

**SENATE OF THE REPUBLIC
17TH PARLIAMENTARY TERM**

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RESOLUTION OF STANDING COMMITTEE 10

(Industry, trade, tourism)

(Rapporteur SCALIA)

approved at the session of 17 February 2016

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 (COM(2015) 634 FINAL)**

under Article 144 (1) and (6) of the Rules of Procedure

Sent to the President's Office on 19 February 2016

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The Committee,

Having examined – under Article 144(1) and (6) of the Rules of Procedure – the proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content;

whereas the proposal in question is based on Article 114 of the Treaty on the Functioning of the European Union and its main goal is to improve the establishment and functioning of the internal market, by removing legal barriers to online transactions relating to digital content, conferring specific rights on consumers and creating legal certainty for companies that wish to sell their products in other Member States;

whereas the proposal appears to comply with the principle of subsidiarity, since autonomous initiatives by the Member States would not be able to overcome the barriers that result from differences between national legislation, while common regulation at European level allows the objective to be achieved; in particular, the adoption of uniform EU rules on the conformity of digital content, the remedies available to consumers in case of lack of conformity and the arrangements for exercising these remedies ensure equal conditions for supplies of digital content and homogeneous levels of consumer protection in all Member States;

whereas the proposal appears to comply with the principle of proportionality, since it does not go beyond what is necessary to achieve the objectives or harmonise all aspects of contracts for the supply of digital content, but provides a common framework only for those contracts that obstruct cross-border trade;

hereby issues a favourable opinion, with the following remarks:

– the European Commission is asked to ensure that the proposal for a Directive is fully consistent with Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011, both in terms of the definition of ‘digital content’, which appears broader than that in Article 2(11) of Directive 2011/83/EU, and the mandatory nature of the consumer protection provisions in Article 19 of the proposal under consideration, which appear to be different from those in Article 25 of Directive 2011/83/EU;

– the Commission is asked to clarify whether the right to damages referred to in Article 14 of the proposal is limited to the ‘actual loss’, i.e. the loss suffered by the consumer resulting from the lack of conformity with the contract or failure to supply the digital content, or also includes the ‘loss of earnings’ attributable to the same cause;

– as regards the impact assessment done by the Commission,

which is reflected in the choice of option 1 on targeted fully harmonised rules on digital content and goods, it is noted that option 5 – a voluntary European standard contract combined with an EU trust-mark – would achieve the objectives more effectively. This is because companies could offer digital content throughout the EU under a standard contract, whose consumer protection provisions would be laid down in the legislative process and would take precedence over any different clauses in the Member States' domestic law. There would therefore be no additional cost linked to the diversity of such contractual rights. This standard contract would be combined with the EU trust-mark. In this regard, consumers' acceptance of such a contract, linked to the EU trust-mark, would be largely dependent on the degree of legal protection provided;

– in relation to the right of termination of long-term contracts (of an indefinite period or more than twelve months), governed by Article 16 of the proposal, it should be made clear that the prohibition on withdrawing within the first twelve months refers only to cases in which the consumer wishes to terminate out of personal choice and not because the supplier has failed to fulfil the contract. In the latter case, even if the contract is long term, the consumer should be able to withdraw at any time, even within the first twelve months, in accordance with the preceding Articles and, in particular, Articles 12(5) and 13.

OPINION OF STANDING COMMITTEE 14
(EUROPEAN UNION POLICIES)

(Rapporteur: ORELLANA)

27 January 2016

The Committee, having examined the act,

whereas:

– the digital single market strategy, adopted by the European Commission on 6 May 2015, set out legislative measures concerning harmonised standards applicable to the supply of digital content and online selling of goods. The proposal in question concerns certain aspects of contracts for the supply of digital content and complements a proposal on online sales contracts and other types of distance sale of goods (COM(2015) 635);

– these two proposals are based on experience acquired during negotiations on the Regulation on a common European sales law (COM(2011) 635). In particular, they no longer take the approach of a voluntary scheme and a comprehensive set of rules, but contain a targeted set of fully harmonised rules and are also based on some amendments adopted by the European Parliament at first reading;

– the objective of the two proposals is to create a business-friendly environment which allows companies, in particular small and medium-sized enterprises, to sell more easily across borders, by eliminating differences between national laws;

– the objective of the proposal for a Directive in COM No 634 concerns full harmonisation of a set of core rules for digital content delivery contracts. It specifies that the Directive contains rules on the conformity of digital content, the remedies available to consumers in case of lack of conformity, and some aspects concerning the right to withdraw from a long-term contract and the modification of digital content (Article 1);

– the definition of digital content is deliberately broad and includes all types of digital content, including, for example, films that are downloaded or web streamed, social media and visual modelling files necessary in the context of 3D printing, so as to remain relevant also in the light of future developments and to prevent distortions of competition and

create a level playing field (Article 2);

- although digital content is very relevant to the internet of things, the proposal for a Directive does not apply in this area;

- the remedies available to the consumer in case of supply problems or lack of conformity of the digital content are structured so that, initially, the consumer has the right to request correction of the non-conformity of digital content within a reasonable period, without significant inconvenience and without incurring any costs, while, subsequently, the consumer is entitled to a reduction in price or termination of the contract if the lack of conformity relates to the main services provided;

- the proposal for a Directive deals with the right of withdrawal from long-term contracts for which the consumer has the right to terminate the contract at any time after the expiration of the initial period of twelve months;

since the proposal has no impact on the budget of the European Union,

hereby, within its remit, comments favourably on the proposal, highlighting the following points:

- the proposal is based on Article 114 of the Treaty on the Functioning of the European Union, which aims mainly to improve the establishment and functioning of the internal market and is used to harmonise and standardise the laws of the Member States. The proposal (Article 4) does not allow Member States to maintain or adopt provisions diverging from those laid down by it, and the Directive will therefore introduce full harmonisation;

- the proposal complies with the principle of subsidiarity since, in providing digital content to consumers in other Member States, companies must comply with different mandatory rules of consumer contract law, and contracts for the supply of digital content are also classified differently from one Member State to another. Depending on the Member State, such contracts are regarded as sales, service or rental contracts. In addition, contracts for the provision of digital content are sometimes classified differently within a Member State, depending on the type of content offered.

Thus, as far as digital content is concerned, national rights and obligations vary among Member States, as do the remedies available to consumers. There is therefore a need for action at European level. Otherwise, businesses would be increasingly faced with different mandatory rules of consumer contract law for the supply of digital content. In contrast, with the adoption of the legislation in question, specific rights are granted to consumers in a coordinated manner, so as to ensure legal certainty for companies that wish to sell their digital content in other Member States;

- the proposal complies with the principle of proportionality, since it does not seek to harmonise all aspects of contracts for the supply of digital content, but focuses on the harmonisation at European Union level of only the key, targeted contractual rights of European consumers that are essential for cross-border online transactions. The use of a

directive rather than a regulation will therefore limit interference with national law. This will also leave room for any new developments occurring in an area of rapid technological and commercial change such as digital content;

– as regards the impact assessment done by the Commission, which is reflected in the choice of option 1 on targeted fully harmonised rules on digital content and goods, it is noted that option 5 – a voluntary European standard contract combined with an EU trust-mark – would achieve the objectives more effectively. This is because companies could offer digital content throughout the EU under a standard contract, whose consumer protection provisions would be laid down in the legislative process and would take precedence over any different clauses in the Member States' domestic law. There would therefore be no additional cost linked to the diversity of such contractual rights. This standard contract would be combined with the EU trust-mark. In this regard, consumers' acceptance of such a contract, linked to the EU trust-mark, would be largely dependent on the degree of legal protection provided;

– in relation to the right of termination of long-term contracts (of an indefinite period or more than twelve months), governed by Article 16 of the proposal, it should be made clear that the prohibition on withdrawing within the first twelve months refers only to cases in which the consumer wishes to terminate out of personal choice and not because the supplier has failed to fulfil the contract. In the latter case, even if the contract is long term, the consumer should be able to withdraw at any time, even within the first twelve months, in accordance with the preceding Articles and, in particular, Articles 12(5) and 13.