services by Law No 4002/2011 (Article 51 sec. 5) comply with the principle of net neutrality, Kanellos L., Net neutrality: personal freedoms at stake?, (in greek), Nomiko Vima 2014, p. 816. See also above under Q.2.2.

139 Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25/11/2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union

(application – agnostic offers) it could be considered as an acceptable commercial practice[141]. Zero rating practices *may create economic incentives to use an application instead of competing ones and may lead to circumstances where end-users' choice is materially reduced in practice*[142]. Furthermore it is being emphasized that *zero rating may be restricting for end users' free choice and privacy and may be harmful for the development of a competitive digital economy*[143].

In Greece there is no specific legal regulation or other act issued by the competent NRA (Hellenic Telecommunications & Post Commission) specifically handling with zero – rating practices. According to the general rules of competition law applying, companies with a dominant position may not adopt practices which reduce competition by forcing other companies to remain out of the market (Competition Law No 3959/2011 Article 2 sec. 2).

Q.3.2: The goal for a further harmonization of telecommunication networks and services should resolve the problem of law and practice fragmentations between Member States. Perhaps a strengthening of the role of NRAs towards a consistent application of the rules could assist to this direction. Also privacy issues and end users' rights should be taken into account.

Apart from the general obligations and measures harmonizing Greek Law to the four telecommunication directives (framework Directive, authorization directive, access directive and universal service directive) no further special broadband measures have been adopted.

Q.3.3: Legal issues have arisen from the spectrum management, particularly from the lawfulness of imposing restrictions to the spectrum user's rights to be granted. As a general rule, the number of spectrum's users rights granted may not be restricted unless it is necessary for the efficient use of spectrum (Telecommunication Law No 4070/2012, Article 23 sec. 1). The tasks and responsibilities connected with the procedure followed for an eventual spectrum's users' rights restriction are being allocated between the competent Minister and the NRA (Hellenic Telecommunications & Post Commission), whereas the law specifies the extent of tasks and competences awarded to each one of these two[144].

140 See BEREC, Guidelines on the Implementation by National Regulators of European Net Neutrality Rules, August 2016, p.10.

141 BEREC, op. cit. No 40-43

142 NRAs when assessing such commercial practices should take into account the spirit of the Regulation 2015/2120, Recital 7 which requires intervention against agreements or commercial practices which, by reason of their scale, lead to situations where end-users' choice is materially reduced in practice. To this end, the assessment of agreements and commercial practices should, inter alia, take into account the respective market positions of those providers of internet access services, and of the providers of content, applications and services, that are involved. National regulatory and other competent authorities should be required, as part of their monitoring and enforcement function, to intervene when agreements or commercial practices would result in the undermining of the essence of the end-users' rights.

143 https://creativecommons.ellak.gr/2016/07/15/3-imeres-apomenoun-zitiste-na-prostatefti-i-oudeterotita-tou-diadiktiou/

144 Based on a study conducted by the European University Institute in Florence the Greek government decided to proceed to a public tender for licenses of digital television of national coverage and in high definition

Furthermore the NRA (Hellenic Telecommunications & Post Commission) is the only competent for setting the starting price in a public auction[145].

Q.3.4: The formation and functioning of NRAs are either regulated directly in the Constitution[146] or based on a legislative rule[147] mostly in conformity to European regulations. In case of NRAs which formation is foreseen in the Constitution, their members are elected with specific procedure which requires the unanimity or the vast majority (4/5) of a special parliamentary body (Conference of Presidents) were all political parties of the Parliament are represented (Greek Constitution, Article 101A)[148]. Due to political reasons the lack of the necessary vast majority makes the replacement of old members and the formation of a new Regulatory Body quite problematic or even impossible for a long period of time[149].

This was the case of the NRA regulating the broadcasting market (National Council of Radio and Television) which in 2016 with Ministerial Decision No. 4297 of 1/3/2016 was partially deprived from its competences. The Ministerial Decision has been challenged and annulled by the Supreme Administrative Court[150].

The problem remaining is that the State is not ready to totally entrust NRAs and to accept their competence in regulatory areas of high interest.

4. Data in the digital economy

Q4.1: In Greece there is a specific Ministry for Digital Policy, Telecommunications and Media. The Ministry[151] includes the General Secretariat of Digital Policy consisting of: a) The Directorate of Strategic Planning, Standards and Evaluation (with the Unit of Digital Strategy on Big Data, cloud computing and Digital Platforms, b) The Directorate for Works of Public

standards reducing the number of the available licenses to four, although the existing private television stations with national coverage are eight. For more details, see Economou A., Greece: Application of law on licensing of digital television under controversy, IRIS 2016-5:1/20, available in http://merlin.obs.coe.int/iris/2016/5/article20.en.html.

145 Kondylis B., Competences on the fixation of starting prices in invitations to tender concerning spectrum user rights, Dikaio Meson Enimerosis & Epikoinonias 2016, p. 25.

146 Hellenic Data Protection Authority (Constitution, Article 9A), National Council of Radio and Television (Constitution, Article 15 sec. 2), Hellenic Authority for Communication Security and Privacy (Constitution, Article 19 sec. 2), Supreme Council for Civil Personnel Selection (Constitution, Article 103 sec. 7).

147 Hellenic Telecommunications & Post Commission, Hellenic Capital Market Commission, Regulatory Authority for Energy.

148 Economou A., Greece: Application of law on licensing of digital television under controversy, IRIS 2016-5:1/20, available in http://merlin.obs.coe.int/iris/2016/5/article20.en.html. See also above under Q.2.4..

149 Antonopoulos A., Questions of functioning and competence of NRAs (in greek), Theoria & Praxi Dioikitikou Dikaiou 2016, p. 16.

150 For more details on this legal challenge see above under Q.2.6.

151 According to the Presidential Decree no 82/2017published in the Official Journal (FEK) no A' 117 dated 10 August 2017.

Sector and c) The Directorate for Cybersecurity: The latter comprises the Division for Coordination and Domain Names of the State which "collaborates with the relevant Ministries and the Independent and Regulatory Authorities for the direct incorporation of the General Data Protection Regulation 2016/679"[152]. The Ministry has launched a common framework for the National Digital Policy 2016-2021, in collaboration with organisations, like the Organisation of Open Technologies founded in Greece in 2008, and comprised of 30 Universities and Research centres in Greece.

B) In June 2016 the Ministry of Justice has established a Law Committee for the transposition of Directive 2016/680/EU and the examination of eventual legislative measures to be taken for the correct implementation of Regulation (EU) 679/2016[153]. The Committee consists of an IT Law professor (Ms L. Mitrou), a Public Prosecutor, Representatives of the Police and the Ministry of Justice, a lawyer and the Head of Auditors of the Independent Authority for Data Protection.

C) The Data Protection Authority staff and experts have participated in many conferences and seminars in order to raise public awareness in the public and private sector. So have done other associations[154].

Q4.2: How are businesses in your country adapting to the new requirements of the GDPR such as those related to consent, impact assessments, privacy by design and by default?

The private sector has launched many seminars on training the personnel on the Data Protection Officer tasks[155], such as taking the necessary safety measures and designing policies for data protection, to proceed to Privacy Impact Assessment, to design products and services taking into account privacy by default or privacy by design, to proceed to data breach notification within 72 hours, to implement an Incident Response Plan, and to award compensation of clients whose data have been infringed[156]. Awareness events are also organized in the pharmaceutical sector[157], the advertising sector etc.[158] In addition, there are new insurance packages to protect companies from cybersecurity threats[159].

152 See article 15 of the Presidential decree.

153 Ministerial Decision 43519, published at FEK B no 1913 dated 27 Ιουνίου 2016, p. 21427.

154 See for example G. Dellis, For an effective public protection of data: the «miraculous new world» of the Regulation (EU) 679/2016, published at Journal of Administrative Law 2017, p. 2.

155 http://www.dpoacademy.gr/el/.

156 See http://www.cyberinsurancequote.gr/news/to-proto-programma-gia-data-protection-officers-stin-ellada-dimioyrgithike-apo-tin-dpo-academy-kai-tin-nomiki-vivliothiki/.

157 See "Pharma Transformation - Compliance in a Digital Era", http://www.eefam.gr/%CE%86%CF%81%CE%B8%CF%81%CE%B1/newsid510/83.

158 See http://www.edee.gr/default.asp?pid=19&la=1&artid=587

159 Cyber & Privacy Insurance Quote, available at http://www.cyberinsurancequote.gr/.

Q.4.3: In Greece a debate is developed in relation to Internet of Things (IoT) and especially the issues arising privacy and data protection[160]. The competent National Regulatory Authority (Hellenic Data Protection Authority – HDPA) has denied the use of wearable location tracking devices designated for children[161]. HDPA has particularly focused on the danger for the equilibrated development of children's personality: children may be convinced from their early youth that being watched by cameras and other smart devices for their own safety is a "normal thing". The use of location tracking devices may be used to children only for health reasons. It is for health treatment reasons that the HDPA has issued permissions[162] to various communities to use smart devices which are equipped with GSM and GPRS systems and are processing health data of the persons concerned. These smart devices are allowed to be used for social and health services offered from the communities to aged and handicapped people with their prior consent.

Q4.4: The Greek courts have ruled that photos or information posted on e.g. facebook, twitter or blogs without the consent of the subject constitute an illegal data file processing under the Directive 95/46/EC and the Greek law 2472/1997. For example:
a) The acts of uploading and posting photographs of two people by one of them *without the consent* of the other on websites (such as "Facebook") constitute two separate and distinct forms of illegal automated processing, in particular the "registration" and "dissemination" of personal data of the individuals to which the photograph relates, according to the definitions provided by art. 2(d) of the Greek law on data protection 2472/1997. The Court ordered the offender who posted the photographs in order to ridicule the other individuals to take herself down the photographs from Facebook. [163] Information uploaded on a blog *without the consent* of the subject constitutes a data file processed[164]. In its Decision 17/2016,[165] the Independent Data Protection Aufhority has ruled that although there is an exemption for domestic use of data in social networks, the mayor's website with more than 1000 contacts could not be exempted. The existence of a large number of contacts and the use of the website as a means of communicating with the citizens *goes beyond the exemption for domestic use*, making the mayor a controller having all the obligations laid down in art. 7 of Law 2472/1997 on Data Protection in Greece. Thus the Mayor cannot reveal personal data of a third-party (disability pension) without his / her consent. This illegal posting had to be erased by the Mayor in 5 days.

160 Pantazopoulou-Koutnatzi, Internet of Things, Dikaio Meson Enimerosis & Epikoinonias 2014, p. 346.

161 HDPA Decision 112/2012, available in www.dpa.gr.

162 HDPA Permissions 1252/2013, 1316/2014 and 1328/2014, available in www.dpa.gr.

163 Judgment of One Member Tribunal of Thessaloniki no 1024/2015, published at Elliniki Dikaiosyni 2015, p. 1456.

164 Judgment of the One Member Court of Appeals of Thessaloniki 1960/2014 published at the «Law for Mass Media» 2015 p. 487.

165 Published at "Law for Mass Media" 2016 p. 313.

b) Information uploaded on the facebook on the individual's own initiative does not constitute a data file and is not covered by data protection. The general terms for the facebook platform make it clear that once an information or photograph is on the facebook platform *this is not a data file*[166].
c) A digital platform for social networking like «twitter» is a place where an «offence of personality via the press» may be committed by an individual who must be punished (e.g. pecuniary compensation paid by the offender to the victim).[167]
d) On the extraterritorial effect of the Case Google v. Spain C 131/12: The Greek courts have respected the «extension» of international jurisdiction provided by the general terms of Facebook which appoint Ireland as the state for suing Facebook[168]. The Greek courts cannot decide on an application of provisional measures on data protection (e.g. when the users were last active) if the provisional order cannot be executed in Greece since the general terms of the contract have lawfully extended the international jurisidiction to Ireland.[169] The Greek Court thus did not apply the «main activity doctrine».[170]
2. The Independent Data Protection Authority of Greece has issued three Decisions on the «right to be forgotten». The Authority seems to be in favour of the argument that article 17 of the Regulation concerns the right to erasure and not the right to be forgotten. In a number of cases brought before the Authority that were against Google, it recognized, under certain conditions, the right to erasure from search engine results (delisting), but not from the source of the information.
a) Decision 82/2016: A former CEO of the Hellenic Defense Industry submitted seven requests to Google Inc. for the delisting from eighteen links because they adversely impacted his reputation and personality. Some links contained private personal information in relation to *criminal proceedings* against him and others containing *inaccurate information in relation to his portrayed membership* in a certain organization. Google Inc. accepted his request for delisting the links that referred to the CEO's alleged membership, something that was irrelevant to any misuse of public funds by the CEO or any other public aspect relating to his position, but rejected his request for delisting information on criminal proceedings, arguing that they contained information related to his status as a prominent public figure which the public had the right to know. The Greek Authority affirmed that he was indeed a prominent

166 Judgment of the Court of Appeals of Athens no 175/2014, published at «Armenopoulos» 2014 p. 1740, and «Law of Mass Media» 2014 p. 379.

167 Judgment of the Three member Tribunal of Athens, no 1767/2015.

168 Judgment of the One Member Tribunal of Athens, no 10053/2013, Armenopoulos 2013 p. 2421, with observations of A. Anthimos. Also published in Epitheorisi politikis dikonomias 2014 p. 503.

169 Art. 23 and 31 of the Regulation (EC) 44/2001 (Brussels I) and CJEU Case C-391/95, Van Uden, 17.11.1998.

170 However in the judgment of the Three Member Tribunal of Athens no 457/2016 (not provisional measures), Google was ordered to pay a compensation of 100.000 euros because of the «offense of personality» of a known businessman because of its omission to delete the copies of the files/webpages that included an offensive posting of an unknown blogger. This case is also mentioned in Q.1.1.

public figure and that the public had the right to be aware of the information related to his role as CEO. The Authority invoked the fact that *this information was published after public discussions in Parliament and review by relevant public authorities had taken place.*

It is worth to note that the aforementioned delinking occurred in both google.com and google.gr search engines but only for individuals using those search engines from Greece. The delinking, thus, did not apply to users that were outside Greece (e.g. the USA where the claimant now permanently resided).[171]

b) Decision 83/2016: An obstetrician requested the deletion of a specific link of the blog «troktiko» in Google's search engine, which was the only link that referenced his conviction to six years in prison (with parole) and suspension of his medical license for a year on charges related to his illegal facilitation of adoption of babies for his own profit when searching for his name. The doctor argued that this was sensitive personal information, that the sentence referred to the Court of first instance and was thus inaccurate, as it was greatly reduced later by the Court of Appeals (second degree), and that the blog itself was inactive with no administrator, thus depriving him of the possibility to request removal of the information. Google Inc. rejected his claim, arguing that his occupation as a doctor placed him in the public sphere and that the information was not inaccurate, as he had been convicted at both first and second degree.

The Authority observed that the claimant (doctor), although not a public figure at first look, could be considered to belong *within the broader public sphere as a member of a regulated profession* under the criteria established by the Working Party on the Protection of Individuals with regard to the Processing of Personal Data (former article 29) and now European Data Protection Board under article 94 of the Regulation (EU) 2016/679. However, the Authority ruled that the information contained in the blog referred to the decision of the Court of first instance, rendered inaccurate by the fact that there had now been a newer decision by the higher Court of Appeals and notwithstanding the fact that he had been convicted in both courts. In addition, the fact that there was no administrator to take down the page considerably impaired the ability of the claimant to protect his interests, adversely impacting his private life. Therefore, the Authority ruled that Google's denial was not properly legally founded in accordance with the evaluation criteria established by the European Data Protection Board, and that Google, as the Data Processor, should immediately *delink the blog's information from its search engine*. Therefore the Greek Data Protection Authority makes a broad interpretation of the legal concept of public figure and includes also members of a regulated profession when acting as professionals.[172]

c) Decision 84/2016: In this case, the claimant (a woman) requested the erasure of links that connect here name to websites of pornographic content, arguing that this content was completely irrelevant with her person and was aimed at harming her reputation and defame

171 See Panagopoulou-Koutnatzi Fereniki, The evolution of the right to forget (or forget to forget), in Greek, in Efimerida Dioikitikou Dikaiou, 2016, p. 714-722.

172 http://lawandtech.eu/2014/11/04/right-to-be-forgotten/

her. Google initially denied to delink the above information, arguing that the websites were clearly not related to the claimant. The claimant brought the case before the Authority, and the Authority requested that Google re-examine the case and better justify its denial. Upon re-examination, Google eventually satisfied the request of the claimant, erasing the above links from the search engine. However, the claimant submitted supplementary documentation arguing that, despite the delinking, an unknown person continued to link her name with website of that kind, for which she had submitted another request to Google (without bringing forth relevant proof to the Authority), and, later, additional documentation that a new link had appeared for which she had not sent a request to Google yet. The Authority stipulated that the same process as the original complaint should be followed in similar cases and links, and in the case where the claimant had not contacted Google, it dismissed her complaint as not following proper administrative procedure (she should have first sent her claim to Google before contacting the Authority).

d) Minutes of Plenary Meeting of the Authority on 28 June 2016: In its Plenary Session, the Authority dismissed the claim of a man requesting the removal of a link from Google's search engine with the argument that it defamed his honor and personality. This claim cannot be evaluated by the Authority, and needs to be judged by the competent Courts. The Authority informed the claimant that the arguments involved in his claim cannot be examined by the Authority, and that he has the right to submit a new claim (to Google and, in case it is denied, to the Authority) on new grounds (e.g. violation of data protection legislation) other than what was included in his current claim.[173]

173 F. Panagopoulou-Koutnatzi, The evoludion fo the right to be forgotten (about forgetting the forgotten?) in Greek.