

April 2016

Contract rules for online purchase of digital content and tangible goods – Part of Digital Single Market –

Main instruments:

Directive on Consumers' Rights [2011/83](#) and Consumer Sales and Guarantees Directive [1999/44](#)

This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

EP committee responsible at time of adoption of the EU legislation:

- Committee on Internal Market and Consumer Protection (IMCO) (Directive 2011/83) and Committee on the Environment, Public Health and Food Safety (ENVI) (Directive 1999/44)

Date of adoption of original legislation in plenary:

[23 June 2011](#) (Directive [2011/83](#)) and [19 April 1999](#) (Directive [1999/44](#))

Deadline for transposition of legislation:

- Member States (MS) had to adopt and publish, by 13 December 2013, the laws necessary to comply with Directive 2011/83. These measures had to be applied from 13 June 2014 (Article 28, Directive 2011/83).
- 1 January 2002 (Article 11, Directive 1999/44)

Planned date for review of legislation:

- By 13 December 2016, the Commission must submit a report on the application of Directive 2011/83 to the European Parliament and the Council (Article 30, Directive 2011/83).
- The Commission must, not later than 7 July 2006, review the application of Directive 1999/44 and submit a report to the European Parliament and the Council (Article 12, Directive 1999/44).

Timeline for new amending legislation:

The European Commission, in its [Commission Work Programme 2016](#), noted that it will present its proposals on digital contract rights in December 2015. On 9 December 2015, the Commission submitted two proposals for new directives: the [first](#) on certain aspects concerning contracts for the supply of digital content and the [second](#) on certain aspects concerning contracts for online and other distance sales of goods.

1. Background

The Digital Single Market is one of the [priorities](#) of the European Commission. In May 2015, the Commission adopted the [Digital Single Market Strategy for Europe](#)¹ which had defined the Digital Single Market as a market 'in which the free movement of goods, persons, services and capital is ensured and where

¹ COM(2015) 192 final.

individuals and businesses can access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection'.²

The present system of consumer protection in the EU is, however, not fully harmonised. Currently, 28 different national consumer protection and contract laws co-exist. The situation for e-commerce is identical. Today, full harmonisation of consumer and contract laws exists only in some areas (e.g. the right of withdrawal). In other areas, such as remedies, current EU legislation only provides for minimum harmonisation. Thus, national rules can differ considerably. This can create barriers influencing cross-border e-commerce and customer confidence in cross-border e-commerce. With the creation of a single digital market, the Commission intended to break down the existing barriers and fragmentation of the digital market in the EU.³ According to the [Political Guidelines for the European Commission](#) (July 2014), the creation of a connected digital single market enables generation of additional growth, which will be reflected in the creation of new jobs and a vibrant knowledge-based society.⁴ In the [Digital Single Market Strategy for Europe](#), the Commission announced that it will submit legislative proposals 'covering harmonised EU rules for online purchases of digital content' and 'allowing traders to rely on their national laws based on a focused set of key mandatory EU contractual rights for domestic and cross-border online sales of tangible goods'.⁵ The EU digital single market is built on three pillars:

- [better online access to digital goods and services](#),
- [an environment where digital networks and services can prosper](#), and
- [digital as a driver for growth](#).

A part of the first pillar ([better online access to digital goods and services](#)) is described as 'easier e-commerce', by which the [Commission](#) intends to facilitate cross-border e-commerce and thus both encourage cross-border e-commerce, and increase customer confidence in cross-border e-commerce.

Presently, no dedicated legal instrument exists that would exclusively cover online purchase contracts. The rules applicable to these contracts are spread across several legal acts that address various issues (e.g. the right to information, the right to withdraw from a contract, trader liability, or trader guarantees). Furthermore, some of the existing pieces of EU legislation were adopted before the rise of online purchases and thus they do not necessarily take the most recent developments in this area into account. The existence of different legal acts and numerous national implementation provisions, led to a considerable fragmentation of the regulatory regime. The Commission tried to tackle this situation in 2011 by submitting a [proposal](#) for a *Regulation on a Common European Sales Law*⁶ which should have brought various aspects of EU contract law together in one legal act. With this proposal, the Commission intended to create an optional legal regime, which would exist in parallel to Member State (MS) contract law. In this regard, the European Parliament adopted a [resolution](#)⁷ that recommended considerable changes to the original Commission proposal. However, the proposal did not get the necessary backing in Council and the Commission decided to withdraw it in 2014.⁸

Main legal documents – digital contracts law

- Directive [2011/83](#) on consumers' rights
- Directive [1999/44](#) on consumer sales and guarantees
- Directive [2000/31](#) on electrical commerce
- Directive [93/13](#) on unfair terms in customer contracts

² Ibid., p. 3.

³ Ibid.

⁴ Political Guidelines for the European Commission (July 2014), p. 10.

⁵ COM(2015) 192 final, p. 5.

⁶ 2011/0284 (COD).

⁷ P7_TA-PROV(2014)0159.

⁸ Commission Work Programme 2015, [Annex II](#), item 60. The Commission argued that it withdrew the proposal in order to submit a new proposal that would 'fully unleash the potential of e-commerce in the Digital Single Market'.

The main rules applicable to digital contract law are the following directives:

- **Directive on Consumers' Rights [2011/83](#)**

Directive 2011/83 applies to 'all' contracts between traders and consumers, including online contracts. Article 4 of the directive introduced full harmonisation in the field of consumers' rights, as it forbids MS to 'maintain or introduce, in their national law, provisions diverging from those laid down in the directive, including more or less stringent provisions to ensure a different level of consumer protection, unless provided otherwise'. The directive fully harmonised various rules, most notably:

- *the pre-contractual information requirements*⁹ for both distance and other than distance contracts.¹⁰ These provisions require that the consumer is provided with information about the product, its price, the duration of a contract and the functionality of digital content, and
- *withdrawal from a distance contract*.¹¹ The directive established a list of rights and obligations of traders and customers connected with withdrawal from contracts, including the omission of information on the right of withdrawal (Article 10), effects of withdrawal (Article 12), and exceptions to the right of withdrawal (Article 16). One of the exceptions to the right of withdrawal is audio or video recordings or computer software which was unsealed after delivery (Article 16(i)). With regard to distance contracts, the customer has the right to withdraw from a contract, without providing any reason, within a period of 14 days.

- **Directive [1999/44](#) on certain aspects of the sale of consumer goods and associated guarantees**

Directive 1999/44¹² partially harmonised the contract law on legal guarantees and commercial guarantees. It provided a minimum protection, as it had allowed the MS to adopt or maintain more stringent provisions to ensure a higher level of consumer protection.¹³ This directive also applies to 'all' forms of commerce, including digital commerce. Directive 1999/44 provided for a hierarchy of the remedies available to customers and for optional guarantees. In case of product non-conformity with the contract, the customers can, firstly, request that the product is brought into conformity free of charge, i.e. they can require either that a product is repaired or replaced.¹⁴ Secondly, if the conditions set by the directive are met,¹⁵ the consumer may require an appropriate reduction in price or have the contract rescinded. The customer can pursue these remedies within a period of two years from the date of delivery of the goods.¹⁶ Apart from these legal guarantees on non-conformity, the trader may, based on the directive, provide the customer with optional (additional) guarantees which do not, in any way, affect the remedies provided by the directive for non-conformity.¹⁷

- **Directive [2000/31](#) on electronic commerce**

According to Article 1, Directive 2000/31 contributes to the proper functioning of the internal market by ensuring the free movement of information society services between the MS. It provides for a minimum

⁹ See, Article 5 Directive 2011/183.

¹⁰ A distance contract is any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. Article 2 (7) Directive 2011/83.

¹¹ See, Articles 6 - 16, Directive 2011/83.

¹² Based on the Explanatory Memorandum to the proposal for a Directive on certain aspects concerning contracts for online and other distance sales of goods, the Commission is currently carrying out a fitness check on this directive. The data from the fitness check analysis on the application of Directive 1999/44 are likely to be available in the second half of 2016.

¹³ Article 8 (2) Directive 1999/44.

¹⁴ Article 3 (3) Directive 1999/44.

¹⁵ For example, if the consumer is entitled to neither repair nor replacement, or if the seller has not completed the remedy within a reasonable time, or if the seller has not completed the remedy without significant inconvenience to the consumer, Article 3 (5), Directive 1999/44.

¹⁶ Article 5 Directive 1999/44.

¹⁷ Article 6 (5) Directive 1999/44.

harmonisation of rules on electronic commerce.¹⁸ The directive contains a special provision on contracts concluded by electronic means (e-contracts). Based on this provision,¹⁹ the MS must ensure that their legal system allows contracts to be concluded by electronic means. There should be no obstacles to the use of electronic contracts. Furthermore, the results of these contracts should not be deprived of legal effectiveness and validity. The MS can, however, decide that some contracts cannot be concluded electronically – such as contracts used to create or transfer rights in real estate or contracts in family law.

- **Directive [93/13](#) on unfair terms in customer contracts**

This directive intended to harmonise the rules dealing with unfair terms in contracts concluded between sellers and consumers (B2C contracts). Its goal was to protect customers from unfair terms and conditions that might be included in such contracts. The directive, for example, required that the terms were drafted in a plain, intelligible language and that they were in compliance with a general requirement of good faith. It is applicable to 'all' B2C contracts and does not include any special standards for digital contracts.²⁰

- **The [Proposal](#) for a directive on certain aspects concerning contracts for the supply of digital content (Proposal I) and the [Proposal](#) for a directive on certain aspects concerning contracts for the online and other distance sales of goods (Proposal II) (2015)**

As early as the 2015 [Digital Single Market Strategy for Europe](#), the Commission announced a legislative initiative to harmonise rules for the supply of digital content and online sales of goods. In December 2015 the Commission submitted the proposals to Parliament and to the Council. Their general objective was to contribute to faster growth for the Digital Single Market, to benefit both the customers and traders (businesses).²¹ The proposals also intended to eliminate key contract law barriers that hinder cross-border e-commerce. Both proposals, in their explanatory memoranda, pointed to a lack of trust in cross-border online purchases and to various barriers limiting the willingness of businesses to sell online cross-border. In comparison with the abovementioned 2011 proposal for a Regulation on a Common European Sales Law, the present proposals contain a 'targeted, fully harmonised set of rules'.²² The proposed rules should enable traders to sell digital content and goods online throughout the EU, whilst applying the same set of contract rules. The proposals aim to facilitate cross-border e-commerce by enhancing legal certainty and avoiding unnecessary costs for traders.

Proposal I:

- fully harmonises the rules for supplying digital content.
- introduces a right to modification of long term contracts.
- introduces a right of termination of long term contracts.
- applies only to B2C transactions.
- applies to all digital content.

Proposal II:

- fully harmonises the rules for online purchases of goods.
- introduces a right to terminate contract for minor defects.
- extends the period for the transfer of the burden of proof to two years.
- applies only to B2C transactions.
- does not apply to goods incorporating a digital content.

Proposal I introduces harmonised rules protecting customers against digital content which is not in conformity with the contract,²³ the right to modify long term contracts, and the right to terminate long

¹⁸ Article 1 (3) Directive 2000/31.

¹⁹ Article 9 (1) Directive 2000/31.

²⁰ These directives are not the only pieces of the EU legislation that are applicable to contract law or the protection of customers. See also, for example, Regulation [1215/2012](#) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or Regulation [593/2008](#) on the law applicable to contractual obligations (Rome I). However, the proposals intend to change only the abovementioned directives and not the regulations dealing with the jurisdiction of national courts. An overview of the EU legislation in the digital market is also provided in the EP [Study](#): The Cost of Non-Europe in the Single Market. Part III - Digital Single Market (2014).

²¹ Proposal I, p. 2 and Proposal II, p. 2.

²² Proposal II, p. 2.

²³ It seems that so far only The Netherlands and the United Kingdom have adopted special legislation on digital content. Proposal I, p. 3.

term contracts. The goal of Proposal I is to fully harmonise a set of key rules concerning contracts for the supply of digital content. It is only applicable to B2C transactions and covers the supply of all types of digital content.²⁴ The proposal also discusses cases of liability, where suppliers provided digital content that was not in conformity with the contract or failed to supply this content. Furthermore, the proposal gives consumers the right to terminate the contract immediately should suppliers fail to supply the digital content. At the same time the proposal lists remedies available to the consumer: (a) to have the digital content brought into conformity and (b) to have the price reduced or the contract terminated. Customers were also given rights to damages. Finally, the proposal introduced the right to terminate contracts concluded for an indeterminate duration or for a duration exceeding 12 months, to allow a consumer to switch provider.

Proposal II provides for full harmonisation of conformity criteria for goods sold online. It introduces a hierarchy of the remedies available to customers and legal guarantees. Customers are given the right to terminate the contract in case of minor defects. Another important change is an extension of the period for the transfer of the burden of proof to two years. The proposal is only applicable to B2C transactions and does not apply to goods incorporating digital content, such as DVDs or CDs. Its goal is to fully harmonise the requirements on purchase of goods online, and it sets objective conformity criteria for these goods. Furthermore, the proposal specifies the requirements that have to be met to engage the seller's liability for non-performance of the contract. Similarly as for Proposal I, Proposal II also provides for a list of remedies in the case of non-conformity to the contract. Customers are entitled (a) to repair or replacement of the goods, and to a price reduction, or termination of the contract where lack of conformity is not or cannot be remedied through repair or replacement. The proposal also clarifies that, generally, the consumer may choose between repair and replacement of a product. The two year time limit for remedies to remain available is maintained.

2. EU-level reports, evaluations and studies

- **The European Commission [Communication](#) on Digital contracts for Europe – Unleashing the potential of e-commerce (2015)**

The Communication²⁵ described e-commerce as a main driver for economic growth. It noted a growth of the value of retail e-commerce in 2014 when compared with 2013, as well as considerable growth in business turnover from retail e-commerce.²⁶ At the same time, it showed that the share of e-commerce in Europe is significantly lower than in the USA.²⁷ Furthermore, the Commission argued that it is necessary to deal with obstacles impeding the development of cross-border e-commerce in the EU, such as different contract rules across the EU, emerging legal fragmentation, and lack of legal clarity and associated costs. One of the ways to deal with the obstacles would be to amend the existing legislation regulating e-commerce. The Commission clarifies that Proposal I and Proposal II can contribute to a growth in the Digital Single Market by:

- reducing costs resulting from differences in contract law. This would prevent the emerging legal fragmentation and the same rules will be applied in all MS.
- creating legal certainty for businesses, as presently businesses face a complicated and diverse legal framework.
- helping consumers to gain from online cross-border shopping in the EU. The proposals will provide customers with a fully harmonised set of clear rules applicable to online purchases throughout the EU.

²⁴ Proposal I., p. 11.

²⁵ COM(2015) 633 final.

²⁶ According to the Commission, the value of retail e-commerce in 2014 reached a total of €370 billion and retail e-commerce as a share of total retail turnover has risen by 85% from 2009 to 2014. Ibid., p. 2.

²⁷ The Commission claims that in 2014, the share of e-commerce in total retail was 7.2% in the EU compared to 11.6% in the USA. Ibid.

- reducing the damages suffered by consumers with respect to defective digital content. Clear rules may help customers to decrease the damages they may currently suffer because of a lack of rules.
- overall, balancing the interests of consumers and businesses. The Commission in this context claims that the adoption of the proposals will create conditions for overall economic gains.

According to the Commission, the proposals offer an ambitious but realistic way forward to remove contract law related barriers and thus help to unleash e-commerce potential in the EU.²⁸

• [Impact assessment accompanying the proposals \(2015\)](#)

The impact assessment²⁹ broadly described the problems connected with cross-border online purchases and the need for the EU to act. The main problems with the present contract law system linked with online purchases are (1) differences in the national consumer contract law rules that hinder traders from selling digital content and goods online cross-border and (2) a consumer lack of confidence of consumers when buying digital content and goods online cross-border.³⁰

The impact assessment noted that, based on its evidence, contract law rules do not seem to be a major hindrance for cross-border B2B (business-to-business) online transactions. Because of that, the focus of the EU initiative should remain with B2C (business-to-customer) relations. Objectives that should be achieved by the initiative include contributing to faster growth of the Digital Single Market, for the benefit of both, consumers and businesses as well as reducing business costs resulting from differences in contract law or reducing the uncertainty faced by businesses due to the complex legal framework.³¹

• [Inception impact assessment on proposal on contract rules for online purchase of digital content and tangible goods \(2015\)](#)

In this inception impact assessment the European Commission noted that its intention is to create a coherent legal framework for both online and offline transactions. According to the Commission, consumers and traders should be able to rely on the same rules when buying online and offline. It argued that the proposals intend to provide simple and modern rules for online purchases of digital content and tangible goods, while increasing consumer trust and creating a business-friendly environment for traders selling abroad. The inception impact assessment claimed that there are two main issues that need to be addressed (a) limited interest from businesses to conduct cross-border online trade and (b) lack of consumer confidence in buying goods and digital content online and cross-border.

The [Better Regulation Guidelines](#) (SWD (2015) 111 final) describe **inception impact assessment** as a roadmap for initiatives subject to an impact assessment. It sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option.

The Commission highlighted the existence of different national mandatory consumer contract rules on defective products which discourage businesses from conducting cross-border online trade. Furthermore, businesses might be also discouraged by a complex legal situation for digital content products. These two issues may create legal uncertainty and additional costs. On the other hand, customers are not always certain about their rights when buying products online from another Member State, and might be deterred from these purchases by a complex legal situation. The impact assessment noted that the proposals would lead to better deals for consumers and substantially lower costs for businesses while increasing legal certainty and decreasing costs linked with gaps and uncertainties in the existing legal framework. This

²⁸ Ibid., p. 6.

²⁹ SWD(2015) 274; For additional information on the impact assessment, please see Briefing by the EPRS Ex-Ante Impact Assessment Unit: [Initial Appraisal of a European Commission Impact Assessment: Contracts for the supply of digital content and for the online and other distance sales of goods](#).

³⁰ Ibid., p. 10 - 16.

³¹ Ibid., p. 22.

should subsequently build consumer trust in the Digital Single Market and encourage businesses to sell online across borders.

The Commission proposed several options to approach these issues, including no EU policy change, a fully harmonised set of key mandatory rules, a directive harmonising only digital content products, a directive harmonising only online sales of tangible goods, or a voluntary stakeholders' model contract.³²

- **The European Commission [Communication](#) on a coherent framework for building trust in the Digital Single Market for e-commerce and online services (2012)³³**

The European Commission noted that the development of e-commerce and online services is advantageous to European consumers, and has an exceptional and social potential. It underlined the challenge posed by the internet to traditional economic activities and their administrative rules, and to a need to adapt to the newest developments. In this regard, the Commission argued that the share of the internet economy in European GDP is marginal and less advanced than in the US or Asia-Pacific and that it tends to stay within national borders. Because of that, the Commission set five priorities, namely to:

- develop the legal and cross-border offer of online products and services,
- improve operator information and consumer protection,
- establish reliable and efficient payment and delivery systems,
- combat abuse and resolve disputes more effectively and
- deploy high-speed networks and advanced technological solutions.³⁴

With regard to improving operator information and consumer protection, the Commission intended to:

- improve training for online traders in their obligations and the opportunities offered by the Digital Single Market, in particular through the Enterprise Europe Network,
- develop codes of good conduct, good practice guides and guidelines giving consumers access to transparent and reliable information and
- adopt a [European Consumer Agenda](#), putting forward a strategy and initiatives to place consumers at the heart of the Single Market.³⁵

- **Executive Agency for Health and Consumers [Study](#) on the functioning of e-commerce and internet marketing and selling techniques in the retail of goods (2011)**

This study³⁶ focused on the impact of e-commerce on consumer welfare, on its potential and on the main obstacles and corresponding remedies. In this context, the study assessed consumer shopping behaviour, factors affecting internet retail experiences and measures that can increase customer confidence. According to the study, customer issues regarding cross-border online purchases are similar to national online purchases. It found that consumers are mostly concerned about the delivery of products and about the possibility to return or replace a faulty product. Furthermore, they are concerned about the misuse of payment card details and personal data. To increase customer confidence, the study showed that it is necessary to increase measures ensuring the protection of payment data. It also pointed to a need to ensure that the same consumer rights are valid across the EU, as well as the protection of personal data and measures against fraudulent online sellers. The study also noted that some customers would be willing to solve a dispute with an online seller through an online dispute resolution body.

³² Ibid., p. 4.

³³ COM(2011) 942.

³⁴ Ibid., p. 5 - 16.

³⁵ Ibid., p. 11.

³⁶ The study was commissioned by the Executive Agency for Health and Consumers, acting on behalf of the European Commission, and carried out by Civic Consulting in 2010.

The study proposed nine recommendations to improve the functioning of e-commerce in the EU. In the context of digital contract rights, the study recommended, among other measures, to:

- address the fragmentation of consumer protection rules and other regulatory barriers at EU level,
- encourage retailers to offer goods cross-border to consumers in other MS,
- address other obstacles for cross-border e-commerce, including confidence in payment systems,
- promote faster and improved complaint handling and customer service, and
- create effective redress mechanisms for cross-border e-commerce.³⁷

• **The European Commission [Communication](#) on Cross-Border Business to Consumer e-Commerce in the EU (2009)**³⁸

The Commission pointed to a fragmented online internal market while enumerating the various customer benefits of an integrated online internal market, including the likelihood of finding cheaper offers and access to products unavailable domestically. To tackle the regulatory barriers to cross-border e-commerce, the Commission recommends various steps, for example, to:

- address the fragmentation of consumer protection rules,
- ensure effective enforcement of the Directive 2006/123 on services in the internal market,
- increase the efficiency of cross-border enforcement,
- promote alternative dispute resolution schemes and the cross-border small claims procedure,
- simplify the VAT reporting obligations of distance sellers and
- improve payment systems and tackle technical barriers.³⁹

• **The European Commission [Communication](#) on the implementation of Directive 1999/44 (2007)**

The communication⁴⁰ noted that there were several problems in the transposition of Directive 1999/44. According to this implementation report, there were significant divergences between national laws as a result of the use of the minimum harmonisation and the various regulatory options provided for by the directive.⁴¹ The report did not specify how these divergences could affect the proper functioning of the internal market. However, the Commission noted that diverging regimes were a potential problem for the internal market.

3. European Parliament position/MEP questions

• **European Parliament [resolution](#) of 16 September 2015 on the Commission Work Programme 2016**⁴²

Parliament welcomed the adoption of the Digital Single Market Strategy for Europe by the European Commission. It called for its swift implementation, aiming to establish a digital economy where businesses could operate across borders and the rights of consumers were protected. Parliament expressed its belief that consumer protection and fundamental rights protection are vital for customer trust in the Digital Single Market. Furthermore, Parliament welcomed the European Commission decision to withdraw the proposal for a Common European Sales Law. In this context Parliament stressed that the new Commission proposals should be based on its position to the Common European Sales Law proposal adopted at [first reading](#).⁴³ In its first reading position, Parliament, among others, had required that the regulation allowed traders to rely on a common set of rules and to use the same contract rules in cross-border transactions. Parliament had also proposed that the Common European Sales Law regulation applied only to distance

³⁷ Ibid., p. 7.

³⁸ COM(2009) 557 final.

³⁹ Ibid., p. 5 - 11.

⁴⁰ COM(2007) 210 final.

⁴¹ Ibid., p. 10.

⁴² P8_TA-PROV(2015)0323.

⁴³ During the first reading Parliament adopted a legislative resolution (P7_TA-PROV(2014)0159), including more than 250 amendments to the original Commission proposal.

contracts, including online contracts.⁴⁴ In the present resolution, Parliament furthermore recognised the Commission's commitment to focus on three pillars of the Digital Single Market, including better access for customers and businesses. At the same time, Parliament noted that the Commission could use more targeted measures to build greater consumer confidence in purchasing digital goods and services across the EU and to increase data protection.

At the time of drafting of this briefing, the European Commission has not yet reacted to this resolution with a follow-up document.

- **European Parliament [resolution](#) of 27 November 2014 on supporting consumer rights in the digital single market⁴⁵**

Parliament noted the need to address the obstacles for consumers and businesses regarding e-commerce, including online services, access to digital content and fraud prevention. It called for a thorough enforcement of the EU competition rules, which will have a positive impact on the growth of the internal market, consumer access and choice and competitiveness. Furthermore, Parliament highlighted the importance of providing consumers with the same protection online as they enjoy in their traditional markets.

In its [follow-up](#)⁴⁶ of February 2015, the Commission agreed that it is necessary to remove unjustified restrictions as regards the availability of goods and services cross-border to consumers. The Commission noted that unjustified restriction of the use of online services should not take place in a true Digital Single Market. In this context it promised that it will analyse the need to revise or complement the existing measures to enable a functional Digital Single Market.

- **European Parliament [resolution](#) of 4 July 2013 on completing the digital single market⁴⁷**

In this resolution the Parliament, inter alia, pointed out that delivery services are an essential element in the online purchasing of goods and are best promoted by means of free and fair competition. Parliament expressed its concerns about consumer uncertainties relating to final delivery, costs and reliability. Parliament therefore welcomed the public consultation launched by the Commission to identify possible shortcomings and to take actions to address them, so that both businesses and consumers can benefit from the Digital Single Market. Furthermore, Parliament stressed that a high level of network and information security is essential for the functioning of the Digital Single Market and consumer confidence. Parliament stressed the crucial importance of enforcement of consumer rights.

The Commission, in its [follow-up](#) of October 2013,⁴⁸ argued that it had taken action to address consumer protection, particularly online. In this context it pointed to the adoption of [Regulation 524/2013](#) on online dispute resolution for consumer disputes, and it informed Parliament of various other proposals that were adopted or submitted in the course of 2013, such as a proposal for a [Consumer Product Safety Regulation](#) or a [Communication on Bringing the EU Package Travel Rules into the Digital Age](#).

- **European Parliament [resolution](#) of 11 June 2013 on a new agenda for European Consumer Policy⁴⁹**

Parliament acknowledged that uncertainty exists over consumer rights with regard to cross-border purchases. In this context, it considered that the Commission should focus on clarifying the rules of the purchase of digital content in the digital environment. Parliament recommended the Commission concentrate on explaining how to promote the sale of goods and services in the digital environment and boost consumer confidence. Parliament insisted that consumers be informed as to how to defend their rights, should they purchase a product or a service that is not in conformity with a contract. Parliament also

⁴⁴ See also [the summary](#) of Parliament's position.

⁴⁵ P8_TA-PROV(2014)0071.

⁴⁶ SP(2015)64.

⁴⁷ P7_TA(2013)0327.

⁴⁸ SP(2013)627.

⁴⁹ P7_TA(2013)0239.

called on the Commission to take measures to combat the unequal treatment of consumers arising from distance-selling restrictions in cross-border distance selling.

In October 2013, the Commission [followed-up](#) on this resolution.⁵⁰ It announced its intention to make sure that consumers buying digital products receive key information in an understandable and comparable manner. By spring 2014, the Commission intended to develop a model for the online display of key requirements to make information on digital products clearer and easy to compare.⁵¹ The Commission also argued that the Services Directive ([Directive 2006/123](#)) had already ensured that consumers cannot be discriminated against by traders on mere grounds of nationality or residence, except when this can be directly justified by objective criteria. In this context, the Commission informed Parliament that in 2013 it intended to produce a [guidance document](#) for consumers and businesses.⁵²

[Written question by Adam Szejfeld, MEP](#), August 2015

The MEP asked the Commission about the legislative changes in the context of the Digital Single Market. He asked whether there would be any changes enabling cross-border access to digital content whilst ensuring adequate protection of the legitimate interests of consumers and authors.

[Answer given by Mr Oettinger on behalf of the Commission](#), October 2015

The Commission replied that the Digital Single Market Strategy (May 2015) set out objectives for reform of the EU copyright rules, including portability and cross-border access to online content services by consumers. By these objectives it intended to maximise the offers available to users. The Commission noted that it planned to present a legislative proposal in the upcoming months.

[Written question by Biljana Borzan, MEP](#), February 2015

The MEP posed a question regarding the legislative steps taken by the Commission in the context of traders' complaints about the difficulties faced when selling digital goods across borders, due to intellectual property rights restrictions, and in the context of customers' complaints about limited access to digital content when abroad.

[Answer given by Mr Oettinger on behalf of the Commission](#), May 2015

The Commission noted that both the political guidelines and the Commission's Work Programme 2015 had acknowledged EU copyright rules were a priority. It also argued that it intended to address the obstacles to the functioning of the Digital Single Market and aimed to adopt a formal proposal later in 2015 (proposals on [portability](#) and cross-border access to content services and copyright proposals).⁵³

4. European Economic and Social Committee (EESC) and Committee of the Regions (CoR)

The EESC, in its [opinion](#) of December 2015 on a Digital Single Market Strategy for Europe, welcomed the Commission's initiative to simplify and make cross-border contract rules for consumers and businesses more effective. It noted that any cross-border commerce is challenging for SMEs and customers because of language and cultural issues. The EESC called for a simple and fair standard contract text in all EU languages that would remove some of these obstacles. However, the EESC also pointed out concerns about e-commerce security. Nonetheless, the EESC expressed its hopes that the proposals of the Commission would

⁵⁰ SP(2013)626.

⁵¹ The model for the display of consumer information about online digital products was published in 2014 as Annex I to the DG Justice [Guidance Document concerning Directive 2011/83 on consumer rights](#).

⁵² The European Parliament also adopted other resolutions that partially covered the topic of this briefing, for example the [legislative resolution](#) of 27 January 2005 on the Council common position for adopting a decision of the European Parliament and of the Council establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable, [resolution](#) of 4 July 2013 on the European Parliament's priorities for the Commission Work Programme 2014, [resolution](#) of 20 April 2012 on a competitive digital single market – eGovernment as a spearhead, [resolution](#) of 11 December 2012 on completing the Digital Single Market and [resolution](#) of 11 September 2012 on the online distribution of audiovisual works in the European Union.

⁵³ Other questions by MEPs that partially address the issue of the digital rights can be found in [E-000025-15](#), [E-006591-15](#), [E-008292-15](#).

not reduce a high level of customer protection in any of the MS. At the same time the EESC noted concerns among social partners that cross-border e-commerce can disrupt existing national businesses.

In its [opinion](#) of October 2015 on the Digital Single Market, the CoR provided its policy recommendations on the Digital Single Market. In this opinion the CoR noted that it is necessary to improve online access for consumers and businesses in Europe. In this regard, the CoR underlined that the modernisation of rules for online and digital cross-border purchases will, on one hand, encourage traders to sell their products online cross-border and on the other, increase consumer confidence in cross-border e-commerce. Furthermore, the CoR argued that it is necessary to have cross-border approaches to digital media that allow for the protection of European citizens who speak a minority regional language, as well as the Union's less-used languages. The CoR also acknowledged that the single market will be strengthened only if the consumer protection framework is further developed. In this context it stressed the role of the local and regional authorities.⁵⁴

5. Public consultation

Between 12 June 2015 and 3 September 2015, the European Commission carried out a [public consultation](#) on contract rules for online purchases of digital content and tangible goods. Its aim 'was to collect interested parties' views on the possible ways forward to remove contract law obstacles related to the online purchases of digital content and tangible goods'.⁵⁵

In the context of *digital content products*, the majority of consumer associations favoured full harmonisation of consumer protection, provided that the high level of protection is guaranteed. The associations also supported a broad definition of digital content and noted that there should be a consistency in remedies applicable to both digital content and tangible goods. The majority of consumer associations also advocated a legal guarantee period not shorter than two years. Business respondents argued that some action at EU level is necessary otherwise the market may fragment. Businesses in principle supported a full, targeted harmonisation. According to the main representatives of the SMEs, the harmonised EU legislation could increase the protection of consumers when buying digital content. They also supported the extension of rules on digital content to B2B transactions. As to remedies, businesses underlined that suppliers of digital content should have the choice whether to bring the goods into conformity before the consumer can terminate the contract. In general, however, the answers given by businesses varied considerably. In the context of the *online sale of tangible goods* there was a general recognition among consumer associations that harmonisation may improve cross border e-commerce, as it brings clarity for consumers and traders. Consumer associations strongly opposed any form of the application of law of the trader's domicile. The majority of consumer associations supported a free choice of remedies. The associations were in favour of a longer legal guarantee period, especially for durable goods. Businesses were in favour of action at the EU level, namely, full harmonisation of European contract law on the B2C sale of tangible goods. Similarly, they argued in favour of a hierarchy of consumer remedies across the EU. Business correspondents furthermore supported a full harmonisation of the two year legal guarantee period. However, they were not in favour of uniform EU rules on the content and form of commercial guarantees.

Apart from the public consultation the Commission carried out with regard to the abovementioned proposals, several targeted consultations, workshops, consumer surveys and business surveys were held.⁵⁶

⁵⁴ Further opinions of the EESC and the CoR dealing with the topic of the Digital Single Market include, for instance, an [opinion](#) of the CoR of May 2010 on a Digital Agenda for Europe, an [opinion](#) of the EESC of January 2011 on the Green Paper from the Commission on policy options for progress towards a European contract law for consumers and businesses or an [opinion](#) of the EESC of April 2013 on the Green Paper - An integrated parcel delivery market for the growth of e-commerce in the EU.

⁵⁵ [Summary](#) of the public consultation.

⁵⁶ According to the Explanatory Memorandum, the Commission carried out, in addition to the public consultation, [targeted consultations](#) with the Stakeholder Consultation Group for consumer rules for online and digital purchases (Commission Expert

6. Conclusion

The 2015 Commission proposals on contract rules for online purchase of digital content and tangible goods intend to simplify and harmonise the contract rules on the cross-border online purchases in Europe. The proposals introduce various rules with a goal to fully harmonise provisions applicable to online purchases. These proposals try to react to the newest developments in the digital society while updating existing European legislation. Full harmonisation can increase legal certainty on the applicable rules and interest of the customers in making cross-border purchases. As currently various different national contract rules are applied in the MS, full harmonisation would introduce the same rules applicable throughout the whole EU. This harmonisation will in general, simplify and increase customer protection in contract relations conducted online and cross-border. However, full harmonisation might have some negative impact on those MS that already have existing national legislation going beyond the text of the proposals.

7. Other sources of reference

- EP [In-depth analysis](#): Contract law and the Digital Single Market – Towards a new EU online consumer sales law? (2015)
- EP [Study](#): The Cost of Non-Europe in the Single Market. Part III – Digital Single Market (2014)
- EP [Briefing](#): The regions in the Digital Single Market – ICT and digital opportunities for regions and cities (2015)
- EP [Briefing](#): A Digital Single Market Strategy for Europe (2015)
- EP [Briefing](#): A connected Digital Single Market – State of play and the way forward (2015)
- EP [Briefing](#): Contracts for online and other distance sales of goods (2016)

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Group), [Consumer survey identifying the main cross-border obstacles to the Digital Single Market and where they matter most](#) (2015), [Business survey on companies engaged in online activities](#) (2015). Proposal I, p. 7.