



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

***The new proposal for harmonised rules for
certain aspects concerning contracts for the
supply of digital content, termination,
modification of the digital content and right to
terminate long term contracts***

Key findings (COM(2015)634)

- Article 13 is titled « **Termination** » but only envisages termination as a remedy for the lack of conformity with the contract.
- Article 16 is titled « **Right to terminate long term contracts** » but is only applicable to termination where there is neither a lack of conformity nor a modification which adversely affects the consumer.

The scope of application of Articles 13, 15 and 16 should appear more clearly, in the title of the articles.

Key findings (COM(2015)634)

- Article 11, titled « **Remedy for the failure to supply** », grants an immediate right for termination.
- Article 13, titled « **Termination for the lack of conformity** », makes termination a « **second step** » remedy. There is a hierarchy of remedies

The supply of digital content, which does not conform at all, should not deprive the consumer from claiming « immediate » termination under Article 11.

Proposals and key findings

- The right to terminate should be subject to a time limit.
- A consumer should give notice within a « reasonable time ».
- Provisions on **how to give notice** should be introduced.

Proposals and key findings

- *Article 16, COM 2015/634*
Right to terminate long term contracts.
 - ⇒ What are « long term contracts »: **contracts with an indefinite duration.**
 - ⇒ **12 months period** before termination may operate :
is this appropriate ?

Proposals and key findings

Article 15: Modification of the digital content.

Article 15 sets the conditions under which a supplier may modify the contract and those under which the consumer has a right to terminate the contract due to the modification.

- ⇒ **Too much power to the industry to modify unilaterally the content of the contract.**
- ⇒ **Does Art. 15 apply if the consumer is offered the choice of an upgrade (*particularly dangerous without a warning of its potential effects*)?
It is not clear enough.**

Proposals and key findings

Notions that will create uncertainty :

- What are « the main performance features of the digital content » ?
- When does the modification « adversely affect access to or use of the digital content by the consumer » ?

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