



# DIGITAL CONTRACTS

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## New rules to modernise the supply of digital content and sale of goods

Millions of transactions take place across the EU every day: buying or selling goods, digital content, digital services or ‘smart’ goods. The European Commission proposed new and modern contract law rules on the supply of digital content and the sale of goods guaranteeing a high level of consumer protection and a clear legal framework for traders. The two directives have just been adopted by the European Parliament and the Council.

### What problems do consumers and traders have to deal with?

**10%** Only 10% of EU retailers sell online to consumers in other EU countries, with **businesses** reporting differences in national contract laws as one of the top barriers to cross-border sales. With no EU level rules businesses face legal uncertainty and heavy legal costs, when they sell digital content or digital services to other EU countries.



As for **consumers**, 1 in 3 online users had at least one problem with digital content such as music, games and cloud storage in 2015. Only 10 % of them found a suitable solution to their problems.

### New rights and more protection for consumers

	Digital content	Goods
Remedies	<ul style="list-style-type: none"> <li>• At least 2 years to request a remedy in case of defects</li> <li>• If defects are recurrent or severe, consumers do not have to wait for the trader to fix the problem, but can directly choose to               <ol style="list-style-type: none"> <li>a) either keep the product, even though it has a defect, and get back part of the price they paid</li> <li>b) or terminate the contract, return the product and get a full refund</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• The seller will be responsible for all defects in the “hard-ware” and in the digital element of a smart good</li> <li>• The seller will make sure that software updates needed to keep a smart good faultless and cybersecure are provided</li> </ul>
Defect in the first year	<ul style="list-style-type: none"> <li>• Consumers will not have to prove that the digital content or digital service was defective from the beginning</li> </ul>	<ul style="list-style-type: none"> <li>• Consumers will not have to prove that the goods were defective from the beginning</li> <li>• This is a major improvement compared to the current 6 months applied in most Member States</li> <li>• Member States can choose to have a two-year period instead of one</li> </ul>

## How will the new rules on digital contracts work for consumers and traders?

You buy a new smartphone advertised for its high-resolution camera from an online electronics store in another EU country. However, when the phone arrives you are disappointed to find that the camera takes blurry and low-resolution photos.



### With the new rules

- Within at least two years from the day you purchased the smartphone, you can go back to the online seller and ask them to fix the issue.
- The seller will be responsible regardless of whether the problem is in the camera lens or in the pre-installed camera application.
- If the seller does not or cannot fix the problem, you can choose between:
  - a) keeping the phone and getting a price reduction, or
  - b) returning the phone with a full refund.

You pay to download a movie, but the quality of sound and image is poor. Prior to the new rules, all you could get was a discount for future downloads on the site.



### With the new rules

- You can ask the supplier to provide you with another version of the movie that works properly.
- If this is not feasible or the supplier fails to do this, you can choose between:
  - a) keeping the movie and getting a price reduction, or
  - b) asking for a full refund.

You buy a smart TV, which seems to work perfectly. Just about two years later, a serious security flaw appears in a component of the TV, which would allow someone else to take over control of your TV through the Internet.



### With the new rules

- The seller must inform you and provide an update to correct this bug in the software of the TV.
- This can be done through a direct update of your TV device, which you can install by approving it.
- If the update is made available to you but you decide not to install it, the seller will not be responsible for the consequences.

An electric drill you purchased 10 months ago is defective. You go to the store and ask the seller to repair or replace it. However, the seller refuses to do anything, unless you prove that the drill was defective already when it was delivered to you, 10 months ago.



### With the new rules

For any defect that becomes apparent up to 1 year after the delivery, you can ask for a remedy (repair, replacement, price reduction, refund) without having to prove the existence

of the defect at the time of delivery. It is taken as a given that the issue was there when the product was delivered.

You run a family business selling handmade shoes, and want to sell online to consumers in different EU countries. When selling within your own country, you know that if a defect occurs, consumers should first contact you and ask you to repair or replace the product. However, a lawyer tells you that in certain EU countries you may have to immediately give a full refund instead.



### With the new rules

- No matter which EU country you choose to sell to, the same rules on consumer remedies will apply.
- If there is a defect in the shoes you sold to consumers, both in your own country and abroad, you will first be allowed to try to fix the problem, by repairing or replacing the shoes.
- If you cannot fix the problem, the consumer will be able to ask you either for
  - a) a price reduction keeping the defective shoes, or
  - b) for a full refund giving back the shoes.
- But if a defect is very serious or is repeated, the consumer will be able to immediately ask you for a price reduction or a full refund.

Your start-up has developed a photo-editing app for smartphones and tablets. However, you are reluctant about supplying it directly outside of your own country, as you do not have the time and money to find out which rules apply in other EU countries.



### With the new rules

- No matter which EU country you choose to sell to, the same rules will apply.
- Your app will have to meet the same conformity criteria across the EU.
- You will have the same obligations if the app you provide is faulty. You will first try to fix the problem. If you do not or cannot fix it, you will have to give consumers a price reduction or a refund.