Briefing

EU Legislation in Progress

April 2016

European Parliament

Contracts for supply of digital content to consumers

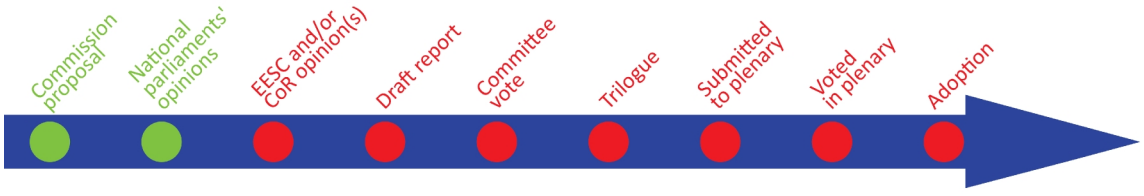
SUMMARY

On 9 December 2015, the Commission tabled a proposal for a directive on contracts for supply of digital content to consumers. The proposal would cover, with a single set of rules, contracts for the sale of digital content (e.g. when consumers buy music, films, e-books or applications), for rental of digital content (e.g. when consumers watch a movie online, but do not download a copy), as well as contracts for digital services, such as cloud computing and social media. The proposal envisages a maximum level of harmonisation, meaning that it will be prohibited for Member States to enact or retain more consumer-friendly rules within the directive's scope.

Currently, only the UK has enacted rules designed specifically for contracts for supply of digital content. A similar legislative bill was recently discussed in Ireland. Other Member States, such as Germany and the Netherlands, have extended the scope of existing contract rules, especially on consumer sales, to include sale of digital content. Yet in other Member States, such as Poland, there are no explicit rules on supply of digital content, which leads to legal uncertainty and practical difficulties regarding the rights and remedies available to consumers in case of non-conformity.

Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content

Committee responsible:	Internal Market and Consumer Protection	COM(2015)634 *of* 9.12.2015
Rapporteur:	Evelyne Gebhardt (S&D, Germany)	*procedure ref.*: 2015/0287(COD)
Next steps expected:	Discussions in committee	Ordinary legislative procedure



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Introduction

Contracts for the supply of digital content are concluded on a daily basis by millions of consumers across the globe, and are becoming 'an integral part of the daily life of Europe's digital consumers.'[1] Consumers purchase or hire digital content increasingly often, not only whenever they purchase computer programs or mobile applications, but also when they access, in digital form, cultural and entertainment goods, such as music, films, e-books or games. Also, consumers often acquire digital services, for instance when they use cloud computing services (for the storage, processing and use of data on remotely located servers accessed online) or social media platforms.

The approach taken by national legislatures and courts to this phenomenon has been varied. Some Member States apply the same set of rules to the sale and rental of both tangible objects and intangible ones (inter alia digital content), and apply the rules on services to all types of services, whether digital or not. Other Member States have developed a specific set of rules exclusively for digital content. In yet other Member States, the precise legal situation for supply of digital content remains controversial.

In this context, the Commission, as part of its Digital Single Market Strategy, put forward a proposal for a directive concerning certain aspects of contracts for the supply of digital content to consumers, which would introduce total harmonisation of the applicable rules across the EU.

Existing situation

EU legislation

At present, the supply of digital content at EU level is partly regulated by the Consumer Rights Directive, Unfair Terms Directive and e-Commerce Directive. Importantly, the Consumer Sales Directive is not applicable, as the definition of 'consumer goods' in that Directive extends only to 'tangible moving items'.

The sale of digital content was to be included in the scope of the Common European Sales Law, an optional instrument of contract law in the form of a regulation. However, despite receiving the backing of the Parliament in 2014, it was never endorsed by the Council, and the Juncker Commission promised to withdraw it.

The e-Commerce Directive (a minimum harmonisation instrument), obliges Member States to ensure that **contracts can be concluded in a digital environment**. The fact that they have been concluded in electronic form may not hamper their legal effect in any way. It also sets out **detailed information rights** of the parties concluding an electronic contract, which are mandatory in the case of consumer contracts, but may be waived if both parties are professionals.

The Consumer Rights Directive (a total harmonisation instrument) contains a number of rules specifically designed for the digital environment. In principle, consumers cannot withdraw from a contract for the provision of digital content if they have already used the content. Specifically, consumers lose the right of withdrawal if they unseal digital

content provided on a tangible medium. They also need to pay for downloaded digital content, unless they did not give their consent for the download, did not acknowledge the loss of their right of withdrawal, or if the trader infringed duties regarding the form of the contract and information duties. The Directive imposes a set of detailed information duties incumbent upon traders, as well as formal requirements regarding the contract document. It also grants consumers an at-will right of withdrawal from all digital contracts, which can be exercised within 14 days of their conclusion.

The Unfair Terms Directive prohibits unfair terms in contracts if such terms are prepared in advance by the trader and do not concern the main subject-matter of the contract (i.e. price and description of goods or services). The list contains an annex with examples of such terms, however as it was enacted more than 20 years ago, it does not contain many unfair terms typically occurring in contracts for supply of digital content.

Existing national law

United Kingdom

In the UK, contracts for supply of digital content were initially treated by courts as *sui generis* contracts, to which general principles of the common law applied.[2] Now they are explicitly regulated as a specific type of contract by the recently adopted Consumer Rights Act 2015. It contains a special chapter devoted to 'Digital content', which applies to contracts for the supply of digital content to consumers in exchange for a price, even if that price was paid for other goods, services and digital content. The chapter regulates such issues as the satisfactory quality of the digital content, its fitness for a particular purpose, its conformity with any description given by the trader, consumer remedies (repair or replacement, price reduction, refund), as well as liability for damages caused by the content to the consumer's device.

Ireland

The Irish legislature intends to follow the model of the UK, and a proposal for an Irish Consumer Rights Act contains a special Part 3 devoted to 'Contracts for Supply of Digital Content'. Part 3 creates a new type of contract for supply of digital content, distinct from the sale of goods contract, and provides for a distinct system of rights and remedies similar to those which apply to contracts for the supply of consumer goods (regulated in Part 2 of the proposal). The proposal was subject to a public consultation running from May to August 2015 and it is awaiting presentation as a bill to the Houses of the Oireachtas.

The Netherlands

Under Dutch law,[3] the sale of digital content **on a durable medium** (e.g. DVD, CD) is treated as an ordinary form of sales on the assumption that digital content is an integral part of the tangible object sold. As regards the sale of digital content **without a durable medium** (e.g. downloaded from the internet or webstreamed), an amendment to the Civil Code enacted in March 2014 made the rules on consumer sale (with certain exceptions) explicitly applicable to such contracts. According to a decision of the Dutch Supreme Court from 2012, in business-to-business contracts the law of sale also applies to the downloading of 'standard software'. However, as from June 2015, another amendment of the Civil Code excluded from the scope of consumer sales those contracts under which the digital content is not **individualised and controlled** by the consumer. Effectively, therefore, contracts for the streaming of digital content are not treated as sales contracts, but are rather treated as contracts for the **provision of services**. This has practical consequences for the rights and remedies of the consumer.

Poland

The Polish legislator envisaged applying the standard rules on sales to digital content, but eventually this option was dropped, as it was believed that there were too many differences between selling tangible goods and supplying digital content.[4] As a result, for the time being, both the legal nature of contracts for the supply of digital content and the rules applicable to them still remain controversial.[5]

Germany

Under German law, the rules on sales contracts were initially applied by courts by analogy to the sale of digital content. In 2001, a reform of the law of obligations introduced an explicit rule to this effect (§ 453 BGB) which made the provisions on the sale of tangible objects applicable, *mutatis mutandis*, to the sale of rights and other objects and was explicitly intended to cover software also.[6] German courts have also applied the rules of sales law, with some modifications, in the absence of a durable medium, i.e. when digital content is downloaded from the internet. They have also applied rules on rental contracts (*Mietvertrag*) to situations where the digital content is made available online on the provider's server but is not installed on the user's device.

France

Under French law[7] the rules on consumer sales and associated guarantees apply only to the sale of tangible goods and do not apply to intangible digital content. There are no specific rules on contracts for supply of digital content.

The changes the proposal would bring

Scope of application

Scope ratione materiae

The directive would apply to contracts for the supply of **digital content**, where 'digital content' is understood as comprising both 'intangible goods' as well as services, i.e.:

- data produced and supplied in digital form (e.g. video, audio, application, digital games, other software),
- a service allowing the creation, processing or storage in digital form of data provided by the consumer (e.g. cloud computing, or a website for editing of images on-online),
- a service allowing sharing of data and interaction with data in digital form, if those data are provided by other users of the service (e.g. social media websites).

For the directive to apply, the digital content would have to be supplied **against some form of counter-performance by the consumer**, either monetary (payment of a price) or in the form of data (e.g. the consumer's personal data).

Certain contracts have been **excluded** from the proposed directive's scope: services performed 'with a predominant element of human intervention'; electronic communication services, as well as healthcare, gambling and financial services. On top of that, the directive would not apply to digital content provided **purely for free**, without any kind of counter-performance, i.e. when the consumer provides data only to the extent strictly necessary to perform the contract or to meet legal requirements, but the supplier does not process that data in any other way. The preamble further clarifies that the following would be excluded from the directive: digital content provided in exchange for data collected by cookies or in exchange for the consumer accepting to view advertisements (if no price is paid).

Scope ratione personae

The directive would apply exclusively to contracts **between consumers and traders**. The notion of consumer is defined in a way typical in EU private law, i.e. as encompassing only natural persons acting for purposes outside their trade, business, craft or

profession. Traders – 'suppliers' in the proposal – would include natural persons and legal persons, both publicly and privately owned, acting for purposes relating to their trade, business, craft or profession. Therefore, the supply of digital content to SMEs or individuals acting in a professional capacity (e.g. lawyer, doctor) would be excluded.

Level of harmonisation

The proposal aims at total (maximum) harmonisation which means that Member States would not be allowed to provide for more consumer-friendly rules in their national legal systems within the directive's scope. However, the proposal explicitly provides that national rules of general contract law regarding the formation, validity and effects of contracts, as well the consequences of their termination, will not be affected.

Quality requirements for digital content

The proposal lays down detailed rules regarding the conformity of the digital content with the contract, i.e. a lack of defects. The rules are adapted to the digital environment, referring to such features as version, functionality, interoperability, accessibility, continuity and security. The requirements for the digital content must be spelt out in the contract, as well as in that part of the pre-contractual information given to the consumer which is legally deemed to be an integral part of the contract.[8] Furthermore, the digital content must be fit for any particular purpose that the consumer disclosed to the supplier with the latter's acceptance. If the contract so stipulates, instructions, customer assistance and updates must be made available.

Reference to standards, codes of conduct and codes of good practices

If, however, the contract is silent on the requirements for the digital content or the terms are unclear or incomprehensive, the fitness of the digital content for purpose must be evaluated in the light of whether it was supplied in exchange for a price or another counter-performance, or whether there are any existing international technical standards or, in their absence, industry codes of conduct and good practices.

Reference to statements made by supplier or third parties

Furthermore, if the contract is silent on the requirements for the digital content or the terms are unclear or incomprehensive, the proposal requires that public statements made by the supplier, on their behalf or by other persons in earlier links in the chain of transactions, are taken into account. These statements will be incorporated into the contract (a rebuttable presumption), unless suppliers show that: they were not aware of them or could not reasonably have been aware; or that the statement was corrected prior to the conclusion of the contract; or that the consumer's purchasing decision was not influenced by that statement.

Requirement of most recent version

The proposal includes a default rule whereby the digital content must be in conformity with the most recent version of that content, as available when a contract is concluded. However, there is no default rule on the consumer's right to updates.

Durability of conformity

If the digital content is to be supplied over a period of time, the requirement of conformity is applicable throughout that period.

Integration of digital content

Digital content usually needs to interact with existing software and hardware. Hence, the notion of conformity also covers the integration of digital content. Incorrect integration amounts to non-conformity if it was integrated by the supplier (or under

their responsibility), as well as if the intention was for the consumer to integrate the digital content but their incorrect integration was due to shortcomings in the instructions provided by the supplier.

Digital content free from third-party rights
The proposal provides that the digital content must, at the time it is supplied, be free of any rights held by a third party (especially intellectual property rights) so that it can be used in accordance with the contract. If the digital content is supplied over a period of time, it must be free of third-party rights throughout that time.

Burden of proof as to conformity
The burden of proof as to conformity of the digital content with the contract rests with the supplier (reversal of burden of proof in favour of the consumer). In contrast to the proposed rules on sale of tangible goods, the proposed directive on supply of digital content does not provide for any time limit for the consumer to make a claim. However, time limits under national law will apply. Furthermore, in the case of one-off supply of digital content (e.g. sale of software), the supplier is liable only for any non-conformity existing at the time of supply.

Duty of cooperation and possibility of undoing the reversed burden of proof
The reversal of the burden of proof of conformity (in favour of consumers) can be undone by suppliers if they show that the 'digital environment of the consumer is not compatible with interoperability and other technical requirements of the digital content, and where they had informed the consumer about such requirements' prior to the contract's conclusion. Furthermore, the proof of defectiveness returns to the consumer if the latter fails to cooperate with the supplier 'to the extent possible and necessary to determine the consumer's digital environment', e.g. to check the version of the consumer's operating system or the type of hardware (e.g. printer, camera etc.).

Extent of supplier's liability
The liability of the supplier covers three situations: failure to supply the digital content; non-conformity of the digital content existing at the time of supply; and non-conformity of the digital content during a subscription period.

Consumer remedies
Remedy of immediate termination
A consumer may terminate the contract immediately if the supplier has **failed to supply** the digital content. Termination occurs by giving the supplier notice by any means. The consumer must be reimbursed 'without undue delay' and no later than 14 days from receipt of the termination notice.

Right to have the non-conformity cured
If the supplier did supply the digital content, but it **does not conform** to the contract, the consumer has the right to have the content brought into conformity free of charge, unless that would be impossible, disproportionate or unlawful. The supplier must cure the non-conformity 'within a reasonable time' from the moment when the consumer informed them about the non-conformity.

Subsidiary remedy of termination or reduction of price
The right to have the non-conformity cured is a primary remedy. Hence, the consumer **may not demand a total or partial refund upfront**, but must wait for the supplier to cure the digital content 'within a reasonable time'. Therefore, a consumer may terminate the contract or claim a partial refund (reduction of price) only if:

- cure of non-conformity is impossible, disproportionate or unlawful,
- cure of non-conformity was not completed within a 'reasonable' time (but such time is not defined in the proposal, leaving legal uncertainty),
- cure of non-conformity would cause 'significant inconvenience' to the consumer (which is also an open-ended notion, not defined in the proposal),
- the supplier has declared they will not cure the non-conformity, or
- it is clear from the circumstances that the supplier will not cure the non-conformity.

Exclusion of the right to terminate when non-conformity is minor
The consumer's right to terminate, despite the uncured non-conformity of the digital content, is excluded if the non-conformity does not impair the functionality, interoperability or 'other main performance' features of the digital content (accessibility, continuity, security). The burden of proof lies with the supplier.

Termination pro rata temporis
If the consumer subscribed to digital content for a certain period of time in exchange for a fee, and the digital content was defective for part of that time (but was in conformity with the contract during the remaining part of the subscription period), the consumer may terminate only with regard to the period of time when there was non-conformity. In that case, the refund due from the supplier will also be proportionate.

Subsidiary remedy – reduction of price
If the consumer purchased the digital content **in exchange for a price**, and is entitled to termination because of non-conformity, they may instead choose partial reduction in the price. Such a price reduction is in proportion to the reduced value of the digital content actually supplied in comparison to the digital content which would have conformed to the contract.

Legal consequences of termination by consumer
The proposal contains detailed rules on the parties' rights and duties upon termination (whether on account of non-supply or non-conformity). First of all, the supplier must reimburse the consumer without undue delay, but no later than within 14 days.

Supplier's duty to refrain from using consumer's data
If the consumer provided a counter-performance other than money (e.g. personal data), the supplier must take any appropriate measures to refrain from the use of that counter-performance. The same applies to content uploaded by the consumer (e.g. to the cloud, to a social media platform), except for content generated jointly by the terminating consumer and other users, if those other users are still using that content.

Consumer's right to retrieve all content (exportability of data)
Furthermore, the supplier must provide the consumer with technical means to retrieve all the content they provided, as well as any other data produced or generated by the consumer, to the extent that data has been retained by the supplier. This must be provided to the consumer free of charge, in reasonable time and in a commonly used format (e.g. a popular file format).

Consumer's duty to stop using digital content
If the digital content (e.g. an application, film, e-book) was not supplied on a durable medium, the consumer must refrain from using it, must not make it available to third parties and should delete it or make it otherwise unintelligible. Once the contract is terminated, the supplier has a right to prevent any further use of the digital content by the consumer, for example by making it inaccessible or by disabling the consumer's user

account. However, a consumer who terminates the contract may not be charged for using the digital content up to the moment of termination. It therefore seems that a consumer who continues to use the digital content later on (which is prohibited), may receive an additional charge from the supplier.

Consumer's duty to return durable medium

If the digital content was supplied on a digital medium (e.g. DVD, CD-ROM), the consumer must – if the supplier so requests – return it to the supplier at the supplier's expense, without undue delay (but no later than within 14 days of the request). The duty to delete digital content, if it was copied from the durable medium, also applies.

Consumer's right to damages from supplier

Apart from remedies for non-conformity (cure, price reduction, termination) the proposal also provides for the supplier's liability in damages towards the consumer. This is possible whenever the non-conforming digital content caused 'economic damage to the digital environment of the consumer'. The same applies if such 'economic damage' was caused by the non-delivery of the digital content by the supplier. The rule on damages provides that they are intended to 'put the consumer as nearly as possible into the position' in which they would have been had the digital content been duly supplied in conformity with the contract. The concept of 'economic damage' is not defined and the preamble merely explains that the harm suffered by the consumer can extend both to software and hardware. The proposal provides that detailed rules on the 'exercise of the right to damages' are to be laid down by the Member States.

Modification of digital content by supplier during time of subscription

If the consumer purchased a subscription of digital content for a period of time, the supplier may modify that digital content only if the contract allows for it and provided that the consumer is notified and has the right to terminate within 30 days of the notice. The supplier must then refund the consumer *pro rata temporis* for the unused period of subscription. If the consumer provided a counter-performance other than money (e.g. personal data), the supplier must stop using it.

Termination of long-term contracts (over 12 months)

The proposal provides for special rules applicable to long-term contracts, defined as those which last over 12 months (also as a result of totalling renewed periods of subscription). In the case of such contracts, consumers may terminate them by notice given to the supplier by any means. The contract will be ended within 14 days of the moment when the supplier received the notice. The proposal contains detailed rules on the effects of termination of long-term digital contracts with regard to the further use of the content and the retrieval of the consumer's content provided.

Supplier's right of redress to persons earlier in the chain of transactions

Whenever suppliers are liable to the consumer because of non-supply or non-conformity of the digital content, they may pursue remedies against persons earlier in the chain of transactions. Details are left to national law.

Procedural rule: enforcement

The proposal introduces a procedural rule, providing that Member States must ensure that 'adequate and effective means' exist to ensure compliance with the directive. In particular, Member States must allow for an administrative or judicial (civil, criminal) procedure to be launched by certain bodies and organisations. The Member State may

choose whether to grant standing to one more of the following: public bodies; consumer organisations; professional organisations.

Mandatory nature of rules

The rules in the directive are to be unilaterally mandatory (*ius cogens*), meaning that contractual terms may not deviate from them to the detriment of the consumer. However, consumers may agree to worse conditions once the non-conformity of the digital content is brought to their attention.

Preparation of the proposal

During summer 2015, the Commission conducted a public consultation in which stakeholders had the opportunity to answer a set of 22 detailed questions on the online sale of goods as part of a questionnaire devoted also to the supply of digital content. A total of 189 stakeholders replied, and the Commission summarised their views in a brief document. The proposal was accompanied by an impact assessment, which was analysed by the EPRS Ex-Ante Impact Assessment Unit.

Stakeholders' views

Consumers

The European Consumer Organisation (BEUC) welcomed the Commission's proposal, considering that most Member States do not have specific rules on supply of digital content which makes the directive 'a missing piece of the consumer law *acquis*'. The application to digital content of rules regarding tangible goods, in some Member States, is not a sufficient solution. In BEUC's view, consumers of digital goods should receive at least equal protection to consumers of tangible goods, and in some aspects (e.g. in the reversal of the burden of proof) they may need additional protection. BEUC recommends addressing the issue of unfair terms in the directive, for instance terms prohibiting consumers from format shifting (e.g. prohibition to print e-books, prohibition to record a movie on a DVD, etc.) for personal and non-commercial purposes. As regards remedies, BEUC believes that remedies available under contracts for the sale of tangible goods should be made available also for digital content contracts.

Businesses

UEAPME, the EU-wide SME federation, pointed out that there were currently no sufficient legal rules concerning the supply of digital content, in particular with regard to streaming and downloading. However, UEAPME considers that the rules applicable to digital products should be the same as for tangible products. Furthermore, they believe that the quality of digital content should be defined in contracts, rather than through mandatory legislative rules.

BusinessEurope, the EU-wide federation of national business interest groups, was unenthusiastic about new legislation on supply of digital content. They stressed the need to preserve the 'fast developing nature of digital content markets' and pointed out that even if specific rules on supply of digital content do not exist, general contract law still applies, in particular with regard to pre-contractual information duties incumbent upon suppliers. Nevertheless, they acknowledged there was a risk of legal fragmentation if individual Member States enact domestic legislation on the supply of digital content, which could justify a European legislative initiative in that regard.

Legal practitioners

The Council of Bars and Law Societies of Europe pointed out that contracts for supply of digital content were classified differently in different Member States, leading to

discrepancies between legal regimes and legal uncertainty for businesses. They recommended urgent legislative action, arguing that the 'existing rules are not sufficient to protect the interests of users of digital content'.

The UK General Council of the Bar took a sceptical view on the need for new legislation. English barristers would rather extend the existing Consumer Sales Directive to cover the sale of digital content to consumers, instead of devising a new instrument. Pointing to the recently adopted UK Consumer Rights Act 2015, which provides a clear legal regime for supply of digital content, the General Council suggested building on the experiences of Member States that have regulated such contracts 'rather than to seek to address everything at EU level from a standing start'.

Legal scholars

Vanessa Mak pointed out that the proposal did not classify the supply of digital content as a sale or service contract, which would lead to differences between national laws and likely result in fragmentation and confusion, especially for consumers and SMEs. As a remedy she proposed requiring Member States to create a special type of contract (supply of digital content), distinct from sale and services. She also considered that the definition of 'digital content' in the proposal was unclear and must be revised. In Mak's view, consumers who pay for digital content by providing data (instead of paying a price) should be treated equally to consumers who pay. As regards the liability for non-conformity, Mak thinks it should be subject to a time limit. She also believes that the rules on the effect of termination were not sufficiently specific. Finally, she was critical of the provision on the consumer's right to damages from the supplier, pointing out that it should not be limited to damages to the consumer's digital environment.

Christiane Wendehorst criticised the Commission's idea of splitting the sale of tangible goods and supply of digital content into two distinct regimes (governed by two separate directives). In her view, we are currently witnessing a 'merger of the tangible and digital world' which should be an argument in favour of creating a unitary regime for the sale of tangible and digital goods alike, especially in that many goods are of a hybrid nature (mix of tangible and digital elements which are difficult to separate legally).

Benedicte Fauvarque-Cosson criticised the proposal for a lack of clarity regarding the various types of termination (as a first degree remedy if the supplier fails to supply; as a second degree remedy in the case of non-conformity; as a right to terminate by giving notice in long-term contracts). She suggests that consumers who receive digital content which does not conform at all to the contract should have the right of immediate termination (as a first degree remedy). The right to terminate should be subject to a time limit and the directive should specify how consumers must give notice of termination. The relation of the directive to national rules, found in some Member States, on 'judicial termination' or limiting the right to unilateral termination (rescission) should be specified. Furthermore, in her view the rules on the supplier's right to modify the digital content are not precise enough. Finally, Fauvarque-Cosson believes that the rule allowing termination of long-term contracts after only 12 months is not flexible enough.

Hugh Beale pointed out that due to the maximum harmonisation clause, the proposed directive would lead to a significant reduction of consumer protection in some Member States. Like Vanessa Mak, he criticised the limitation of supplier's liability for damages to loss in the consumer's digital environment only. He pointed out that implementing that rule in national law would lead to a serious loss of consumer protection. He thinks the proposal should also address the consumer's rights to make a second copy of the

digital content, to transfer such content or to receive free upgrades. Beale called upon the Commission to come up with a proposal covering business-to-business supply of digital content (the current proposal being limited to consumer transactions only).

National parliaments

National parliaments could express their opinion under the subsidiarity check procedure by 8 March 2016. A **reasoned opinion** was submitted only by the French Senate which considered that by imposing a maximum level of consumer protection the directive would actually force some Member States, including France, to lower the existing protection standards. Other national parliaments did not issue reasoned opinions, but nevertheless expressed views on the proposal. In particular, the Austrian Federal Council warned against risks of legal fragmentation, pointed to the disadvantages of total harmonisation and suggested a simple legal solution, consisting of extending the scope of the existing rules on consumer sales to sales of digital content. The Italian Senate would prefer the definition of 'digital content' harmonised with the Consumer Rights Directive to avoid inconsistencies and would specify exactly the scope of damages available under the consumer's right to damages (in particular whether lost profit is also included). The Czech Chamber of Deputies raised concerns regarding the rights of copyright holders, as well as SME competitiveness. The Luxembourg Chamber of Deputies expressed concerns on fragmentation of the legislative proposals mainly for political reasons, noting that the supply of digital content proposal is less controversial than that on online sale of tangible goods. Finally, the Romanian Senate expressed concerns regarding the definition of digital content.

Parliamentary analysis

In September 2015, the Members' Research Service published an in-depth analysis on Contract law and the Digital Single Market which analysed in detail the contract law related aspects of the Digital Single Market Strategy and explored regulatory options. Following this publication, the Members' Research Service held a policy hub with Dirk Staudenmayer (Commission) and Prof. Martijn Hesselink (University of Amsterdam). In February 2016 the EPRS's Ex-Ante Impact Assessment Unit published an evaluation briefing of the Commission's impact assessment in which it pointed out that the consumer *acquis* was currently undergoing a 'Regulatory Fitness Check' (REFIT) which would have to be fed into the debate on the proposals. Also in February 2016 Policy Department C organised a Workshop on 'New rules for contracts in the digital environment' for the Legal Affairs Committee with the participation of Professors Hugh Beale, Vanessa Mak, Jan Smits, Bénédicte Fauvarque-Cosson and Christiane Wendehorst. The workshop was accompanied by the publication of four in-depth analyses written by academics on the topic of supply of digital content. In April 2016 the EPRS Policy Cycle Unit published an implementation appraisal on the topic.

Legislative process

Within the EP, the proposal will be examined by the Internal Market and Consumer Protection Committee (rapporteur: Evelyne Gebhardt, S&D, Germany), with opinions to be delivered by the Legal Affairs (rapporteur: Axel Voss, EPP, Germany) and Civil Liberties, Justice and Home Affairs Committees (rapporteur: Marju Lauristin, S&D, Estonia).

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[3] The author would like to thank Prof. Marco Loos for providing explanations on Dutch law.

[4] I. Barańczyk, in M. Namysłowska (ed.), *Kodeks cywilny. Komentarz do zmian wprowadzonych ustawą z dnia 30 maja 2014 r. o prawach konsumenta* (Wolters Kluwer 2015), comment on Article 555, para. 3.

[5] T. Targosz, M. Wyrwiński, 'Dostarczanie treści cyfrowych a umowa sprzedaży. Uwagi na tle projektu nowelizacji art. 555 kodeksu cywilnego' [Supply of Digital Content and the Sales Contract: Remarks Concerning the Proposed Amendment of Article 555 of the Civil Code], *Forum Prawnicze* (2015): 18-31, p. 30.

[6] P. Rott, 'Germany', in University of Amsterdam (ed.), Comparative analysis of the applicable legal frameworks and suggestions for the contours of a model system of consumer protection in relation to digital content services – Report 1 – *Country Reports* (2011), pp. 85-86.

[7] J. Rochfeld, G. Brunaux, R. Tigner, 'France' in Comparative analysis..., op. cit., p. 40ff.

[8] See especially Article 6(5) of the Consumer Rights Directive which provides that obligatory pre-contractual information provided to the consumer in the case of distance and off-premises contract is an integral part of the contract, unless the parties expressly agree to alter it.

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