



Digital Contracts for Europe - Question & Answer

Brussels, 9 December 2015

What is the untapped potential of cross-border e-commerce in the EU?

Despite the rapid growth of e-commerce, most European businesses do not yet make the most of the Digital Single Market. The full potential of online sales is not yet well exploited in the EU: in 2014, the share of e-commerce in the total retail sector in Europe was 7.2%, while in the USA it reached 11.6%.

Only 12% of EU retailers sell online to consumers in other EU countries, while **more than three times as many (37%) sell online in their own country.**

- Differences in national contract laws are a significant obstacle for cross-border sales for **four out of ten EU retailers** (39%) currently selling online. The additional one-off cost for businesses to adapt to different consumer contract laws when selling cross-border is around €9,000 for each Member State they wish to sell to.
- If the same rules for e-commerce applied across the EU, **57% of EU businesses** that are either active or interested in online cross-border trade would "definitely" or "to some extent" start or increase their online cross-border sales.

European consumers also miss out on the potential of broader choice of products and better prices.

Only 15% of EU consumers buy online from other EU countries, while almost **three times as many (44%) buy online in their own country.**

- Low confidence plays a key role: only 38% of EU consumers feel confident buying online from another EU country.
- Three out of ten consumers' top concerns about buying online from other EU countries are related to key contract law rights, such as non-delivery of their order, delivery of a wrong or damaged product, or repair and replacement of a faulty product.

At least **70 million consumers have experienced one or more problems** with just four popular types of digital content (music, anti-virus, games and cloud storage) over the last 12 months.

However, **only 10% of consumers experiencing problems received remedies.** As a result of those unresolved problems, consumers in the EU have suffered a financial and non-financial detriment estimated of about €9-11 billion.

How do the Digital Contracts proposals fit into the Digital Single Market strategy?

The [Digital Single Market](#) Strategy adopted by the Commission on 6 May 2015 aims at using the potential of the digital economy for achieving more and stable growth for the EU.

The 16 actions announced in the Strategy are designed to work together, to address bottlenecks hampering the achievement of a truly integrated market. Together with the online content portability proposal also adopted today, the proposals on Digital Contracts are the first deliverables under the Strategy. They aim to bring down the remaining contract law barriers and to unleash the untapped potential of cross-border e-commerce in the EU.

What are the problems addressed by the Digital Contracts proposals?

Differences in consumer contract law rules have been identified by stakeholders consulted to prepare the Directives, including businesses and consumer associations, as a significant barrier to cross-border trade.

For digital content, there is a clear gap in the EU legislation, while most Member States do not have any specific national legislation. In some Member States, the supply of digital content may be governed by the rules of sales, in others by the rules on services or rentals. As a result, remedies for defective digital content differ. This creates legal uncertainty both for businesses and consumers. Only a few Member States have recently enacted or started to work on specific legislation on contracts for the supply of digital content. This risks causing more legal fragmentation if no action is taken at EU level.

For goods, and in particular regarding consumer rights in case a good is defective, there are only

minimum EU requirements in place. As a result, in practice there are still different national laws. This situation creates legal uncertainty, imposes additional costs for businesses and affects consumers' confidence in cross-border shopping.

What solution is the European Commission proposing?

The Commission is proposing two Directives: one for digital content and another for goods. Together they will ensure that the same key contract law rules apply across the EU for online purchases of goods and the supply of digital content.

How will these Directives improve the life of consumers in the EU?

Consumers will have access to offers from more traders across the EU and will therefore benefit from a **wider choice of products**, at **more competitive prices**.

Consumers will have specific rights with a high level of protection when accessing digital content and buying goods online. For digital content, the rules will apply when consumers pay for their content with money or if they give their data to access the content (e.g. by registering to an online service/ social media). This will be relevant for a big share of EU consumers: during the last 12 months, the share of EU internet users who downloaded or accessed digital content without paying with money reached 82% for sport events, 80% for audio-visual content (films, series, video clips, TV content), 77% for music, 76% for games and 64% for e-books.

Digital content:

- **Supplier's liability for defects:** If the digital content is defective, the consumer can ask for a remedy. There will be no time limit to the supplier's liability for such defects, because -unlike goods- digital content is not subject to wear and tear.
- **Reversal of burden of proof:** If the digital content is defective, it will not be up to the consumer to prove that the defect existed at the time of supply, but rather for the supplier to prove that this is not the case. This is important considering the technical nature of digital content where it can be especially difficult for consumers to prove the cause of a problem.
- **Right to end a contract:** Consumers will have the right to terminate long-term contracts, and contracts to which the supplier makes major changes.
- **Contract established in exchange for data:** If the consumer has obtained a digital content or service, in exchange for personal data, the new rules clarify that the supplier should stop using them in case the contract is ended.

Goods:

- **Reversal of the burden of proof for two years:** In the EU, it is already the case that for a certain period of time a consumer asking for a remedy for a defective product does not have to prove that the defect existed at the time of delivery; it is up to the seller to prove the opposite. Currently, the time period during which the seller has this burden of proof varies by Member State; now it will be extended to two years throughout the EU.
- **No notification duty:** Consumers will not lose their rights if they do not inform the seller of a defect within a certain period of time, as is currently the case in some Member States.
- **Minor defects:** If the seller is unable or fails to repair or replace a defective product, consumers will have the right to terminate the contract and be reimbursed also in cases of minor defects.
- **Second-hand goods:** For second-hand goods purchased online, consumers will now have the possibility to exercise their rights within a two-year period, as is the case with new goods, instead of the one-year period that currently applies in some Member States.

How will these Directives improve life for businesses in the EU?

Businesses will be able to supply digital content and sell goods online to consumers throughout the EU, based on the same set of contract law rules. This will increase legal certainty and create a business friendly environment.

When supplying digital content, businesses will avoid the cost of legal fragmentation which is emerging due to the lack of EU wide rules and the fact that some Member States are starting to put into place specific national legislations. When selling goods, businesses will save the costs of adapting to the contract law rules of every Member State they wish to sell in.

Common rules across the EU will reduce contract law-related consumer concerns. More **consumers** will be encouraged **to start buying online from other EU countries**, thus creating a market of up to **70 million** online cross-border buyers. This will open up new markets and will be particularly beneficial for small and medium enterprises (SMEs), who need to build their customer-base and often need to go beyond their home market.

How will these Directives contribute to economic growth?

Removing contract law-related obstacles will facilitate cross-border trade. It is estimated that:

- At least **122,000 more businesses** will **start selling online to other EU countries**;
- **Between 8 and 13 million additional consumers** will **start buying online from other EU countries**;
- **EU GDP** will **increase** by **€4 billion** from its current level.
- Increased competition will drive consumer prices down throughout the EU. This will lead to additional consumer welfare and is estimated to increase household consumption in the EU by **€18 billion** from its current level.

How will the new rules work in practice for consumers and businesses?

- A consumer pays to download a movie, but cannot watch it due to its poor quality. Today, he may only receive a discount for future downloads.

From now on, he can ask the supplier to provide another version that works properly. If this is not feasible or the supplier fails to do this, he can ask for a reduction of the price or claim a full refund.

- If an Italian consumer discovers today that a product he purchased online more than 6 months ago is defective and asks the seller to repair or replace it, he may be obliged to prove that this defect existed at the time of delivery.

From now on, throughout the two-year guarantee period, the same consumer will be able to ask for a remedy without having to prove the existence of the defect at the time of delivery.

- A small business produces design coffee tables and wishes to sell them to consumers in 3 different Member States. The owner of the business wants to know in advance for how long he would have to satisfy requests for repairs or replacements from his customers in these new markets, in case there are any defects when the tables are delivered. He seeks legal advice, and finds out that in the first of his new target markets he will be liable for defects for a period of two-years. In the second Member State, this period will be three years. In the third one, there is actually no time-limit for this legal guarantee period.

Similarly, a family-run business wishes to sell hand-made hats to consumers in 2 Member States. When selling within his own country, the owner knows that in case any defects occur, consumers have to notify him within 2 months. In one of his new target markets, consumers still have to notify, but this time within a "reasonable time". In the second Member State, there is no such duty to inform.

From now on, businesses will no longer need to deal with such differences: they will be able to supply digital content or sell goods to consumers in all Member States based on the same set of key contract law rules.

What is the benefit of targeted harmonisation of key contract law rules across the EU?

The Digital Contracts proposals offer a new dynamic: they strike the right balance between significantly increased opportunities for businesses through targeted full harmonisation and a very high level of consumer protection at EU level.

Fully harmonised rules will therefore ensure legal certainty and fewer costs for businesses as well as an increased level of consumer protection.

Overall, this will translate into increasing consumer confidence and spurring business activity across the EU.

Existing EU consumer contract law rules

CONTRACT LAW RULES	GOODS	DIGITAL CONTENT
1. Pre-contractual information	Fully harmonised EU rules	Fully harmonised rules
2. Right to withdraw	Fully harmonised EU rules	Fully harmonised rules
3. Conformity	Minimum harmonisation EU rules	No EU rules
4. Remedies	Minimum harmonisation EU rules	No EU rules
5. Delivery	Fully Harmonised rules	No EU rules
6. Damages	No EU rules	No EU rules

Sources

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- [Flash Eurobarometer 397, "Consumer attitudes towards cross-border trade and consumer protection" \(2014\)](#)
- ["Consumer surveys identifying the main cross-border obstacles to the Digital Single Market and where they matter most", GfK, 2015](#)
- "Economic Study on Consumer Digital Content Products", ICF International, 2015 (to be published shortly)
- [Flash Eurobarometer 411, "Cross-border access to online content" \(2015\)](#)
- [JRC Technical Report " The Macro-economic Impact of e-Commerce in the EU Digital Single Market", \(2015\)](#)

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Press contacts:

[Christian WIGAND](#) (+ 32 2 296 22 53)

[Melanie VOIN](#) (+ 32 2 295 86 59)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)