



Position Paper

EU Commission Contract Rules Proposals

Mission

EMOTA's¹ main goal is to assist policy makers in removing any barriers to cross-border trade². EMOTA's commitment to a barrier free EU Single Market is long standing and can be traced across all our positions and actions.

We are making the following comments with the aim to constructively contribute to the debate over the future of the EU Digital Single Market for products and services by reflecting the views of online sellers across 17 markets, including the largest.

Key messages

- EMOTA supports¹ the EU Commission proposal² to harmonize the EU rules on consumer legal guarantees and remedies in distance selling contracts.
- EMOTA rejects the absence of full harmonization of all B2C contract law aspects and the fragmented approach for online and "offline" retail.
- EMOTA rejects the provisions which aim to enhance consumer rights but will result in high trading costs and possibly new service obligations which could diminish the benefits of a quasi-harmonized contract law framework.

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- Recommendations
- Detailed comments on the legislative proposals
- First proposal for amendments

¹ EMOTA, the European eCommerce and Omni Channel Trade Association, is the European level umbrella federation representing online and distance sellers across Europe. The main mission of EMOTA is to promote eCommerce and Distance Selling and help policy makers remove any barriers to cross-border selling. Transparency register N° 11251212351-96

² http://ec.europa.eu/justice/contract/digital-contract-rules/index_en.htm Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on certain aspects concerning contracts for the online and other distance sales of goods COM/2015/0635 final - 2015/0288 (COD) and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on certain aspects concerning contracts for the supply of digital content COM/2015/0634 final - 2015/0287 (COD)



EMOTA makes the following recommendations to policy makers

- A 24 months seller burden of proof is disproportionate and costly
- Modifications to the minimum 24 months legal guarantees risk creating legal uncertainty
- 30 extra days “passing of risk” when the consumer installs the goods is disproportionate
- Durability and life expectancy information should not be a mandatory requirement
- A notification requirement or a clear consumer duty of care are necessary to prevent abuse
- Termination rights for small defects could upset the hierarchy or remedies
- Accessories are defined too broadly, including products that do not have a clear functionality link
- Packaging or third party rights should not be specific conformity criteria
- Commercial guarantees should not be included in the text in order to avoid confusion
- A clear functionality link should be established in order to determine the applicable rules
- Free contracts for digital content should not be included
- The remedies for digital content contracts should be revised for consistency and clarity
- References to third party enforcement actions should be considered carefully

An online/offline approach

- **EMOTA does reject the creation of a distinction between the rules applicable for the sale of goods online and the rules for the sale of goods offline.**
- EMOTA would also argue that without a sufficiently clear delimitation, the creation of a third contract law regime, for the online sale of digital content, cross-border, could further fragment the markets and increase legal uncertainty.
- As the EU Commission itself recognizes in the Roadmap³, the online/offline approach risks to create confusion for both consumers and sellers and conflict with the obvious evolution towards omni-channel retail.
- Policy makers should not ignore the increasingly blurred line between digital and tangible products.
- Consumers and sellers will be confused by having to deal with two different sets of rules for the same products or services.

Examples:

1. *A seller might have both online and offline sales channels, being Omni-channel, as it is increasingly the trend. In the context proposed by the Commission such sellers would have to manage two different sets of rights and obligations for virtually the same products, one for their online sales (possibly online and cross-border only) and another one for their “offline” sales. One obvious example is the case of DVDs and CDs which are carriers or digital content and at the same time products but the EU Commission seems not to recognize the product dimension, focusing only on the carrier dimension.*

³ http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_008_contract_rules_for_digital_purchases_en.pdf



2. *Some companies sell online and offer the consumer the possibility to receive the product in a store, where additional contracts might be concluded – insurance, refills, supplies, accessories etc. Having two sets of rules would create significant confusion for both sellers and consumers.*
3. *Digital content services are becoming a much more integral part of the tangible products. A product such as a digital camera could malfunction because of the software rather than the hardware, but the seller and the consumer would not be able to determine the cause or the set of applicable rules.*
4. *Products might have additional functions or services imbedded. A home appliance could be controlled via software, or via an app (e.g. smart locks, smart switches, connected appliances – washers, fridges, etc.). Should there be a malfunction with either the app or the software it would be very difficult for the consumer or the seller to know what causes the defect until a professional inspection could take place, and thus what rights would apply.*

Targeted/Full harmonization

- *EMOTA welcomes the harmonization approach taken by the EU Commission⁴ and calls for this to be extended to all remaining B2C contract rules⁵ in order to favor the completion of the Digital Single Market for goods and Services.*
- *EMOTA rejects the EU Commission’s approach encouraging Member States maintain/adopt national rules concerning limitation periods (e.g. suspension of time limits during repairs/negotiations), commercial guarantees or the redress rights for sellers. Such an approach risks maintaining the legal fragmentation and increased trading costs.*

Examples:

1. *It is not clear what happens if and during the period a product is repaired: is the guarantee period extended? Does it restart? Does the moment when the repair takes place have any effect? What if the product is repaired/brought in conformity in month 23 of the total 24?*
2. *Sellers have to deal with different procedures across the 28 EU markets. Leaving this area not harmonised would only continue the legal fragmentation.*

Timing issues

- *The EU Commission decided to expand the period for the reversal of the burden of proof to 24 months, overlapping with the minimum legal guarantee period provided by the same 1999 Directive. This can prove a costly and burdensome change for sellers.*
- *The EU Commission and policy makers could consider a threshold approach for the reversal of the burden of proof (based on value, time, other differentiations).*
- *EMOTA welcomes the EU Commission’s decision to maintain the minimum guarantee period to 24 months. We are concerned by past debates in the EU Parliament where attempts were made to introduce longer legal guarantee periods which are likely to be attempted again.*

⁴ Criteria and conformity, hierarchy of remedies, etc.

⁵ 93/13/EEC Unfair Contract Terms Directive



Examples:

1. A washing machine is maintenance sensitive, maybe more so than a TV or a pair of shoes. Some products will be more sensitive to the environment in which they function or are being used (humidity, dust, heat, etc.) Many products depend on the good care of the consumer's in order to function well.
Extending the reversal of the burden of proof period from 6 months to 24 months means that the seller will find it more difficult to distinguish the production or delivery faults from the usage faults. The time passed from the moment of delivery will result in additional elements that make it very difficult to prove that the product was delivered in a certain condition (lack of regular maintenance and use of original parts, lack of proper cleaning, the appearance of scratches, power shortages, heavy water, etc.).
2. It is very important for the seller to have the freedom to argue that the consumer misused the product. Such a right becomes even more important in the case of high value goods and where there is a risk that the seller would not be able to recover the costs from the producer or where the seller has internalized the repair services and therefore the costs.

Passing of risk

- In Article 8 the EU Commission introduced a new right for consumers. If the goods are to be installed by the consumer, the time to establish conformity seems to be extended to 30 days. ***This can be both very burdensome for businesses and create legal uncertainty.***
- ***The EU Commission does not provide sufficient clarity around the installation obligations.***

Examples:

A consumer would have 30 days to decide whether or not they keep a product when ordering online. The defects could at this stage also appear from the way the good has been used. This could become an important burden for online sellers. In addition, most goods require some form of installation – which could extend this right to a very large number of transactions.

Durability/Life expectancy/Spare parts

- ***EMOTA opposes any obligation for the seller to provide, by default, and outside of any voluntary commercial guarantees, information on “life expectancy” or “durability” for products.*** The producer testing and any commitments should be seen as a competitive advantage and not as a default minimum market requirement. Such obligations will very likely confuse consumers in understanding the differences between technical testing, commercial guarantees and legal guarantees.
- We oppose any further seller obligations regarding spare parts or the reparability of products.

Examples:

1. An industry standard is agreed on the life cycles of a battery. This is well beyond the expected normal use of a consumer. The company producing the battery also offers a commercial guarantee on top of the normal legal guarantee. A requirement to inform consumers on a third guarantee will be very confusing and impractical.



Removing the notification requirement

- The EU Commission proposes the complete removal of the so called notification requirement option.
- 17 countries have implemented the option to ask the consumer to notify the lack of conformity within a certain time and under a certain procedure in some cases, 12 Member States opted for 2 months, while others have variations (e.g. “as soon as”).
- **EMOTA opposes removing the notification obligation because it could lead to abuse instances.**
- The market experience shows that the defects will appear within the first 6 months of a product’s life. This means that sellers and manufacturers can foresee a certain logistics chain as to best serve the consumer, ensuring repair or replacement capacities are used the most efficiently. Should this notification period be removed the product cost will increase because sellers will be less likely able to identify the cause of the defect, thus the legal framework will remove an incentive for a **“duty of care”**. Such a duty of care is very important and should be maintained.

Examples:

1. Some products have error logs (white goods, electronics) and could indicate whether or not a product was misused following a malfunction. Others do not have this option (clothing, bikes, etc). Consumers that do not notify the defect continue to use a faulty product making the defect even worse and possibly hurting themselves. This also increases the cost of the repair/replacement.

Establishing conformity

- The EU Commission chooses to re-structure the current Article 2 of the 1999 Sales Directive in two Articles, 4 and 5, introducing a set of subjective criteria and one set of objective criteria for establishing conformity with the contract.
- The EU Commission introduces a third conformity check, requiring sellers to ensure the products are free of rights and the consumer is not restricted from using these.
- EMOTA opposes the introduction of new obligations forcing the seller to conduct expensive patent or copyright checks, should this information not be provided by the producer or distributor.
- **EMOTA opposes the EU Commission’s decision to introduce wording referring to the “packaging” of the order. This is the responsibility of the seller and could result in limiting some developing business practices. The seller is responsible for providing a product in conformity with the contract and the consumer is sufficiently protected.**

Commercial guarantees

- **The Commission seems to have extended the obligations for commercial guarantees.**
- EMOTA urges caution regarding the future debates on commercial guarantees. Policy makers should avoid creating confusion by mixing the guarantees and remedies framework with the rules on unfair commercial practices or via different national rules on commercial guarantees.



New provisions on remedies

- ***Article 9 Withholding performance by the consumer until the goods are repaired. The provision seems not to consider the real contractual path.*** If the consumer did not purchase/pay for the product he/she is using already, it means the consumer has a contract with a financing institution. Withholding payment from the financial institution (installments) would have little effect on a non-compliant seller but would only hurt the interests of the financial body and the consumer's.
- ***Article 13 Trader reimburses the consumer in 14 days while consumer has to send the good back in 14 days. The seller might not actually see the product and the product might be in a repair center or at the consumer when the reimbursement has to be made, thus forcing the seller to reimburse a product that cannot be checked. Such a provision can lead to significant abuse.***
- ***Article 13 Termination of contracts for small defects. Having this new termination right as the ultimate remedy will make it very difficult for the consumer and seller to agree on the previous steps, basically incentivizing the termination.*** The current set of rules envisages a fair set of remedies, at the choice of consumers but counterbalanced by test for reasonability and cost efficiency. This new remedy will in effect upset the hierarchy of remedies as abusive customers could make use of such provisions in an attempt to extend their withdrawal rights illegitimately, increasing overall trading costs.
- ***In Article 13 The EU Commission proposed the termination of contracts for accessories when the main contract has been terminated. EMOTA considers that this current wording around this provision is not clear enough could lead to the illegitimate extension of the withdrawal rights for products that while are being sold as accessories, they could function as standalone products (e.g. TV and sound system).*** For this reason, we reject this provision.

Definitions

- ***Accessories/accessory: the inclusion of this formulation in Articles 5 and 13 could lead to confusion.*** A stronger functionality link is needed – other than just the mere purchasing at the same time. Some products might function very well as stand alone, while others might only be purchased at the same time with the product for which the termination occurs.
- ***Given the technological developments (cloud services) retailers should be allowed to provide consumers with the necessary guarantee/remedies information in websites or apps.*** This depends on the interpretation of “durable medium”. Previous EU Commission wording in the 2014 Consumer Rights Directive Guidance and ECJ C-49/11 Content Services Ltd could support this approach – possibly via a recital specifically referring to the conditions a website/app should fulfil in order to consider the access to the information equal to the “durable medium”.



Contracts for digital content and services

- **EMOTA considers that the distinction between the definitions for digital content and tangible goods is extremely complex and will be almost impossible to distinguish in the near future.** In this context the EU Commission should avoid introducing new definitions which could also be in conflict with those already adopted (e.g. 2011 Consumer Rights Directive). Without a clear approach, sellers and consumers will have trouble identifying what rules apply to what part of the product (mechanical, digital, electronic).
- **The definition used by the EU Commission for digital content contracts is very broad,** risking to capture many other products and services (cloud, smart devices, etc.) for which the rules envisaged by the EU Commission might not be applicable, sometimes because of potential conflicts with other rules (e.g. remedies such as termination, deletion of the users data, etc.).
- In order to avoid legal uncertainty and restrictions on the use of data, **the Directive should not cover “counter performance” contracts,** such as those where the consumer “actively” (or inactively/passively) provides data in exchange of a product instead of payment. The current rules (data protection, consumer protection or unfair commercial practices) offer a sufficiently comprehensive protection level.
- **EMOTA believes that a debate on the value of personal data is not best placed in this context as it takes a very narrow perspective** (e.g. compensations for paying or non-paying apps). Article 3 of the Directive aims to create a distinction between the “commercial” use of data and other uses, creating legal uncertainty for the services and products which rely on usage data in order to adjust the functioning of the products (a similar approach is taken in the 2008 ePrivacy Directive in Article 5.3 creating confusion for regulators, sellers and consumers). The feedback from usage data is part of the consumer experience itself and is an additional service provided by the operator. Policy makers seem to point in this proposal to a lack of clarity in the legal grounds for the collection and processing of data (in this case non-personal data) rather than a contract law issue.
- **The inclusion of user generated data in the scope of the proposal creates an overlap with the data protection framework** (right to access data) and a potential conflict with copyright rules. The end result of the system with which the user interacted (profile information, usage statistics, different creations) will be the result of the unique features of the system itself and thus foreseen by the creators of the system. It is unclear to what extent the data generated by the user interaction with the system can be returned as such to the users (e.g. a kitchen is generated in a simulator made available by the online shop).
- **We welcome the Commission’s acceptance that the uniqueness of a certain type of data is limited because consumers are likely to follow/confirm patterns.** Therefore, it is essential that sellers are able to continue using some non-unique data sets even after the consumer terminated the contract (Recital 38 and Article 13).
- **The EU Commission should not incentivize switching in a market so competitive as eCommerce.** References to an obligation for sellers to provide contract data in Recital 39 seem to indicate an incentive for switching.



- *The EU Commission should fully harmonize all contract law aspects, including the rules on damages and.* Leaving this area to Member States will maintain the legal fragmentation. The rules on remedies should be proportionate and adequate to the context (e.g. partial performance due to a lack of network connectivity should not trigger an instant right to termination).
- *The EU Commission should not encourage collective action as it will not benefit the market or the consumers, but will raise trading costs significantly and sanction mostly SMEs.*

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EU Commission December 2015 Proposal	EMOTA Amendment	CESL	EU Parliament
<p>(13) This Directive should not apply to goods like DVDs and CDs incorporating digital content in such a way that the goods function only as a carrier of the digital content. However, this Directive should apply to digital content integrated in goods such as household appliances or toys where the digital content is embedded in such a way that its functions are subordinate to the main functionalities of the goods and it operates as an integral part of the goods.</p>	<p><i>(13) This Directive should not apply to goods like DVDs and CDs incorporating digital content in such a way that the goods function only as a carrier of the digital content. However, this Directive should apply to digital content integrated in goods such as household appliances or toys where the digital content is embedded in such a way that its functions are subordinate to the main functionalities of the goods and it operates as an integral part of the goods.</i></p>		
<p>(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. Member States should also be free to provide more detailed conditions in relation to aspects regulated in this Directive to the extent those are not fully harmonised by this Directive: this concerns limitation periods for exercising the consumers' rights, commercial guarantees, and the right of redress of the seller.</p>	<p><i>(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. Member States should also be free to provide more detailed conditions in relation to aspects regulated in this Directive to the extent those are not fully harmonised by this Directive: this concerns limitation periods for exercising the consumers' rights, commercial guarantees, and the right of redress of the seller.</i></p>		
<p>(19) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in case of failure to deliver what is expected, it is essential to fully harmonise rules for determining the conformity with the contract. Applying a combination of subjective and objective criteria should safeguard legitimate interests of both parties to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract - but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.</p>	<p><i>(19) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in case of failure to deliver what is expected, it is essential to fully harmonise rules for determining the conformity with the contract. Applying a combination of subjective and objective criteria should safeguard legitimate interests of both parties to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract—but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.</i></p>		
<p>(21) Conformity should cover material defects as well as legal defects. Third party rights and other legal defects might effectively bar the consumer from enjoying the goods in accordance with the contract when the right's holder rightfully compels the consumer to stop infringing those rights. Therefore the seller should ensure that the goods are free from any right of a third party, which precludes the consumer from enjoying the goods in accordance with the contract.</p>	<p><i>(21) Conformity should cover material defects as well as legal defects. Third party rights and other legal defects might effectively bar the consumer from enjoying the goods in accordance with the contract when the right's holder rightfully compels the consumer to stop infringing those rights. Therefore the seller should ensure that the goods are free from any right of a third party, which precludes the consumer from enjoying the goods in accordance with the contract.</i></p>		



<p>(23) Ensuring longer durability of consumer goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential to increase trust in the single market. For these purposes, product specific Union legislation is the most appropriate approach to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives followed in this Union sector specific legislation. In so far as specific durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the criteria for conformity.</p>	<p>(23) Ensuring longer durability of consumer goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential to increase trust in the single market. For these purposes, product specific Union legislation is the most appropriate approach to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives followed in this Union sector specific legislation. In so far as specific durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the criteria for conformity.</p>		
<p>(24) Enhancing legal certainty for both consumers and sellers requires a clear indication of the time when the conformity of the goods to the contracts should be assessed. In order to ensure coherence between the present Directive and Directive 2011/83/EU it is appropriate to indicate the time of the passing of risk as the time for assessing the conformity of the goods. However, in cases where the goods need to be installed, that relevant time should be adapted.</p>	<p>(24) Enhancing legal certainty for both consumers and sellers requires a clear indication of the time when the conformity of the goods to the contracts should be assessed. In order to ensure coherence between the present Directive and Directive 2011/83/EU it is appropriate to indicate the time of the passing of risk as the time for assessing the conformity of the goods. However, in cases where the goods need to be installed, that relevant time should be adapted.</p>		
<p>(25) The optional possibility for Member States to maintain notification obligations for consumers may lead them to easily lose well-substantiated claims for remedies in case of delayed or lack of notification, especially in a cross-border transaction where a law of another Member State applies and the consumer is not aware of this notification obligation resulting from the law of another Member State. Therefore a notification obligation for consumers should not be established. Accordingly, Member States should be prevented from introducing or maintaining a requirement for the consumer to notify the seller the lack of conformity within a certain deadline.</p>	<p>(25) The optional possibility for Member States to maintain notification obligations for consumers may lead them to easily lose well-substantiated claims for remedies in case of delayed or lack of notification, especially in a cross-border transaction where a law of another Member State applies and the consumer is not aware of this notification obligation resulting from the law of another Member State. Therefore a notification obligation for consumers should not be established. Accordingly, Member States should be prevented from introducing or maintaining a requirement for the consumer to notify the seller the lack of conformity within a certain deadline.</p>		
<p>(26) In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first two years, in order to benefit from the presumption of lack of conformity, the consumer should only establish that the good is not conforming, without needing to</p>	<p>(26) In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first two years six months, in order to benefit from the presumption of lack of conformity, the consumer should only establish that the good is not conforming, without needing</p>		



<p>demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the Digital Single Market, a fully harmonised order in which remedies can be exercised should be provided for. In particular, the consumer should enjoy a choice between repair or replacement as a first remedy which should help in maintaining the contractual relation and mutual trust. Moreover, enabling consumers to require repair should encourage a sustainable consumption and could contribute to a greater durability of products.</p>	<p>to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the Digital Single Market, a fully harmonised order in which remedies can be exercised should be provided for. In particular, the consumer should enjoy a choice between repair or replacement as a first remedy which should help in maintaining the contractual relation and mutual trust. Moreover, enabling consumers to require repair should encourage a sustainable consumption and could contribute to a greater durability of products.</p>		
<p>(29) Considering that the right to terminate the contract due to the lack of conformity is an important remedy applicable where repair or replacement are not feasible or have failed, the consumer should also enjoy the right to terminate the contract in cases where the lack of conformity is minor. This would provide a strong incentive to remedy all cases of a lack of conformity at an early stage. In order to make the right to terminate effective for consumers, in situations where the consumer acquires multiple goods, some being an accessory to the main item which the consumer would not have acquired without the main item, and the lack of conformity impacts that main item, the consumer should have the right to terminate the contract also in relation to the accessory elements, even if the latter are in conformity with the contract.</p>	<p><i>(29) Considering that the right to terminate the contract due to the lack of conformity is an important remedy applicable where repair or replacement are not feasible or have failed, the consumer should also enjoy the right to terminate the contract in cases where the lack of conformity is minor. This would provide a strong incentive to remedy all cases of a lack of conformity at an early stage. In order to make the right to terminate effective for consumers, in situations where the consumer acquires multiple goods, some being an accessory to the main item which the consumer would not have acquired without the main item, and the lack of conformity impacts that main item, the consumer should have the right to terminate the contract also in relation to the accessory elements, even if the latter are in conformity with the contract.</i></p>		
<p>(33) In order to ensure higher awareness of consumers and easier enforcement of the Union rules on consumer's rights in relation to non-conforming goods, this Directive should align the period of time during which the burden of proof is reversed in favour of the consumer with the period during which the seller is held liable for any lack of conformity.</p>	<p><i>(33) In order to ensure higher awareness of consumers and easier enforcement of the Union rules on consumer's rights in relation to non-conforming goods, this Directive should align the period of time during which the burden of proof is reversed in favour of the consumer with the period during which the seller is held liable for any lack of conformity.</i></p>		
<p>3. This Directive shall not apply to any durable medium incorporating digital content where the durable medium has been used exclusively as a carrier for the supply of the digital content to the consumer.</p>	<p><i>3. This Directive shall not apply to any durable medium incorporating digital content where the durable medium has been used exclusively as a carrier for the supply of the digital content to the consumer</i></p>		
<p>‘durable medium’ means any instrument which enables the consumer or the seller to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the</p>	<p>‘durable medium’ means any instrument which enables the consumer or the seller to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged</p>		



purposes of the information and which allows the unchanged reproduction of the information stored;	reproduction of the information stored, <i>including cloud based services where these meet the necessary criteria;</i>		
(b) be delivered along with such accessories including packaging, installation instructions or other instructions as the consumer may expect to receive; and	(b) be delivered along with such accessories including packaging, installation instructions or other instructions as the consumer may expect to receive; and		
At the time relevant for establishing the conformity with the contract as determined by Article 8, the goods must be free from any right of a third party, including based on intellectual property, so that the goods can be used in accordance with the contract.	At the time relevant for establishing the conformity with the contract as determined by Article 8, the goods must be free from any right of a third party, including based on intellectual property, so that the goods can be used in accordance with the contract.		
2. In cases where the goods were installed by the seller or under the seller's responsibility, the time when the installation is complete shall be considered as the time when the consumer has acquired the physical possession of the goods. In a case where the goods were intended to be installed by the consumer, the time when the consumer had reasonable time for the installation but in any case not later than 30 days after the time indicated in paragraph 1 shall be considered as the time when the consumer has acquired the physical possession of the goods.	2. In cases where the goods were installed by the seller or under the seller's responsibility, the time when the installation is complete shall be considered as the time when the consumer has acquired the physical possession of the goods. In a case where the goods were intended to be installed by the consumer, the time when the consumer had reasonable time for the installation but in any case not later than 30 days after the time indicated in paragraph 1 shall be considered as the time when the consumer has acquired the physical possession of the goods.		
(d) the seller has declared, or it is equally clear from the circumstances, that the seller will not bring the goods in conformity with the contract within a reasonable time.	(d) the seller has declared, or it is equally clear from the circumstances, that the seller will not bring the goods in conformity with the contract within a reasonable time.		
4. The consumer shall be entitled to withhold the payment of any outstanding part of the price, until the seller has brought the goods into conformity with the contract.	4. The consumer shall be entitled to withhold the payment of any outstanding part of the price, until the seller has brought the goods into conformity with the contract		
(a) the seller shall reimburse to the consumer the price paid without undue delay and in any event not later than 14 days from receipt of the notice and shall bear the cost of the reimbursement;	(a) the seller shall reimburse to the consumer the price paid without undue delay and in any event not later than 14 days from receipt of the notice and shall bear the cost of the reimbursement;		
(b) the consumer shall return, at the seller's expense, to the seller the goods without undue delay and in any event not later than 14 days from sending the notice of termination;			
(c) where the goods cannot be returned because of destruction or loss, the consumer shall pay to the seller the monetary value which the non-conforming goods would have had at the date when the return was to be made, if they had been kept by the consumer without destruction or loss	(c) where the goods cannot be returned because of destruction or loss, the consumer shall pay to the seller the monetary value which the non-conforming goods would have had at the date when the return was to be made, if they had been kept by the consumer without destruction or loss until that date, unless the destruction or loss has been caused by a lack of		



loss until that date, unless the destruction or loss has been caused by a lack of conformity of the goods with the contract; and	<i>conformity of the goods with the contract; and The consumer will follow the instructions of the seller concerning how the goods to be returned should be handled and posted.</i>		
(b) the terms of the commercial guarantee that go beyond the legal rights of the consumer, information about the duration, transferability, territorial scope and existence of any charges which the consumer might incur in order to benefit from the commercial guarantee, the name and address of the guarantor and, if different from the guarantor, the person against whom any claim is to be made and the procedure by which the claim is to be made.	<i>(b) the terms of the commercial guarantee that go beyond the legal rights of the consumer, information about the duration, transferability, territorial scope and existence of any charges which the consumer might incur in order to benefit from the commercial guarantee, the name and address of the guarantor and, if different from the guarantor, the person against whom any claim is to be made and the procedure by which the claim is to be made.</i>		