

Contracts for the supply of digital content

2015/0287(COD) - 27/11/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection, together with the Committee on Legal Affairs, adopted the report prepared by co-rapporteurs Evelyne GEBHARDT (S&D, DE) and Axel VOSS (EPP, DE) on the proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content.

The parliamentary committees recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Digital content and services: Members believe that the Directive should cover **not only digital content** as defined in [Directive 2011/83/EU](#) of the European Parliament and of the Council on consumer rights but also services, such as cloud storage or file hosting service, social media, instant messaging services, video or audio sharing websites or platform.

It is therefore proposed to create a **separate category for 'digital services'** to clearly distinguish digital content from digital services.

This Directive shall also cover embedded digital content or **embedded digital services** (meaning digital content or a digital service pre-installed in a good). As regards goods with embedded digital content or embedded digital services, the trader shall be liable under this Directive to the consumer for meeting his obligations only in respect of the embedded digital content or digital service.

Information requirements: before the consumer is bound by a contract for the provision of digital content or a digital service, the trader shall give the consumer the information required under the Directive 2011/83/EU in a clear and comprehensible form.

Conformity with the contract: Members proposed assessing conformity through both **objective and subjective criteria** laid down in the Directive. In addition to complying with any conformity requirements included in the contract, the digital content shall be fit for the purposes for which digital content of the same description would normally be used and shall possess the qualities, including its **functionality, interoperability and other performance features such as accessibility, continuity and security**, which consumers may reasonably expect and in line with any **public statement made by or on behalf of the trader**, the producer or his representative, particularly in advertising or on labelling. Digital content or digital services shall be supplied in conformity with the most recent version of the digital content or digital service which was available at the time of conclusion of the contract.

During a reasonable period of time, the trader shall provide the consumer with updates, including security updates, in order to keep the digital content or digital service in conformity with the contract.

Any **commercial guarantee** shall be binding on the guarantor under the conditions laid down in the pre-contractual information provided by the trader, advertising available at the time of or before the conclusion of the contract; and the guarantee statement which shall be made available in writing or in another durable medium and drafted in plain, intelligible language.

Burden of proof: the burden of proving that a lack of conformity existed shall be on the trader, when a lack of conformity with the contract becomes apparent during the following periods:

- within **two years** of the date of supply of the digital content or digital service;

- within **one year** of the date of delivery of the embedded digital content or digital service;
- within the **duration of the contract**, where the contract provides for continuous supply of digital content or digital service or delivery of embedded digital content or digital service over a period of time.

Methods of compensation: where the trader has failed to supply the digital content or digital service, the consumer shall call upon the trader to supply the digital content or digital service. If the trader fails to supply the digital content or digital service without undue delay, or within an additional period of time as expressly agreed to by the parties, the consumer shall be entitled to **terminate the contract**. In the case of a lack of conformity with the contract, the consumer shall be entitled to have the digital content or digital service brought into conformity, or to receive a proportionate reduction in the price, or to terminate the contract.

In the case of a lack of security, the consumer shall be entitled to have the digital content or digital service brought into conformity with the contract free of charge.

Terminate: the termination of the contract shall become effective **14 days** after the notification, or on a later date indicated by the consumer. In the event of termination of the contract the trader shall **reimburse to the consumer all sums paid under the contract**.

The trader shall make every effort that he can be expected to make to refrain from the use of any user-generated content to the extent that it does not constitute personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader.

Use of data as a counter performance and data protection issues: Members believe that in no case should the Directive give the impression that it encourages a practice of monetising personal data.

As regards the provision of digital content and digital services supplied not in exchange for a price but when personal data is provided, this Directive shall apply to contracts where the **trader requests and the consumer provides personal data**, such as for example, a name and email address or photos, or the IP address.

However, this Directive shall not apply to situations where the supplier collects data that are exclusively used by the supplier in order for the digital content to function, or for the sole purpose of meeting legal requirements.

In general, this Directive shall comply with the general rules of the new **General Data Protection Regulation** ([2016/679](#)) in the supply of safe and secure digital content.

Modification of the digital content: as a rule, the supplier may not alter the functionality, interoperability and other main performance features of the digital content or digital service to the extent that those alternations adversely affect access to or use of the digital service by the consumer.

However, the report maintains exceptions to the rule and includes additional guarantees in the interest of the consumer.

The consumer shall be entitled to terminate the contract if the modification negatively impacts the access to or the use of the digital content or digital service by the consumer, unless such negative impact is only minor.