

# Contracts for the supply of digital content

2015/0287(COD) - 26/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 598 votes to 34 with 26 abstentions a legislative resolution 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 position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

## *Objective and scope*

The directive would aim to ensure a high level of consumer protection by establishing common rules on certain requirements concerning contracts concluded between professionals and consumers for the provision of digital content or services, in particular rules on:

- the conformity of digital content or a digital service with the contract,
- the remedies in the event of lack of conformity or lack of supply and the procedures for exercising these remedies, and
- the modification of digital content or a digital service.

The directive would apply to any contract by which the trader provides or undertakes to provide digital content or a digital service to the consumer and the consumer pays or undertakes to pay a price.

It would cover, among other things, computer programs, applications, video files, audio files, music files, digital games, electronic books or other electronic publications, as well as digital services that enable the creation, processing, storage or access to data in digital form, including on-demand software, such as video and audio sharing and other forms of file hosting, word processing or games offered in the cloud computing environment and social media.

## *Conformity*

In order to comply with the contract, the digital content or service should, where applicable, include

- correspond to the description, quantity and quality and present the functionality, compatibility, interoperability and other characteristics provided for in the contract;
- be adapted to the specific purpose sought by the consumer, which the consumer has brought to the attention of the trader at the latest at the time of conclusion of the contract and which the trader has accepted;
- be provided with all accessories, instructions, including installation instructions, and customer support as provided for in the contract; and
- be updated as provided for in the contract;

- have the qualities and performance characteristics, in particular with regard to functionality, compatibility, accessibility, continuity and security, that are normal for digital content or services of the same type and that the consumer can reasonably expect.

### ***Liability of the trader***

The trader should be responsible for any failure to provide the digital content or service. The amended text provides that the supplier's period of responsibility in the event of lack of conformity may not be less than two years. Where the contract provides for continuous supply over a period of time, the trader shall be liable for a lack of conformity that occurs or becomes apparent within the period of time during which the digital content or digital service is to be supplied under the contract.

The burden of proof with regard to whether the supplied digital content or digital service was in conformity at the time of supply shall be on the trader for a lack of conformity which becomes apparent within a period of one year from the time when the digital content or digital service was supplied.

### ***Remedies for lack of conformity***

In the case of lack of conformity, the consumer would be entitled to have the digital content or service brought into conformity, to benefit from a proportional reduction in the price, or to terminate the contract. He would have the right to obtain compliance of digital content, unless this is impossible or would impose disproportionate costs on the trader.

In the event of termination of the contract, the trader should reimburse the consumer for all sums received under the contract. Any reimbursement to which the trader is liable to the consumer as a result of a price reduction or termination of the contract should in any event be made within 14 days of the day on which the trader is informed of the consumer's decision to exercise his right to a price reduction or termination of the contract. There should be no charge to the consumer for the refund.

### ***Modification of digital content or service***

For a subscription to digital content for a given period of time, the buyer could modify such content only if the contract so permits, and if the consumer is given reasonable advance notice and is given the opportunity to cancel the contract within at least 30 days of notification.