



BEUC The European
Consumer
Organisation

The Consumer Voice in Europe

Digital content products

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New approach?

Modification of CESL as a consequence of the political guidelines of JP Juncker (July 2014):

“I intend to take, within the first six months of my mandate, ambitious **legislative steps** towards a connected digital single market, notably by

- swiftly concluding negotiations on common European data protection rules; by adding more
- ambition to the ongoing reform of our telecoms rules; by modernising copyright rules in the light of the digital revolution and changed consumer behaviour; and by
- **modernising and simplifying consumer rules for online and digital purchases.”**

Questions on Terms of Reference for Stakeholder Group

- Is the new initiative limited to B to C?
- Is the optional character still under discussion?
- What does it mean to “simplify” consumer rules for on-line and digital purchases – does the European Commission refer to existing EU rules and if yes, which ones? re-open the CRD?
- How does the inclusion of rules for goods (quality, remedies) into the scope of this new legislative initiative relate to the evaluation and potential update of the 1999 consumer sales and the 1993 unfair contract terms directive and the REFIT programme?
- Does the European Commission envisage a dual system for goods bought on-line vs. goods bought off-line?

Consumer rights when purchasing digital content

The missing link - harmonise consumer contract law for digital content (CRD +):

- conformity criteria + consumer expectations test
- Remedies in case of lack of conformity with the contract
- Include digital content provided for non-monetary performance (in exchange of personal data).
- Targeted remedies for “free” digital content.
- Passing of risk: CESL model: “control over the digital content”

What articles can be 'recycled' from CESL?

- Conformity with the contract (**art. 99, 111, 114**) – for **digital content**
- Criteria for conformity (**art. 100**) – for **digital content**
- Overview of consumer's remedies (**art.106**) – for **digital content**
- Passing of risk in contracts for the supply of digital content not supplied on a tangible medium (**art. 142**)
- No discrimination between remedies for 'paid' and 'free' digital content (**EP amendment 193**)
- Consequences of the termination of a contract for the supply of 'free' digital content (**EP amendments 235 and 236**)
- Upon termination of a contract, suppliers of digital content shall refrain from further use of the consumer's personal data (**EP amendment 232**)

Other areas to look at: unfair contract terms

- Form matters

List of unfair terms

- Unfair terms restricting the application of exceptions and limitations granted under Copyright Law (e.g. private copying)
- Unfair terms enforcing TPMs to limit the consumer uses of digital content (e.g. format shifting)
- Unfair terms requiring the consumer to conclude an additional contract to be able to use the purchased digital content.

Consumer economic detriment

Table 5.8: Estimated aggregate financial loss for the total online population in the EU27 in the previous 12 months, by problem type (€m)

Service type	Financial loss (€m)
Lack of information	9,587
Unclear/ complex information	8,146
Quality	2,855
Access	2,328
Unfair terms and conditions	1,009
Privacy	187
Security	3,971
Total for the EU 27	28,083

Source: Europe Economics online consumer survey

Evidence-based case

European sources:

[2011 - Europe Economics study](#)

[2011 - EC Impact Assessment for CESL \(p. 177 ss\)](#)

[2014 - EP STOA study](#)

National sources:

[2014 - UK BIS Impact Assessment for consumer rights bill](#)

Thank you very much for your attention !

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The Consumer Voice in Europe

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