New rules for contracts for the supply of digital content - Council adopts its position

On 8 June, the Council adopted its position on the directive setting out new rules for business-to-consumer contracts for the supply of digital content and digital services.

The objective of the new rules is to provide a high level of protection and legal certainty to European consumers, in particular when buying cross-border as well as to make it easier for businesses, especially SMEs, to sell EU-wide.

“Be it online music and films, Apps, services such as Facebook or YouTube, these new rules will give more certainty to consumers and suppliers when purchasing and selling cross-border. It is an ambitious yet a delicate and balanced compromise that is about guaranteeing rights for European consumers while allowing for the possibility to create new business opportunities for EU companies through the promotion of innovation and competition.”

Maltese presidency

Main elements of the Council's position

The major elements of the compromise reached by the Council's relate to:

- the scope of the directive, in particular embedded digital content, 'over the top' interpersonal communication services (OTTs), bundle contracts and the processing of personal data. On the latter aspect, the text foresees that consumers should be entitled to contractual remedies not only under contracts where they pay a price for the digital content or service but also in cases where they only provide personal data that will be processed by suppliers. However, where the personal data are exclusively processed by the supplier for the supply of the digital content or service, or for the supplier to comply with legal requirements to which the supplier is subject, the directive shall not apply.

- the remedies for lack of supply and non-conformity. With a view to preserving both the interests of consumers and suppliers, the text foresees that suppliers should be allowed a "second chance" in case of lack of supply before the contract can be terminated. On non-conformity, the text provides more flexibility for the implementation at national level by setting out the conditions for the use of the different remedies rather than establishing a strict hierarchy between the different remedies.

- the time limits for the supplier's liability. To take into account the differences at national level, the compromise text does not fully harmonise prescription or guarantee periods, but sets that the liability of the supplier for cases of lack of conformity may not be shorter than two years.

- the period of the reversal of the burden of the proof. This period during which the burden of the proof for lack conformity rests on the supplier is set at one year.

Background

The directive concerns business-to-consumer (B2C) contracts for the supply of digital content and covers: data produced and supplied in digital form (e.g. music, online video, etc.), services allowing for the creation, processing or storage of data in digital form (e.g. cloud storage), services allowing for the sharing of data (e.g. Facebook, YouTube, etc.) and any durable medium used exclusively as a carrier of digital content (e.g. DVDs).

The proposed directive on certain aspects concerning contracts for the supply of digital content was presented by the Commission on 9 December 2015 together with a proposal for a directive on certain aspects concerning contracts for the online and other distances sales of goods.

Next steps

Negotiations with the Parliament will start once the latter has adopted its position, most likely during autumn.

- Directive on the supply of digital content and services - document on the general approach
Digital single market for Europe

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