



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



LEGAL AFFAIRS

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Workshop on new rules for contracts in the digital environment

***Scope of application and general
approach of the new rules for
contracts in the digital environment***

Digital Contents and Online Sales Directive

- B2C only
- Targeted (limited coverage of topics)
- Directives not regulations
- Domestic and cross-border
- Full harmonisation (not optional)

Legal issues

- For EU law
 - Beyond Consumer Sales Directive 1999/44
 - For laws of Member States
 - UK Consumer Rights Act 2015 (CRA 2015)

Twin aims

- Improving consumer protection
- Encouraging cross-border trade

DC: Improved consumer rights

- Many MSs have no specific legislation
- Directives
 - Accessible
 - Clear
 - Appropriate (if amended...)
- Some increase in protection
 - Cf CRA 2015
 - Services (CRA: general chapter)

OS: improved rights

- Termination for minor non-conformity
- Termination by notice
- No 2m limit for notification after detection

DC and OS

- Public (collective) enforcement
 - What will be an effective remedy?
 - Financial penalty appropriate for isolated instances?

OS: Loss of protection - UK

- No immediate right to terminate, refund
 - CRA 2015: 30 days, full refund
 - Valued by consumers
 - Confidence with new products, unknown traders
- Loss of all remedies after 2 years
 - Limitation Act 1980: 6 years

DC: Loss of protection - UK

- All MSs have some law on this
 - Often analogous to goods

“fit for all the purposes for which goods of the same description would ordinarily be used”
- DC Art 6(2) qualified by

“To the extent that the contract does not stipulate, where relevant, in a clear and comprehensive manner, the requirements for the digital content under paragraph 1, the digital content shall be fit for the purposes for which digital content of the same description would normally be used ... ”

Unnecessary and risky

- Has not applied to DC on tangible medium, not aware of problems
- C unlikely to read terms, will rely on general description
- T should ensure description is appropriate

DC: Damages: Art 14

- T liable only for damage to consumers' digital environment
- Non-c may cause personal injury, physical loss to C's other property and financial losses
 - Dangerous for C
 - Unnecessary
 - T wanting protection should insert contract term

DC: Omissions

- Rights under end-user licence
 - Free updates to maintain functionality/security?
 - Right to fresh copy if original unusable?
 - Right to resell DC if no longer required?
- May be required by CRD
 - C has no remedy if not provided

Do directives encourage cross-border trade?

- Narrow coverage
 - SMEs “fear the unknown”
- Need to encourage SMEs to make B2B contracts across borders
 - Need clear rights when buying DC
 - Would be encouraged by better rights when buying online
 - Information
 - Withdrawal rights

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