

# Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Directive		2015/0287(COD)	
Contracts for the supply of digital content See also <a href="#">2015/0288(COD)</a>		Procedure completed	
Subject 2.40 Free movement of services, freedom to provide 3.30.06 Information and communication technologies, digital technologies 3.30.25 International information networks and society, internet 4.60.06 Consumers' economic and legal interests 4.60.08 Safety of products and services, product liability			
Legislative priorities <a href="#">Joint Declaration 2018-19</a>			
Key players			
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ITRE</b> Industry, Research and Energy	The committee decided not to give an opinion.	
	<b>CULT</b> Culture and Education	The committee decided not to give an opinion.	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		16/03/2016
		<b>S&amp;D</b> <a href="#">LAURISTIN Marju</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Agriculture and Fisheries</a>	<a href="#">3686</a>	15/04/2019
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3661</a>	07/12/2018
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3622</a>	05/06/2018
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3546</a>	08/06/2017
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3528</a>	28/03/2017
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3508</a>	09/12/2016
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3473</a>	10/06/2016
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3455</a>	10/03/2016
European Commission	Commission DG	Commissioner	
European Economic and Social Committee	<a href="#">Internal Market, Industry, Entrepreneurship and SMEs</a>	ANSIP Andrus	

Key events			
21/01/2016	Committee referral announced in Parliament, 1st reading		
10/03/2016	Debate in Council	<a href="#">3455</a>	
28/04/2016	Referral to joint committee announced in Parliament		

10/06/2016	Debate in Council	<a href="#">3473</a>	
09/12/2016	Debate in Council	<a href="#">3508</a>	
28/03/2017	Debate in Council	<a href="#">3528</a>	
21/11/2017	Vote in committee, 1st reading		
21/11/2017	Committee decision to open interinstitutional negotiations with report adopted in committee		
27/11/2017	Committee report tabled for plenary, 1st reading	<a href="#">A8-0375/2017</a>	Summary
29/11/2017	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
11/12/2017	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
05/06/2018	Debate in Council	<a href="#">3622</a>	
20/02/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	<a href="#">PE637.352 GEDA/A/(2019)003707</a>	
26/03/2019	Results of vote in Parliament		
26/03/2019	Debate in Parliament		
26/03/2019	Decision by Parliament, 1st reading	<a href="#">T8-0232/2019</a>	Summary
15/04/2019	Act adopted by Council after Parliament's 1st reading		
20/05/2019	Final act signed		
20/05/2019	End of procedure in Parliament		
22/05/2019	Final act published in Official Journal		

### Technical information

Procedure reference	2015/0287(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	See also <a href="#">2015/0288(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 114; Rules of Procedure EP 58
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a>
Stage reached in procedure	Procedure completed
Committee dossier	CJ24/8/06371

### Documentation gateway

Legislative proposal		<a href="#">COM(2015)0634</a>	09/12/2015	EC	Summary
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Document attached to the procedure		SWD(2015)0274	10/12/2015	EC	
Document attached to the procedure		SWD(2015)0275	10/12/2015	EC	
Reasoned opinion	FR_SENATE	PE580.756	14/04/2016	NP	
Economic and Social Committee: opinion, report		<a href="#">CES6292/2015</a>	27/04/2016	ESC	
Committee draft report		PE592.444	07/11/2016	EP	
Committee opinion	LIBE	<a href="#">PE582.370</a>	21/11/2016	EP	
Document attached to the procedure		<a href="#">N8-0045/2017</a> <a href="#">OJ C 200 23.06.2017, p. 0010</a>	14/03/2017	EDPS	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A8-0375/2017</a>	27/11/2017	EP	Summary
Coreper letter confirming interinstitutional agreement		<a href="#">GEDA/A/(2019)003707</a>	06/02/2019	CSL	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T8-0232/2019</a>	26/03/2019	EP	Summary
Draft final act		<a href="#">00026/2019/LEX</a>	22/05/2019	CSL	
Commission response to text adopted in plenary		<a href="#">SP(2019)437</a>	30/07/2019	EC	

#### Additional information

Research document	<a href="#">Briefing</a>
Research document	<a href="#">Briefing</a>

#### Final act

[Directive 2019/770](#)  
[OJ L 136 22.05.2019, p. 0001](#) Summary

## Contracts for the supply of digital content

**PURPOSE:** to contribute to faster growth of the digital single market, by eliminating the key barriers related to contract law hindering cross-border trade in the digital environment.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

**BACKGROUND:** the growth potential of e-commerce has not yet been fully exploited. Differences in national consumer contract law rules and a lack of clear contract law rules are among the key obstacles that hinder the development of the supply of digital content.

Only 18% of consumers who used the Internet for private purposes in 2014 purchased online from another EU country while 55% did so domestically. Consumers suffer detriment due to lack of clear contractual rights for faulty digital content. Different national contract law rules have created one-off costs for retailers selling to consumers of approximately EUR 4 billion. These costs mostly affect micro and small- and medium-sized enterprises (SMEs).

The [Digital Single Market Strategy](#) adopted by the Commission on 6 May 2015 announced a legislative initiative on harmonised rules for the supply of digital content and online sales of goods.

This initiative is composed of (i) a proposal on certain aspects concerning contracts for the supply of digital content, and (ii) [a proposal](#) on certain aspects concerning contracts for the online and other distance sales of goods.

By eliminating the key barriers related to contract law hindering cross-border trade, the rules put forward in the proposals will reduce the uncertainty faced by businesses and consumers that is due to the complexity of the legal framework and the costs incurred by businesses resulting from differences in contract law between Member States.

Drawing on the experience acquired during the negotiations for a [Regulation on a Common European Sales Law](#), they no longer follow the approach of an optional regime and a comprehensive set of rules. Instead, the proposals contain a targeted and focused set of fully harmonised rules.

**IMPACT ASSESSMENT:** the impact assessment examined 5 policy alternatives, and concluded that fully harmonised rules for digital content and goods would best meet the policy objectives. This option will reduce contract law-related costs for traders and facilitate cross-border e-commerce. Businesses will be able to rely largely on their own law when selling cross-border, as the main rules, which are relevant for cross-border trade, will be the same in all Member States.

**CONTENT:** the proposed directive aims to fully harmonise a set of key rules concerning contracts for the supply of digital content. It includes rules on: (i) conformity of the digital content, (ii) remedies available to consumers in cases of lack of conformity of digital content with the contract, as well as (iii) certain aspects concerning the right to terminate a long term contract and the modification of the digital content.

**Definitions:** some definitions stem from the current *acquis*, such as the definition of a consumer, while others reflect the specificity of digital content. The definition of digital content is deliberately broad and encompasses all types of digital content, including downloaded or web-streamed movies, cloud storage, social media or visual modelling files for 3D printing, in order to be future-proof and to avoid distortions of competition and to create a level playing field.

**Scope:** the proposal covers only business-to-consumer transactions, and the supply of all types of digital content. It also covers digital content supplied not only for a monetary payment but also in exchange for (personal and other) data provided by consumers, except where the data have been collected for the sole purpose of meeting legal requirements.

Excluded from the scope of the proposal are services performed with a significant element of human intervention or contracts governing specific sectorial services such as healthcare, gambling or financial services. In case of conflict between the Directive and another EU act, the other EU act takes precedence.

**Full harmonisation:** the proposal precludes Member States from adopting or maintaining laws remaining below or going beyond the requirements of the Directive.

**Supply of digital content:** the digital content must be supplied to the consumer or to a third party which operates a physical or virtual facility allowing processing of, access to or transmission of digital content to the final consumer and with which the consumer is in a contractual relation. As a default rule, the digital content should be supplied instantly unless the parties agree otherwise.

**Conformity of digital content with contract:** the digital content must primarily conform to what was promised in the contract. In the absence of such explicit benchmarks, the conformity of the digital content must be assessed according to an objective criterion, i.e. it must be fit for the purpose for which digital content of the same description would normally be used.

The proposal also stipulates that:

- when the digital content is supplied over a period of time, it must be in conformity with the contract throughout the duration of the contract;
- the version of digital content supplied to the consumer must also be the most recent version available at the time of the conclusion of contract;
- a lack of conformity of the digital content resulting from an incorrect integration into the consumer's hardware and software should be equal to a lack of conformity of the digital content itself if the reasons for the incorrect integration are in the sphere of the supplier;
- the digital content must be cleared from any third-party rights, including those based on intellectual property.

**Burden of proof:** the burden of proof for the absence of lack of conformity is imposed on the supplier, unless the consumer's digital environment is not compatible with the digital content. This reversal of the burden of proof is not limited in time.

**Liability of the supplier:** the proposal sets out the cases of liability of the supplier towards the consumer, namely where the digital content is not in conformity with the contract or the supplier failed to supply the digital content altogether. Given that digital content may be supplied over a period of time, the supplier should also be liable for any lack of conformity that occurs during that period.

**Termination, damages, and right of redress:** the proposal:

- gives the right to the consumer to terminate the contract immediately when the supplier failed to supply the digital content altogether. The supplier shall reimburse the price or, if the counter-performance consisted of data, refrain from using these data and any other information which the consumer has provided in exchange for the digital content;
- lists the remedies available to the consumer in case of any failure to supply or lack of conformity of the digital content: (i) in a first step, the consumer shall be entitled to have the digital content brought to conformity within a reasonable time, without significant inconvenience and without incurring any costs; (ii) in a second step, the consumer shall be entitled to have the price reduced or the contract terminated if the lack of conformity relates to main performance features;
- establishes a right to damages restricted to cases where damage has been done to the digital content and hardware of the consumer. However, Member States should lay down the detailed conditions for the exercise of the right to damages;
- lists the conditions under which the supplier can modify the contract for the supply of digital content as regards main performance features;
- establishes the conditions under which the consumer has a right to terminate contracts concluded for an indeterminate duration or for duration exceeding 12 months and thereby is able to switch provider;
- provides the supplier with a right to redress in case of an act or omission by a person in earlier links of the chain of transactions that triggered the supplier's liability for lack of conformity or a failure to supply towards the consumer.

Lastly, the proposal requires Member States to ensure that adequate and effective means exist to ensure compliance with this Directive.

## Contracts for the supply of digital content

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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 Parliaments 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.

## Contracts for the supply of digital content

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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.

## Contracts for the supply of digital content

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**PURPOSE:** to introduce new rules to make it easier and safer for consumers and businesses to buy and sell digital content across borders.

**LEGISLATIVE ACT:** Directive (EU) 2019/770 of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content and digital services.

**CONTENT:** the Directive establishes common rules on certain requirements concerning contracts concluded between professionals and consumers for the provision of digital content or services, including rules on:

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

- the modification of digital content or a digital service.

This Digital Content Directive is part of a package of measures which also includes a [Directive](#) on contracts for the sale of goods (Directive on the sale of goods). The objective is to ensure a high level of protection and legal certainty for European consumers, in particular when making cross-border purchases, and to facilitate EU-wide sales operations by businesses, in particular small and medium-sized enterprises (SMEs).

Scope The Directive introduces a high level of protection for consumers who pay for a service, but also for those who provide data in exchange for that service.

It covers, inter alia, computer programmes, applications, video files, audio files, music files, digital games, e-books or other e-publications, as well as digital services that allow the creation of, processing of, accessing or storage of data in digital form, including software-as-a-service, such as video and audio sharing and other file hosting, word processing or games offered in the cloud computing environment and social media.

#### Liability of the trader

Under the new rules, the trader shall be liable for any failure to provide the digital content or service. 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 a continuous supply for a certain period of time, the trader shall be liable for any lack of conformity that occurs during the period during which the digital content or service is provided under the contract.

The burden of proof shall be on the trader in the case of a lack of conformity which becomes apparent within a period of one year from the date of supply of the digital content. This rule shall not apply where the trader demonstrates that the consumer's digital environment is not compatible with the technical requirements of the digital content or service and the trader has clearly informed the consumer of these requirements before the conclusion of the contract.

#### Remedies for lack of conformity

In the case of lack of conformity, the consumer shall 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 shall 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 shall 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 shall 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 shall 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.

#### Review

The Commission shall report on the application of the Directive by 12 June 2024 at the latest. The report shall assess, inter alia, the need to harmonise the rules applicable to contracts for the provision of digital content or digital services other than those covered by the Directive, including the provision in exchange for advertising.

ENTRY INTO FORCE: 11.6.2019.

TRANSPOSITION: no later than 1.7.2021.

APPLICATION: from 1.7.2022.