

**DIGITAL CONTENT PROPOSAL**  
**COMPROMISE AMENDMENTS - FINAL**

17 November 2017

**1. Compromise amendments on data protection (Article -1 (new) and Article 3(8) and recitals 17, 22 and 22a (new))**

**CA 1 on Article -1 (new) and Article 3(8)**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: 181 (Gebhardt et al.), 182 (Voss/Maydell), 183 (Cavada), 184 cp 1 (Gebhardt et al.), 197 (Voss/Maydell), 200 (Marias), LIBE 6, 212 (Reda), 213 (Maydell), LIBE 10 pc 2, 299 pc 2 (Reda), 301 (Voss/Maydell), 302 (Ford/Dalton), 303 (Collin-Langen), 312 (Dalton/Ford), LIBE 21, AMs 41 (Rapporteurs), 416 (Mizzi), 415 (Voss/Maydell), 417 (Reda), 418 (Guoga), 442 (Reda), 479 (Dalton/ford), 502 (Grapini), 503 (Reda), 504 (Dalton, Ford), 505 (Maydell, Schwab), 506 (Guoga), 43 (Rapporteurs), 515 (Zullo), LIBE 24, 548 (Reda), 593 (Reda), 759 (Kallas, Charanzová), 790 (Reda), 791 (Dalton/Ford), 792 (Guoga), 798 (Mizzi), 807 (Dalton/Ford), 852 (Voss/Maydell), 853 (Gebhardt et al.), 901 (Dalton/Ford), 935 (Reda), 936 (Dalton/Ford), 962 (Guoga), 975 (Reda)

*Article -1*

**Data protection**

*This Directive is without prejudice to the rules on protection of individuals with regard to the processing of personal data as granted by or in compliance with, in particular, Regulation (EU) 2016/679.*

**Article 3, paragraph 8**

~~8. — This Directive is without prejudice to the protection of individuals with regard to the processing of personal data.~~

**CA 2 on recital 17**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including AMs 13 (co-Rapporteurs), 208 (Cavada), 209 (Marias), 210 (Zullo), 5 LIBE

- (17) ~~Digital content is highly relevant in the context of the Internet of Things. This Directive should apply to Internet of Things devices.~~ However it is opportune to address specific issues of liability related to ~~the Internet of Things, including the liability for data and machine-to-machine contracts, in a separate way.~~

### CA 3 on recitals 22 and 22a (new)

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including AMs 14 (co-Rapporteurs), 197 (Voss/Maydell), 221 (Maydell), 222 (Reda), 223 (Zullo), 224 (Rozière), 225 (Dalton/Ford), LIBE 7

- (22) ~~The protection of individuals with regard to~~ *The pursuit of activities falling within the scope of this Directive involves the processing of personal data is. This Directive is without prejudice to the rules of Union law applicable to the processing of personal data within the Union, in particular Regulation (EU) 2016/679 governed by Directive 95/46/EC of the European Parliament and of the Council<sup>1</sup> and by Directive 2002/58/EC of the European Parliament and of the Council<sup>2</sup> which govern the processing of personal data carried out in the Member States under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States are fully applicable in the context of contracts for the supply of digital content.* Those Directives *legal acts* already establish a legal framework in the field of personal data in the Union *and are fully applicable in the context of contracts for the supply of digital content or digital services.* The implementation and application of this Directive should be made in full compliance with that legal framework.
- (22a) *The scope of this Directive includes 'Internet of Things' applications, which are often designed to be contextually aware of the needs and desires of the user, collecting information about their daily practices and routines, whilst remaining invisible in use and unremarkable to users. Although consumers may at least have had a chance to read the privacy policy of their IoT device before signing the contract, these privacy policies are not always understandable. Moreover, IoT devices are routinely designed with poor encryption strength or none at all and a lack of other security features and rely heavily on wireless communications protocols which lack mandatory technical and security standards. Consumers generally have no idea about IoT security and as a result default passwords are often installed in household appliances, never changed and routinely compromised. This Directive in conjunction with the core principles of the Regulation (EU) 2016/679 mandates civil liability when IoT devices fail to include privacy in the architecture of the product, as contract terms which violate any right which has been afforded to the consumer as a data subject under Regulation (EU) 2016/679 of the European Parliament and of the Council should not be binding.*

<sup>1</sup> OJ L 281, 23/11/1995, p. 31 - 50 [to be replaced by the General Data Protection Regulation, once adopted].

<sup>2</sup> OJ L 201, 31.7.2002, p. 37-47.

## **2. Compromise amendments on subject matter (Article 1 and related recitals)**

### **CA 4 on Article 1**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise Amendment replacing all relevant amendments, including AMs 20 (draft report), 365 (Maydell/Schwab), 366 (Mizzi), 367 (Guoga), 368 (Buda), 369 (Gebhardt et al.), 370 (Rozière), 371 (Zullo)

#### *Article 1*

#### **Subject matter**

~~This~~ *The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by laying* ~~lays~~ down certain requirements concerning contracts for the supply of digital content *or digital services* ~~to~~ *between traders and* consumers, in particular rules on conformity of digital content *or digital services* with the contract, remedies in case of *failure to supply digital content or digital services* ~~or~~ the lack of ~~such~~ conformity and the modalities for the exercise of those remedies as well as on modification *of the digital content or digital service* and termination of ~~such~~ *long-term* contracts.

### **CA 5 on recital 1**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 2 (Rapporteurs), 73 (Troszczynski), 74 (Mizzi), 75 (Grappini), 76 (Dalton/Ford), 77 (Buda), 78 (Zullo)

(1) The growth potential of e-commerce *in the Union* has not yet been fully ~~exploited~~ *realised*. The Digital Single Market Strategy for Europe<sup>2</sup> tackles in a holistic manner the major obstacles to the development of cross-border e-commerce in the Union in order to unleash this potential. Ensuring better access for consumers to digital content and facilitating businesses to supply digital content is necessary to boost the Union's digital economy and stimulate overall growth.

### **CA 6 on recital 2**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 3 (Rapporteurs), 81 (Troszczynski), 82 (Gebhardt et al.), 83 (Buda), 84 (Dalton), 85 (Marias), 86 (Cavada), 87 (Guoga), 88 (Grapini), 89 (Zullo), 90 (Pospisil), 91 (Maydell), 92 (Negrescu), LIBE 1

(2) ~~For the achievement of~~ **To achieve** a genuine digital single market, ~~the harmonisation~~ of certain aspects concerning contracts for supply of digital content **or digital services should be harmonised**, taking as a base a high level of consumer protection, ~~is necessary~~. **to increase legal certainty and to reduce transaction costs.**

### **CA 7 on recital 3**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 4 (Rapporteurs), 93 (Troszczynski), 94 (Gebhardt et al.), 95 (Maydell), 96 (Buda), 97 (Zullo), 98 (Dalton), 99 (Marias), 100 (Grapini), 101 (Pospisil)

~~(3)~~(4) Differences in national mandatory consumer contract law rules and a lack of clear contract law rules are among the key obstacles which hinder the development of the supply of digital content, as very few tailor-made rules exist at Union level. Businesses face additional costs stemming from differences in national mandatory consumer contract law rules and legal uncertainty when selling digital content across borders. Businesses, **especially small and medium-sized enterprises ('SMEs')**, also face costs when adapting their contracts to specific mandatory rules for the supply of digital content **or digital services which** are already emerging in several Member States, creating differences in scope and content between specific national rules governing these contracts. In those Member States where there are not yet specific rules for the supply of digital content **or digital services**, traders willing to sell cross-border face uncertainty, as they will often not know which rules apply to digital content **or digital services** in the Member State they want to export to, nor the content of those rules and whether they are mandatory.

### **CA 8 on recital 4**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 5 (Rapporteurs), 102 (Maydell), 103 (Troszczynski), 104 (Buda), 105 (Pospisil), 106 (Zullo), 107 (Rozière), 108 (Dalton)

~~(4)~~(3) Consumers are not **always** confident when buying cross border and especially online. One of the major factors for this lack of confidence is uncertainty about their key contractual rights and the lack of a clear contractual framework for digital content **or digital services**. Many consumers of digital content experience problems related to the quality of, or access to, digital content **or digital services**. For instance, they receive wrong or faulty digital content **or digital services**, or they are not able to access the digital content **or digital service** in question. As a result, consumers suffer financial and non-financial detriment.

### **CA 9 on recital 8**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 135

(Reda), 136 (Gebhardt et al.), 137 (Cavada), 138 (Le Grip), 139 (Voss), 140 (Guoga), 141 (Marias), 142 (Rozière), 143 (Zullo)

(8) This Directive should fully harmonise ~~a set of~~ ***certain*** key rules that are so far not regulated at Union ***or national*** level. It should include therefore rules on conformity of the digital content ***or digital services***, remedies available to consumers in cases of lack of conformity of digital content ***or digital services*** with the contract and certain modalities for the exercise of those remedies. This Directive should also harmonise certain aspects concerning the right to terminate a long-term contract, as well as certain aspects concerning the modification of the digital content ***or digital services***.

#### **CA 10 on recital 9**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 144 (Gebhardt et al.), 145 (Troszczynski), 146 (Reda), 147 (Buda), 148 (Voss), 149 (Rozière), 150 (Anderson et al.)

(9) By fully harmonising ~~all the~~ requirements related to the ~~topics~~ ***matters*** regulated by this Directive, it precludes Member States, within its scope of application, from providing any further formal or substantive requirements, such as ~~a period during which the lack of conformity has to become apparent~~, ***any rules on the reversal of the burden of proof different from what is provided for in this Directive or*** an obligation for the consumer to notify the ~~supplier~~ ***trader*** of a lack of conformity within a specific period ~~or an obligation for the consumer to pay for the use of the digital content until the moment of termination because of a lack of conformity with the contract~~.

#### **CA 11 on Recital 10a (new)**

**Supported by EPP, S&D, ECR, ALDE, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 8 (Rapporteurs), 153 (Reda)

***(10a) This Directive should not affect provisions of national laws governing the conditions under which a contract for the supply of digital content or digital services is considered to be linked with or ancillary to another contract which the consumer has concluded with the supplier or another trader, and the effect this has on either contract or on the remedies to be exercised under either contract. Member States should also be free to determine the nature of such contracts, which could be, inter alia, sales, services, rental or sui generis contracts.***

Note: to be combined with recital 20 on bundles, which would become recital 10b
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### **3. Compromise amendments on delineation of scope vis-à-vis the Goods Proposal (definitions and scope provisions)**

#### **CA 12 on definitions of ‘digital content’ and ‘digital service’ (Article 2, points 1 and 1a (new))**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AMs 21, 22 and 25 draft report (Gebhardt/Voss); AMs 372-373, 378, 383, 391 (Rozière), 374, 402 (Le Grip), 375, 382, 387, 401 (Guoga), 376 (Juvin), 377 and 379, 384, 389 (Buda), 380, 385, 388 (Zullo), 381, 386, 390 (Reda), 400 (Dalton/Ford), 403 (De Jong)

- Article 2, point 1 : ‘digital content’

1. ‘digital content’ means

- (a) data which is produced and supplied in digital form, ~~for example video, audio, applications, digital games and any other software;~~
- (b) a service allowing the creation, processing or storage of data in digital form, where such data is provided by the consumer, and
- (c) a service allowing sharing of and any other interaction with data in digital form, ~~provided by other users of the service;~~

- Article 2, point 1 a (new) : ‘digital service’

- 1a. ‘digital service’ means

- (a) a service allowing the creation, processing or storage of data in digital form, where such data are uploaded or created by the consumer, or
- (b) a service allowing sharing of and any other interaction with data in digital form uploaded or created by the consumer and/or by other users of the service;

#### **CA 13 on definition ‘embedded digital content’ (Article 2, point 1b (new))**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AMs 24 and 30 draft report (Gebhardt/Voss), AMs 392, 441 (Dalton/Ford), 393 (Thun/Zwiefka), 394 (Rozière), 397 (Maydell/Schwab), 398 (Schaake), 399 (Reda/Kallas)

- 1b. ‘*embedded digital content or digital service*’ means digital content or a digital service pre-installed in a good;

#### **CA 14 on Article 3, paragraph 3 (scope, embedded digital content)**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 33 draft report (Gebhardt/Voss); AMs 461 (Rozière), 462 (Zullo), 463 (Thun, Zwiefka), 464 (Gebhardt et al.), 465 (Guoga); AM 34 draft report (Gebhardt/Voss); AMs 466 (Maydell, Arimont, Schwab), 467 (Schwab), 468 (Rozière), 469 (Zullo), 470 (Thun, Zwiefka)

3. With the exception of Articles 5 and 11, this Directive shall apply to ~~any durable medium incorporating digital content where the durable medium has been used exclusively as carrier of digital content~~ ***embedded digital content or embedded digital services. Unless otherwise provided, references to digital content or digital services in this Directive also cover embedded digital content or embedded digital services. As regards goods with embedded digital content or embedded digital services, the trader shall be liable under this Directive to the consumer for meeting his obligations only in respect of the embedded digital content or digital service. The rules of this Directive are without prejudice to the protection granted to consumers by the applicable Union law with respect to other elements of such goods.***

**CA 15 on Recital 11 - inclusion of instant messaging services to the extent that they are not covered by the EECC (OTTs)**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 9 draft report (Gebhardt/Voss); AMs 154 (Rozière), 155 (Reda), 156 (Buda), 157 (Maydell, Voss, Arimont), 158 (Zullo), 159 (Dalton, Ford), 160 (Kallas, Charanzová), 161 (Guoga), 162 (Schaake), LIBE 3, 163 (Marias)

(11) ~~The~~ ***This*** Directive should address problems across different categories of digital content ***or digital services*** and ~~its~~ ***their*** supply. In order to ~~cater for fast technological developments and to maintain the future proof nature of~~ ***ensure consistency with the acquis***, the notion of digital content ~~this notion as used in this Directive should be broader than correspond with that used in Directive 2011/83/EU of the European Parliament and of the Council<sup>30</sup> and should cover, for example, text, video, audio, applications, digital games and any other software. In order to cater for fast technological developments and to make this Directive future-proof, in particular~~ it should ***also*** cover ***digital*** services which allow the creation, processing or storage of data ***and services which allow the sharing of data in digital form, including number-independent interpersonal communication services to the extent that they are not regulated in the European Electronic Communications Code***<sup>3</sup>. While there are numerous ways for digital content ***or digital services*** to be supplied, such as transmission on a ~~durable~~ ***CD, DVD and similar*** medium, downloading by consumers on their devices, web-streaming, allowing access to storage capabilities of digital ***services*** or access to the use of social media, this Directive should apply to all digital content ***or digital services*** independently of the medium used for ~~its~~ ***their*** transmission. Differentiating between different categories in this technologically fast changing market is not desirable because it would hardly be possible to avoid discriminations

<sup>3</sup> Directive xx/xx/EU of [date] the European Parliament and of the Council establishing the European Electronic Communications Code [recast], OJ L xx, [date], p. x-x.

between ~~suppliers~~ **traders**. A level playing field between ~~suppliers~~ **traders** of different categories of digital content **or digital services** should be ensured. ~~However this directive should not apply to digital content which is embedded in goods in such way that it operated as an integral part of the goods and its functions are subordinate to the main functionalities of the goods.~~

### **CA 16 on Recital 12**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 10 draft report (Gebhardt/Voss); AMs 164 (Guoga), 165 (Maydell, Arimont), 166 (Rozière), 167 (Zullo), 168 (Gebhardt et al.), 169 (Thun, Zwiefka), 170 (Reda), 171 (Dalton, Ford)

(12) In order to meet the expectations of consumers and ensure a clear-cut and simple legal framework for ~~suppliers~~ **traders of goods in which** digital content ~~offered on a durable medium or a digital service is embedded~~, in relation to conformity requirements and remedies available to consumers for non-conformity, this Directive should apply to **digital content or digital services pre-installed in goods**, such as DVDs and CDs ~~incorporating digital content in such a way that the goods function only as a carrier of the digital content or 'smart goods'~~. **As regards such goods, the trader should be liable under this Directive to the consumer for meeting his obligations only in respect of the embedded digital content or digital service. Liability for the other elements of those goods should be governed by the applicable law.** ~~The This~~ Directive should apply to ~~digital content supplied on a durable medium, embedded digital content or services~~ independently whether it is sold **the goods in which they are pre-installed are supplied** at a distance or in face-to-face situations, so as to avoid fragmentation between the different distribution channels. ~~The~~ Directive 2011/83/EU should continue to apply to those goods, including **the** obligations related to the delivery of goods, remedies in case of the failure to deliver and the nature of the contract under which those goods are supplied; **hence, the rules on supply of and failure to supply digital content or digital services of the present Directive do not apply to embedded digital content and embedded digital services.** ~~The This~~ Directive is also without prejudice to the distribution right applicable to ~~these~~ **those** goods under copyright law.



#### **4. Compromises on remaining definitions (Article 2 and related recitals)**

##### **CA 17 on Article 2, point 2, definition of ‘integration’**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 23 (co-rapporteurs), AM 395 (Zullo), AM 396 (Guoga)

2. 'integration' means linking ~~together~~ *and incorporating digital content or a digital service with the* different components of ~~a~~ *the consumer's* digital environment ~~to act as a~~ *coordinated whole in conformity with its intended purpose in order for the digital content or digital service to be used in accordance with the contract;*

##### **CA 18 on definitions of ‘trader’ and ‘consumer’; recital on dual purpose contracts (Article 2, points 3 and 4 and recital 7a (new))**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 25 (Rapporteurs), 400 (Dalton/Ford), 401 (Guoga), 402 (Le Grip), 403 (De Jong), 26 (Rapporteurs), 404 (Guoga), 405 (Reda)

- Article 2, point 3: ‘trader’
  3. ~~“supplier”~~ *‘trader’* means any natural or legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to that person's trade, business, craft, or profession *in relation to contracts covered by this Directive;*
- Article 2, point 4: ‘consumer’
  4. 'consumer' means any natural person who in contracts covered by this Directive, is acting for purposes which are outside that person's trade, business, craft, or profession;

##### **CA 19 on dual purpose contracts (recital 7a (new))**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendment 7 (Rapporteurs)

*(7a) This Directive should also apply to dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is marginal within the overall context of the contract, so that that person should also be considered a consumer.*

##### **CA 20 on Article 2, point 5, definition of ‘damages’**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: LIBE 17, AM 406 (Voss, Maydell), AM 407 (Reda), AM 408 (Guoga), AM 409 (Roziere), AM 410 (Gebhardt et al.)

5. 'damages' means a sum of money to which consumers may be entitled as compensation for ~~economic damage to their digital environment~~ *detriment caused by a failure to supply the digital content or digital service or a lack of conformity of the digital content or digital service with the contract;*

**CA 21 on Article 2, point 6, definition of 'price'**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 411 (Voss, Maydell), AM 412 (Mizzi), AM 413 (Guoga), AM 414 (Zullo)

6. 'price' means money that is due in exchange for digital content *or a digital service* supplied;

**CA 22 on Article 2, point 8, definition of 'digital environment'**

**Supported by EPP, S&D, ECR, ALDE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 27 (co-rapporteurs), AM 421 (Zullo), AM 422 (Guoga), AM 423 (Reda), AM 424 Dalton, Ford), AM 425 (Kallas, Charanzova)

8. 'digital environment' means hardware, ~~digital content~~ *software* and any network connection to the extent that *it is* within the control of the user *and used by the consumer to access or make use of digital content or a digital service;*

**CA 23 on recital 18**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: LIBE 6, AM 211 (Voss, Maydell), AM 212 (Reda)

- (18) Contracts may include general terms and conditions of the ~~supplier~~ *trader* that need to be accepted by the consumer. For ~~some digital content services~~, ~~suppliers~~ *traders* often describe the service and measurable service targets in a service level agreement. These service level agreements are generally appended to the main contract and form an important component of the contractual relationship between the ~~supplier~~ *trader* and the consumer. They should be covered by the definition of a contract under this Directive, and should thus comply with the rules laid down therein.

Note: the words “the definition of a contract under” will be deleted if AM 420 (deleting the definition of “contract” in Article 2, point 7) is adopted

## **5. Compromise amendments on data as counter-performance / any other data (scope) (Article 3, paragraphs 1 and 4 and related recitals)**

### **CA 24 on Article 3(1), scope and Article 3(4), data as counter-performance/any other data**

Supported by EPP, S&D, ECR, ALDE, GUE

Compromise amendment replacing all relevant amendments, including: AM 419 (Gebhardt et al.), AM 443 (Schaake), AM 446 (Rozière), AM 448 (Buda), AM 449 (Maydell et al.), AM 450 (Zullo), AM 451 (Cavada), AM 452 (Gebhardt et al.), AM 454 (Guoga), AM 455 (Kallas et al.), AM 456 (Vaidere),

#### *Article 3*

##### **Scope**

1. This Directive shall apply to any contract where the ~~supplier~~ **trader** supplies **or undertakes to supply** digital content **or a digital service** to the consumer ~~or undertakes to do so and, in exchange, whether through the payment of a price is to be paid or under the condition that personal data is provided by the consumer actively provides~~ counter-performance other than money in the form of personal data or any other data **or collected by the trader or a third party in the interest of the trader.**

[...]

4. This Directive shall not apply **where personal data provided by the consumer or collected by the trader is exclusively processed by the trader for supplying, keeping in conformity or improving this** ~~to~~ digital content **or service or for the trader to comply with** ~~provided against counter performance other than money to the extent the supplier requests the consumer to provide personal data the processing of which is strictly necessary for the performance of the contract or for meeting legal requirements~~ **to which and the supplier trader is subject, and the trader does not further process this data for any other purpose.** ~~in a way incompatible with this purpose. It shall equally not apply to any other data the supplier requests the consumer to provide for the purpose of ensuring that the digital content is in conformity with the contract or of meeting legal requirements, and the supplier does not use that data for commercial purposes.~~

### **CA 25 on recital 13, data provided by the consumer and collected by the trader: general considerations**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens

Compromise amendment replacing all relevant amendments, including: AM 11 (co-Rapporteurs), AM 175 (Kallas et al.), AM 176 (Maydell et al.), AM 177 (Guoga), AM 178 (Zullo), AM 179 (Buda), AM 180 (Cavada)

(13) In the digital economy, information about individuals is often and increasingly seen by market participants as having a value ~~comparable to money. Digital content is often~~ **Specific business models have developed, where traders supply digital content**

~~or a digital service and the consumer is required supplied not in exchange for a price but against counter performance other than money to provide or give access to personal data. i.e. by giving access to personal data or other data.~~ Those specific business models *already* apply in different forms in a considerable part of the market.

*This Directive does not intend to decide on whether such contracts should be allowed or not and leaves to national law the question of validity of contracts for the supply of digital content or a digital service where personal data are provided or accessed. This Directive should, in no way, give the impression that it legitimises or encourages a practice based on monetisation of personal data, as personal data cannot be compared to a price, and therefore cannot be considered as a commodity.*

~~However, introducing a differentiation in the rules applying to monetary and non-monetary transactions would provide an unjustified incentive for businesses to move towards offering favour the supply of digital content or digital services against data with the condition that personal data is provided. A level playing field should be ensured.~~ In addition, defects of the performance features of the digital content *or digital service* supplied against counter performance other than money *when there is no price paid* may have an impact on the economic interests of consumers. *With a view to ensuring a level playing-field and a high level of consumer protection, Therefore* the applicability of the rules of this Directive should not depend on whether a price is paid for the specific digital content *or digital service* in question.

#### **CA 26 on recital 14, data provided by the consumer and collected by the trader: scope**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens**

Compromise amendment replacing all relevant amendments, including: AM 185 (Gebhardt et al.), 187 (Dalton/Ford/Van Bossuyt), AM 188 (Reda), AM 189 (Voss/Maydell), AM 190 (Kallas et al.), AM 191 (Guoga), AM 192 (Roziere), AM 193 (Zullo), AM 194 (Collin-Langen), AM 195 (Marias), 196 (Voss/Maydell)

- (14) As regards digital content *and digital services* supplied not in exchange for a price but ~~against counter performance other than money~~ *when provision of personal data is required*, this Directive should apply ~~only~~ to contracts where the ~~supplier~~ *trader* requests and the consumer ~~actively~~ provides *personal data, as well as where the trader collects personal data. It would include for example such as the name and e-mail address or photos, provided* directly or indirectly to the ~~supplier~~ *trader*, for example through individual registration or on the basis of a contract which allows access to consumers' photos, *or personal data collected by the trader, such as the IP address.* This Directive should not apply to situations where the ~~supplier~~ *trader* collects *personal data necessary for exclusively to supply, keep in conformity or improve* the digital content *or a digital service* ~~to function in conformity with the contract, for example geographical location where necessary for a mobile application to function properly, or for the sole purpose of meeting legal requirements, for instance where the registration of the consumer is required for security and identification purposes by applicable laws. This Directive should also not apply to situations where the supplier collects information, including personal data, such as the IP address, or other automatically generated information such as information collected and transmitted by a cookie, without the consumer actively supplying it, even if the consumer accepts the cookie. It should also not apply to situations where the consumer is exposed to advertisements exclusively in order to gain access to digital content or digital service.~~

**CA 27 on recital 19**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 214 (Guoga), AM 215 (Voss, Maydell)

- (19) This Directive should apply only to those services whose main subject matter is providing digital ~~content~~ *services*. Therefore, the Directive should not apply to services, which are performed personally by the ~~supplier~~ *trader* and where the digital means are only used for access or delivery purposes, such as a translation offered by a person or other professional advice services where only the output of the service is delivered to the consumer by digital means.

## **6. Compromise amendments on remaining provisions on scope (Article 3 and related recitals)**

### **CA 28 on Article 3, paragraph 2: content developed according to consumer's specifications**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 32 (co-rapporteurs), AM 457 (Zullo), AM 458 (Roziere), AM 459 (Kallas, Charanzova)

2. This Directive shall apply to any contract for the supply of digital ~~product~~ **content or digital services** developed according to **the** consumer's specifications.

### **CA 29 on recital 16: content developed according to consumer's specifications**

**Supported by EPP, S&D, ECR, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 12 (co-rapporteurs), AM 205 (Zullo), AM 206 (Reda), AM 207 (Buda)

(16) In order to ensure a common set of rights for consumers and a level playing field for businesses, consumers should have the same remedies for digital content **or digital services** which is **are** not in conformity with the contract irrespective of the way **in which** the content **or service** has been developed. Consequently ~~the~~ **this** Directive should apply to contracts for the development of digital content **or digital services tailor-made** to the specific requirements of the consumer including **tailor-made** software. This Directive should also apply to the supply of visual modelling files required in the context of 3D printing. However this Directive should not regulate goods produced with the use of 3D printing technology or the damage caused to them.

### **CA 30 on Article 3, paragraph 5 (including OTTs)**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 36-38 (co-rapporteurs), AM 481 (Zullo), AM 482 (Schwab), AM 483 (Maydell), AM 484 (Buda), AM 485 (Guoga), AM 486 (Roziere), AM 487 (Roziere), AM 488 (Gebhardt et al.), AM 489 (Reda, Charanzova, Kallas), AM 490 (Karas), AM 491 (Juvín), AM 492 (Schwab), AM 493 (Buda)

5. This Directive shall not apply to contracts regarding:
  - (a) services performed **personally** ~~with a predominant element of human intervention~~ by the ~~supplier~~ **trader and** where the digital ~~format~~ **means** is **are** ~~only~~ used ~~mainly as a carrier for access or delivery purposes~~;
  - (a) **interpersonal communication services** ~~electronic communication services as defined in Directive 2002/21/EC the European Electronic Communications Code, with the exception of number-independent interpersonal~~

**Commented [MD1]:** Agreement to put AM 489 to the vote separately

*communication services to the extent that those are not regulated in the European Electronic Communications Code;*

- (b) healthcare as defined in point (a) of Article 3 of Directive 2011/24/EU;
- (c) gambling services meaning services which involve wagering a stake with monetary value in games of chance, including those with an element of skill, such as lotteries, casino games, poker games and betting transactions, by electronic means and at the individual request of a recipient of a service;
- (d) financial services.

#### **CA 31 on Article 3, paragraph 6: additional contractual obligations**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 39 (co-rapporteurs), AM 494 (Buda), AM 495 (Maydell), AM 496 (Guoga), AM 497 (Roziere), AM 498 (Zullo), AM 499 (Cavada)

6. Where a contract ~~includes elements in addition to~~ *for* the supply of digital content *or digital service includes additional contractual obligations*, this Directive shall only apply to the *rights and obligations and remedies* of the parties as ~~supplier~~ *trader* and consumer of the digital content *or digital service*.

#### **CA 32 on recital 20: bundles, including OTTs**

**Supported by EPP, S&D, ECR, ALDE, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 216 (Voss/Maydell)

- (20) *However, without prejudice to the European Electronic Communications Code*, where, under a contract or a bundle of contracts, the ~~supplier~~ *trader* offers digital content *or a digital service* in combination with other services such as ~~telecommunication~~ *interpersonal communication* services or goods, ~~which do not function merely as a carrier of~~ *and the digital content or digital service is not pre-installed in the goods*, this Directive should only apply to the digital content *or digital service* component of such a bundle. The other elements should be governed by the applicable law.

Note: if adopted, to become recital 10b
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#### **CA 33 on Article 3, paragraph 7: sector-specific legislation**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: LIBE 20, AM 40 (co-rapporteurs), AM 500 (Maydell), AM 501 (Guoga)



7. If any provision of this Directive conflicts with a provision of another Union act governing a specific sector or subject matter, the provision of that other Union act shall ~~take precedence over this Directive~~ ***prevail and apply to this specific sector or subject matter.***

**CA 34 on Recital 21: copyright**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 217 (Marias), AM 218 (Reda, Kallas), AM 219 (Voss, Maydell), AM 220 (Cavada)

- (21) This Directive should not deal with copyright and other intellectual property related aspects of the supply of digital content ***or digital services***. Therefore it should be without prejudice to any rights and obligations according to copyright law and other intellectual property laws.

## **7. Compromise amendments on level of harmonisation - general provision (Article 4 and related recitals)**

### **CA 35 on Article 4, level of harmonisation**

**Supported by EPP, S&D, ECR, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 509 (Gebhardt et al.), 510 (Troszczynski), 511 (de Jong), 512 (Reda), 513 (Buda), 514 (Dalton/Ford)

#### *Article 4*

##### **Level of harmonisation**

Member States shall not maintain or introduce, *in their national law*, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, *unless otherwise provided for in this Directive*.

*See as well specific provisions where Member States can maintain into force existing provisions after entry into force of this Directive, in:*

- *Article 10 and recital 34 on duration of the legal guarantee for embedded digital content and digital services (under point 3, below)*
- *Article 3(9) and recital 10 on ‘hidden defects’ and ‘short-term right to reject’ (under point 6, below).*

### **CA 36 on recital 5**

**Supported by EPP, S&D, ECR, ALDE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 6 (Rapporteurs), 109 (Troszczynski), 110 (Gebhardt et al.), 111 (Reda), 112 (Mizzi), 113 (Ford), 114 (Buda), 115 (Negrescu), 116 (Rozière), 117 (Zullo), 118 (Maydell)

(5) In order to remedy these problems, both businesses and consumers should be able to rely on fully harmonised rules *of some key regulatory aspects* for the supply of digital content *or digital services* setting out Union-wide contractual rights ~~which are essential for this type of transactions~~, *whilst allowing Member States to maintain national rules in relation to certain other aspects. In doing so, the ambition of this Directive is to strike the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.*

### **CA 37 on recitals 6 and 7**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including amendments 119 (Troszczynski), 120 (Gebhardt et al.), 121 (Reda), 122 (Maydell), 123 (Marias), 124 (Buda), 125 (Rozière), 126 (Zullo), 127 (Troszczynski), 128 (Gebhardt et al.), 129 (Reda), 130 (Voss), 131 (Buda), 132 (Rozière), 133 (Zullo), 134 (Marias), LIBE 2

(6) ~~Fully~~ **Harmonised** consumer contract law rules in all Member States will make it easier for businesses to offer digital content cross-border. They will have a stable contract law environment when selling online and otherwise at a distance to other Member States. ~~Fully harmonised rules specific for digital content throughout the EU will remove the complexity caused by the different national rules that currently apply to contracts for the supply of digital content.~~ They will also prevent legal fragmentation that otherwise would arise from new national legislations regulating specifically digital content.

(7) Consumers ~~will~~ **should** benefit from fully harmonised rights for digital content **and digital services** at a high level of protection. They ~~will~~ **should** have clear **mandatory** rights when they receive or access digital content **or digital services** from anywhere in the ~~EU~~ **Union**. This ~~will~~ **should** increase their confidence in buying digital content **or digital services**. This ~~will~~ **should** also contribute to reducing the detriment consumers currently suffer, since there will be a set of clear rights that will enable them to address problems they face with digital content **or digital services**.

## **8. Compromise amendments on supply of the digital content/service**

### **CA 38 on Article 5, supply of digital content/digital service**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment on Article 5 replacing all relevant amendments including amendments 44-48 (co-rapporteurs), AM 518 (Buda), AM 519 (Maydell), AM 520 (Zullo), AM 521 (Roziere), AM 522 (Buda), AM 523 (Zullo), AM 524 (Le Grip), AM 525 (Roziere), AM 526 (Le Grip), AM 527 (Le Grip), AM 528 (Buda), AM 529 -531 (Zullo), AM 532 (Le Grip), AM 533 (Maydell), AM 534 (Buda), AM 535 (Gebhardt et al.), AM 536 (Zullo), AM 537 (Guoga), AM 538 (Kallas/Charanzova),

#### Article 5

##### Supply of the digital content *or digital service*

1. ~~When performing the contract for the supply of digital content, the supplier~~ *trader* shall supply the digital content *or digital service by making it available or giving access* to
  - (a) the consumer; ~~or~~
  - (b) a third party which operates a physical or virtual facility making the digital content *or digital service* available to the consumer or allowing the consumer to access it and which has been chosen by the consumer for receiving the digital content *or digital service; or*
  - (c) *any other party designated by the consumer.*
2. ~~Unless the parties have agreed otherwise, the supplier~~ *trader* shall supply the digital content *or digital service without undue delay after the conclusion of the contract.* The ~~supply shall be deemed to take place~~ *trader shall have complied with his obligation to supply* when the digital content *or digital service* is ~~supplied~~ *made available or is made accessible* to the consumer or, where point (b) *or (c)* of paragraph 1 applies, to the third party chosen by the consumer, whichever is ~~the earlier~~ *applicable.*

### **CA 39 on Article 2, point 10, definition of 'supply'**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 29, AM 436 (Le grip), AM 437 (Buda), AM 438 (Zullo), AM 439 (Roziere)

10. ~~'supply' means providing access to digital content or digital services or making digital content or digital services available;~~

### CA 40 on recital 23

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments including: AM 15 (co-rapporteurs), AM 226 (Cavada), AM 227 (Zullo), AM 228 (Buda), AM 229 (Maydell), AM 230 (Kallas/Charanzova), AM 231 (Guoga), AM 232 (Roziere), 275 (Voss/Maydell)

(23) There are various ways for digital content *or digital services* to reach consumers *or to be made accessible to them*. It is opportune to set simple and clear rules as to the modalities and the time for performing the ~~supplier's~~ *trader* main contractual obligation to supply digital content *or a digital service* to the consumer. Considering that the ~~supplier~~ *trader* is not in principle responsible for acts or omissions of an internet provider or an electronic platform which the consumer selected for receiving the digital content *or digital service*, it should be sufficient for the ~~supplier~~ *trader* to supply the digital content *or digital service* to this third party *or to any other party designated by the consumer*. With regard to the time of supply, in line with market practices and technical possibilities, the digital content *or digital service* should be supplied ~~immediately~~ *without undue delay after the conclusion of the contract*, unless the parties decide to agree otherwise in order to cater for other supply models.

## **9. Compromise amendments on conformity criteria (Articles 5a, 6 and 6a, Article 2(1)(9) and Articles 7, 8, and 8a and related recitals)**

### **CA 40bis on Article 5a (new): chapeau article**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments including: AM 50 (Rapporteurs), 541 (Gebhardt et al.)

#### *Article 5a*

##### *Conformity of the digital content or digital service with the contract*

*In order to conform with the contract, the digital content or digital service must meet the requirements of Articles 6, 6a, 7 and 8.*

### **CA 41 on Article 6: subjective conformity criteria**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments including: AM 51-55 draft report (Gebhardt/Voss); AMs 542-549 (Buda), 543-564-566-601 (Maydell), 544-550-553-565-600 (Zullo), 545-547-552-554-560-567 (Rozière), 546 (Dalton, Ford), 548 (Reda), 551 (Guoga), 555 (Grapini), 556 (Juvin), 557 (Cavada), 558 (Le Grip), 599 (Zwiefka, Thun)

#### *Article 6*

##### *Subjective requirements for conformity of the digital content with the contract*

~~4-~~In order to conform with the contract, the digital content *or digital service* shall, where relevant:

- (a) be of the quantity, quality, *description*, duration and version and shall possess functionality, interoperability and other performance features such as accessibility, continuity and security, as required by the contract including in any pre-contractual information, which forms integral part of the contract;
- (b) be fit for any particular purpose for which the consumer requires it and which the consumer made known to the ~~supplier~~ *trader at the latest* at the time of the conclusion of the contract and which the ~~supplier~~ *trader* accepted;
- (ba) *comply with the trial version or preview of the digital content or digital service, made available by the trader, unless the difference between the digital content or digital service supplied and the trial version or preview was brought to the consumer's attention before the contract was concluded;*
- (c) be supplied along with *all the accessories*, any instructions, *including on installation*, and customer assistance as stipulated by the contract *including in*

*any pre-contractual information, which forms integral part of the contract;*  
and

- (d) be updated as stipulated by the contract *including in any pre-contractual information, which forms integral part of the contract.*

#### **CA 42 on Article 6 a (new): objective conformity criteria**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments including: AM 56-60 draft report (Gebhardt/Voss); AMs 559 (Dalton, Ford), 561-577-579-581-582-583-585-591-593 (Reda), 562-563-569 (Rozière), 568 (Grapini), 570-587-595-600 (Zullo), 571-586-589-594-601 (Maydell), 572 (Kallas, Charanzova), 573-576 (Guoga), 574 (Le Grip), 575 (Collin-Langen), 578 (Anderson et al.), 580 (Mizzi), 584 (Schwab), 588 (Schaake), 590 (Kallas-Charanzová), 592-598 (Cavada), 596 (Juvín), 597 (Le Grip)

#### ***Article 6a***

##### ***Objective requirements for conformity with the contract***

~~21.~~ To the extent that the contract does not stipulate, where relevant, in a clear and comprehensive manner, the requirements for the digital content under paragraph 1, the digital content shall be fit for the purposes for which digital content of the same description would normally be used including its functionality, interoperability and other performance features such as accessibility, continuity and security, taking into account:

- (a) whether the digital content is supplied in exchange for a price or other counter-performance than money;
- (b) where relevant, any existing international technical standards or, in the absence of such technical standards, applicable industry codes of conduct and good practices; and

~~2.~~ ~~To the extent that the contract does not stipulate~~ ***The digital content or digital service shall***, where relevant in a clear and comprehensive manner, the requirements for the digital content under paragraph 1, the digital content shall be fit for the purposes for which digital content of the same description would normally be used including its:

- (a) ***possess qualities and performance features including in relation to functionality, interoperability, and other performance features such as accessibility, continuity and security, which are usually found in digital content or digital services of the same type and which the consumer may reasonably expect given the nature of the digital content or digital service,*** taking into account, ~~(a) whether the digital content is supplied in exchange for a price or other counter-performance than money;~~ ~~(b) where relevant, any existing international~~ ***or European*** technical standards or, in the absence of such technical standards, applicable industry codes of conduct and good practices, ***including on the security of information systems and digital environments;***

- (b) ~~(e)~~ **take into account** any public statement made by or on behalf of the ~~supplier~~ **trader, the producer or his representative, particularly in advertising or on labelling** or other persons in earlier links of the chain of transactions, unless the ~~supplier-trader shows~~ **can show** that:
- (i) he was not and could not reasonably have been aware of the **respective** statement ~~in question~~ **on the specifics of the digital content or digital service**;
  - (ii) by the time of **the** conclusion of the contract the statement had been corrected **in the same or a comparable way as it has been made; or**
  - (iii) the decision to acquire the digital content **or digital service** could not have been influenced by the statement.
3. ~~Where the contract stipulates that~~ **In the case of contracts where** the digital content **or digital service is to** ~~shall~~ be supplied over a period of time, the digital content **or digital service** shall be in conformity with the contract throughout the duration of that period. **Temporary interruptions to the supply of digital content or digital service which fall on the responsibility of the trader shall be treated as cases of non-conformity if they are significant, continuous and recurring.**
4. Unless otherwise **expressly** agreed, digital content **or a digital service** shall be supplied in conformity with the most recent version of the digital content **or digital service** which was available at the time of ~~the~~ conclusion of the contract.
5. **The trader shall ensure that during a reasonable period of time the consumer is supplied with and notified of updates, including security updates, to the digital content or a digital service that are necessary in order to keep the digital content or digital service into conformity with the contract. A consumer's failure to install those updates within a reasonable period shall have no bearing on the conformity of the digital content or digital service with the contract. Where the consumer chooses to remain with his or her present version of the digital content or the digital service, and the new version is not necessary for the digital content or service to remain in conformity with the contract, that present version shall remain available or accessible within a reasonable timeframe.**
6. In order to conform with the contract the digital content **or digital service** must also meet the requirements of Articles 7 and 8 **and, where relevant, Regulation (EU) 2016/679.**

**CA 43 on Article 2, paragraph 1, point 9: definition of 'interoperability'**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments including: AM 19 draft report (Gebhardt/Voss); AMs 426 (Le Grip), 427 (Anderson et al.), 428 (Rozière), 429 (Juvin), 430 (Zullo), 431 (Guoga), 432 (Cavada), 433 (Rozière)



(9) 'interoperability' means the ability of digital content *or a digital service* to perform all its functionalities in interaction with a concrete digital environment **including allowing consumers to access digital content or a digital service without having to use applications or other technologies to convert the digital content or digital service they want to have access to.**

#### **CA 44 on recitals 24, 25 and 25a (new): subjective and objective conformity criteria**

Supported by EPP, S&D, ECR, ALDE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 17 draft report (Gebhardt/Voss); AMs 233-236 (Rozière), 234-237 (Reda), 238 (Gebhardt et al.), 235-239 (Zullo), 240 (Kallas, Charanzová)

(24) ~~In order to promote innovation in the Digital Single Market and cater for technological developments reflected in the fast changing characteristics of digital content, it is justified for the digital content to be, above all, in conformity with what was agreed in the contract.~~

(25) ~~In cases where~~ **order to provide clarity as to what a consumer can expect from the digital content or digital service concerned and what the trader would be liable for in the event of failure to supply what is expected, it is essential to harmonise rules for determining conformity with the contract. Applying a combination of subjective and objective criteria should safeguard legitimate interests of both parties to the contract.** ~~The contract does not~~ **should** stipulate sufficiently clear and comprehensive benchmarks to ascertain the conformity of the digital content *or digital service* with the contract. **It is also** necessary to set objective conformity criteria to ensure that consumers are not deprived of their rights. ~~In such cases~~ **The** conformity with the contract should be assessed considering the ~~purpose~~ **quality and performance** for which digital content *or digital services* of the same description would normally be used, **taking into account what can be reasonably expected by the consumer, the nature of the digital content or digital service and, if applicable, any public statements on the specific characteristics of the digital content or digital service made by or on behalf of the trader, the producer or his representative, particularly in advertising or on labelling. Consumers' expectations vary widely depending on the type and the use of digital content and services and should therefore be objectively ascertained.**

(25a) **While freedom of contract with regard to the criteria of conformity with the contract should be ensured, in order to avoid circumvention of the liability for lack of conformity and ensure a high level of consumer protection, any contract clause derogating from the mandatory rules on criteria of conformity and incorrect integration of the digital content or the digital service, which is detrimental to the interests of the consumer, shall be valid only if the consumer has been specifically informed and has expressly consented to it when concluding the contract.**

#### **CA 45 on recital 26: interoperability as part of objective conformity criteria**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 18 draft report (Gebhardt/Voss); AMs 241 (Reda), 242 (Le Grip), 243 (Buda), 244 (Zullo)

(26) Due to *their* nature, digital content *and digital services need* to interact with other digital equipment to function properly; interoperability should therefore form a part of the conformity criteria. *The notion of interoperability should refer to the ability of the digital content or digital service to perform all its functionalities in interaction with a concrete digital environment.* The notion of functionality should refer to the ways in which digital content *or a digital service* can be used; it should also refer to the absence or presence of any technical restrictions such as protection via Digital Rights Management or regional coding. *The consumer should be notified in advance of the authorised uses of the digital content, such as private copying. Where the contract concerns copyright-protected works, the conformity of the contract implies that the entirety of copyright laws is respected. Contractual clauses that specifically prevent the lawful enjoyment of exceptions or limitations laid down in copyright law should constitute a lack of conformity. The conditions under which the enjoyment of the exceptions or limitations should continue to be determined by Union rules on copyright and related rights, which are not modified by this Directive.*

#### **CA 46 on recital 27: security and reliability as part of objective conformity criteria**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 19 (draft report); AMs 245 (Schaake), 246 (Dalton/Ford), 9 LIBE

(27) While data-driven services and technologies bring significant benefits, they also create some vulnerabilities. ~~As recognised by the Digital Single Market Strategy a~~ A high level of network and information security is essential across the European Union to ensure respect of fundamental rights such as the right to privacy and *protection of* personal data, to increase user confidence and strengthen their trust in the digital economy. As software becomes pervasive, qualities such as reliability, security, and adaptability to evolving needs are also becoming a prime concern. It is therefore increasingly important that those data-driven services and technologies ensure that those qualities are guaranteed, to the extent that is proportionate to the role and function those technologies play. In particular, quality in terms of security and reliability is becoming an important concern for innovative, composite services that have to rely on the interconnection of diverse systems in different domains. *In this context it is important to stress that updates, including security updates, are a necessary element to secure the operating software of smart goods such as smartphones, which require the installation as soon as possible by the consumer of the most recent version provided by the trader in order for the consumer to be protected against exploitation by persons acting with malicious intent.*

#### **CA 47 on recital 28: use of standards**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 247 + alignment to CA on Article 6a(1)(a)

(28) When applying the rules of this Directive, ~~suppliers~~ **traders** should make use of standards, open technical specifications, good practices and codes of conduct, including in relation to the commonly used data format for retrieving the content generated by the user or any other content provided by the consumer, **and including on the security of information systems and digital environments**, whether established at the international level, the European level or at the level of a specific industry sector. In this context, the Commission may ~~consider~~ **call for the promotion** of the development of international and European standards and the drawing up of a code of conduct by trade associations and other representative organisations that could support the uniform implementation of the Directive.

#### **CA 48 on recital 28a: updates to the digital content or a digital service**

**Supported by EPP, S&D, ECR, ALDE, GUE, EFDD**

Compromise amendment creating extra recital corresponding to paragraph 4 of Article 6a (below)

*(28a) During a reasonable period of time, the trader should provide the consumer with updates, including security updates, in order to keep the digital content or digital service in conformity with the contract. The consumer should remain free to install those updates or not. For instance, the consumer may decide not to install the updates supplied to him in case this would require an upgrade to his operating system. If the consumer decides not to install the updates, unless expressly agreed otherwise, the consumer cannot reasonably expect the digital content or digital service to remain in conformity with the contract, and shall be made aware of the fact that the trader's responsibility to keep the digital content or digital service in conformity will have to be assessed in the light of his decision not to install necessary updates, including on security.*

#### **CA 49 on recital 29: conformity of digital content or a digital service supplied over a period of time**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 248 (Kallas/Charanzová), 249 (Zullo), 250 (Voss/Maydell), 251 (Buda), 252 (Marias) + alignment to CA on Article 6a(2) and (3)

(29) Many types of digital content **or digital services** are supplied over a period of time. ~~For instance, such as consumers access to cloud services over a period of time.~~ It is therefore ~~important~~ **necessary** to ensure that the digital content **or digital service** is in conformity with the contract throughout the duration of the contract. **Significant, continuous and recurring interruptions to the supply of digital content or digital service which fall on the responsibility of the trader should be treated as cases of non-conformity.** Moreover, given the frequent improvement of digital content **and digital services**, notably by updates, the version of digital content **or of a digital service** supplied to the consumer should be the most recent one available

at the time of the conclusion of the contract, *unless the parties to the contract expressly agree that an older version will be supplied, for instance in order to ensure interoperability with the digital environment of the consumer.*

#### **CA 50 on Article 7: integration of the digital content or digital service**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 602-605-606-609 (Voss/Maydell), 603-608-612 (Zullo), 604-607-610 (Gebhardt et al.), 611 (Reda), 613 (Cavada)

##### *Article 7*

#### **Integration of the digital content or digital service**

Where the digital content *or digital service* is incorrectly integrated into the consumer's digital environment, any lack of conformity resulting from the incorrect integration shall be regarded as lack of conformity *with the contract* of the digital content *or digital service* if:

- (a) the digital content *or digital service* was integrated by the ~~supplier~~ **trader** or under the ~~supplier~~ trader's responsibility; or
- (b) the digital content *or digital service* was intended to be integrated by the consumer and the incorrect integration was due to shortcomings in the integration instructions where those instructions were supplied in accordance with point (c) of Article 6(1) or should have been supplied in accordance with ~~Article 6(2)~~ **Article 6a**.

#### **CA 51 on recital 30: integration of the digital content or digital service**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 253 (Guoga) + alignment to CA on Article 7

(30) In order to work properly, digital content *or a digital service* needs to be correctly integrated into the consumer's ~~hardware and software~~ **digital** environment. Where a lack of conformity with the contract of the digital content *or digital service* results from an incorrect integration, it should be regarded as a lack of conformity with the contract of the digital content *or digital service* itself, where it was integrated by the ~~supplier~~ **trader** or under its control, or by the consumer following ~~supplier's~~ **the trader's** instructions for integration and the incorrect integration was due to shortcomings in the required integration instructions. In such scenarios the origin of the lack of conformity stems from the sphere of the ~~supplier~~ **trader**.

#### **CA 52 on Article 8: third party rights**

**Supported by EPP, S&D, ECR, ALDE, GUE, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 615 (Niebler), 616-623 (Voss/Maydell), 617-625 (Gebhardt et al.), 618-624 (Juvin), 619-626 (Zullo), 620-627 (Dzhambazki), 621-628 (Le Grip), 622 (Cavada), 630 (Reda)

#### Article 8

##### *Third party rights*

1. ~~At the time the digital content is supplied to the consumer,~~ the digital content **or digital service** shall be free of **any restriction resulting from** any right of a third party, including **any right** based on intellectual property, ~~so that may prevent the consumer from using the digital content or digital service can be used~~ in accordance with the contract.
2. Where the digital content **or digital service** is supplied over a period of time, the ~~supplier~~ **trader** shall, for the duration of that period, keep the digital content **or digital service** supplied to the consumer free of **any restriction resulting from** any right of a third party, including ~~that any right~~ based on intellectual property, ~~so that may prevent the consumer from using the digital content or digital service can be used~~ in accordance with the contract.

#### CA 53 on recital 31: third party rights

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AMs 254 (Cavada), 255 (Voss/Maydell) + alignment to CA on Article 8

(31) Conformity should cover material as well as legal defects. Third party rights might effectively bar the consumer from enjoying the digital content or **digital service** or some of its features in accordance with the contract if those third party rights are infringed, and if when the third party rightfully compels the ~~supplier~~ **trader** to stop infringing those rights and to discontinue offering the digital content **or digital services** in question. Legal defects are particularly important for digital content **or digital services**, which, by ~~its~~ **their** nature, ~~is~~ **are** subject to intellectual property rights. Therefore the ~~supplier~~ **trader** should be obliged to ensure that the digital content **or digital service** is free **from any restrictions resulting** from any right of a third party, for example a copyright claim related to the digital content **or digital service**, which precludes the consumer from enjoying the digital content **or digital service** in accordance with the contract.

#### CA 54 on Article 8a (new): derogation clauses

Supported by EPP, S&D, ECR, ALDE, GUE, EFDD

Compromise amendment replacing all relevant amendments, including: AM 55 (Rapporteurs)

#### Article 8a (new)

*Any contract clause excluding, derogating from or varying the effects of Articles 6a, 7 and 8 to the detriment of the consumer shall be valid only if, at the time of conclusion of the contract, the consumer has been specially informed of the specific condition of the digital content or digital service and the consumer expressly accepted that specific condition when concluding the contract.*

## **10. Compromise amendments on liability, including guarantee period (Article 10, recitals 34 and 43)**

### **CA 55 on Article 10: liability of the trader**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including AM 661 (Niebler), AM 662 (Reda), AM 663 (Voss, Maydell), AM 664 (Gebhardt et al.), AM 665 (Guoga), AM 666 (Zullo), AM 667 (Buda), AM 668 (Gebhardt et al.), AM 669 (Voss, Maydell), AM 670 (Kallas, Charanzova), AM 671 (Buda), AM 672 (Zullo), AM 673 (Schwab), AM 674 (Reda), AM 675 (Mizzi), AM 676 (Kallas, Cavada, Charanzova), AM 677 (Zullo), AM 678 (Buda), AM 679 (Schwab), AM 680 (Guoga), AM 681 (Reda), AM 682 (Reda), AM 683 (Niebler), AM 684 (Vaidere), AM 685 (Dzhambazki), AM 686 (Schwab), AM 871 (Zullo), 34 LIBE, 35 LIBE.

*Article ~~10~~ 9*

### **Liability of the ~~supplier~~-trader**

1. The ~~supplier~~ **trader** shall be liable to the consumer for:
  - (a) any failure to supply the digital content *or digital service in accordance with Article 5;*
  - (b) any lack of conformity *of the digital content or digital service with the contract:*
    - ~~(i)~~ *which exists at the time the digital content is supplied of supply of the digital content or digital service and becomes apparent within two years from the time of supply, where the contract provides for a single act of supply or a series of individual acts of supply; and or*
    - ~~(e)~~ *(ii) which becomes apparent during the period of time mentioned in the contract, where the contract provides that the digital content or digital service shall is to be supplied over a period of time, any lack of conformity which occurs during the duration of that period; and*
  - (c) *any lack of conformity with the contract of embedded digital content or an embedded digital service which exists at the time of delivery of the goods in which the digital content or digital service is embedded and becomes apparent within two years from the time of delivery.*
2. *In respect of point (c) of paragraph 1, Member States may maintain more stringent provisions in their national law that are already in force at the date of entry into force of this Directive.*

### **CA 56 on recital 34**

Supported by EPP, S&D, ALDE, ECR, Greens, EFDD

Compromise amendment replacing all relevant amendments, including AM 269 (Cavada, Kallas), AM 270 (Dzhambazki), AM 271 (Voss, Maydell), AM 272 (Gebhardt et al.), AM 273 (Buda), AM 274 (Zullo), AM 275 (Voss, Maydell), AM 276 (Koster), AM 329 (Kallas, Charanzova, Cavada), AM 330 (Gebhardt et al.), AM 331 (Marias), AM 332 (Vaidere), AM 333 (Zullo), AM 334 (Niebler), AM 335 (Voss, Maydell).

(34) The ~~supplier~~ **trader** should be liable to the consumer for **any failure to supply the digital content or digital service and for the any** lack of conformity **of the digital content or digital service** with the contract **that becomes apparent within two years from the time of supply.** ~~and for any failure to supply the digital content. Moreover,~~ Given that digital content **or digital services** may be supplied over a period of time, ~~it is justified that the supplier~~ **trader** should be liable for any lack of conformity which occurs during that period. **As regards embedded digital content or embedded digital services, a similar legal guarantee regime as for normal goods should apply. In order to increase consumer confidence and boost cross-border sales, both online and offline, further progress should be made in the process of harmonisation of consumer legislation. The two-year minimum legal guarantee period laid down in Directive 1999/44/EC should be turned into a full harmonisation norm. However, in order not to decrease consumer protection in certain Member States, those Member States that had already introduced longer or different models of guarantee periods by the time of entry into force of this Directive should be able to maintain them.**

#### **CA 57 on recital 43**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including AM 329 (Kallas, Charanzova, Cavada), AM 330 (Gebhardt et al.), AM 331 (Marias), AM 332 (Vaidere), AM 333 (Zullo), AM 334 (Niebler), AM 335 (Voss, Maydell).

(43) ~~Due to its nature the digital content is not subject to wear and tear while being used and it is often supplied over a period of time rather than as a one-off supply. It is, therefore, justified not to provide a period during which the supplier should be held liable for any lack of conformity which exists at the time of the supply of the digital content. Consequently Member States should refrain from maintaining or introducing such a period. Member States should remain free to rely on national prescription rules in order to ensure legal certainty in relation to claims based on the lack of conformity of digital content.~~



## **11. Compromise amendments on burden of proof (Article 9; recital 32 and 33)**

### **CA 58 on Article 9**

**Supported by EPP, S&D, ECR**

Compromise amendment replacing all relevant amendments, including AMs 637 (de Jong), 638 (Köster), 639 (Kallas et al.), 641 (Collin-Langen), 642 (Schwab), 643 (Comi et al.), 644 (Voss/Maydell), 645 (Guoga), 646 (Comi et al.), 647 (Comi et al.), 648 (Dzhambazki), 649 (Reda), 639 (Kallas et al.), 650 (Gebhardt et al.), 651 (Voss/Maydell), 652 (Zullo), 653 (Le Grip), 654 (Comi et al.), 655 (Voss/Maydell), 656 (Gebhardt et al.), 657 (Reda), 658 (Guoga), 659 (Rozière), 661 (Niebler), 676 (Kallas/Cavada/Charanzová), 683 (Niebler), 33 LIBE

#### *Article 9 10*

#### **Burden of proof**

1. The burden of ~~proof with respect to~~ ***proving that a lack of conformity existed at the time specified in Article 10 9*** shall be on the ~~supplier~~ ***trader, when a lack of conformity with the contract at the time indicated in becomes apparent:***
  - a) ***within two years of the date of supply of the digital content or digital service,***
  - b) ***within one year of the date of delivery of the embedded digital content or digital service,***
  - c) ***within the duration of the contract, where the contract provides for continuous supply of digital content or digital service or delivery of embedded digital content or digital service over a period of time.***
2. Paragraph ***1*** shall not apply where the ~~supplier~~ ***trader*** shows that the digital environment of the consumer is not compatible with interoperability and other technical requirements of the digital content ***or digital service*** and where the ~~supplier~~ ***trader*** informed the consumer of such requirements ***in a clear and comprehensible manner*** before the conclusion of the contract.
3. The consumer shall cooperate with the ~~supplier~~ ***trader*** to the extent possible and necessary to ~~determine~~ ***ascertain*** the consumer's digital environment ***in order to establish whether the lack of conformity of the digital content or digital service existed at the time of supply.*** The obligation to cooperate shall be limited to the technically available means which are the least intrusive for the consumer. ***Only in exceptional and duly justified circumstances where there are no other means available, the consumer shall grant the trader upon request virtual access to the consumer's digital environment.*** Where the consumer fails to cooperate ***and where the trader informed the consumer of such requirement in a clear and comprehensible manner before the conclusion of the contract,*** the burden of proof with respect to the ~~non-conformity~~ ***lack of conformity*** with the contract shall be on the consumer.

## **CA 58a on Article 9**

### **Alternative CA supported by GUE, Greens**

Compromise amendment replacing all relevant amendments, including AMs 637 (de Jong), 638 (Köster), 639 (Kallas et al.), 641 (Collin-Langen), 642 (Schwab), 643 (Comi et al.), 644 (Voss/Maydell), 645 (Guoga), 646 (Comi et al.), 647 (Comi et al.), 648 (Dzhambazki), 649 (Reda), 639 (Kallas et al.), 650 (Gebhardt et al.), 651 (Voss/Maydell), 652 (Zullo), 653 (Le Grip), 654 (Comi et al.), 655 (Voss/Maydell), 656 (Gebhardt et al.), 657 (Reda), 658 (Guoga), 659 (Rozière), 661 (Niebler), 676 (Kallas/Cavada/Charanzová), 683 (Niebler), 33 LIBE

#### *Article 9 10*

#### **Burden of proof**

1. The burden of ~~proof with respect to~~ ***proving that a lack of conformity existed at the time specified in Article 10 9*** shall be on the ~~supplier~~ ***trader, when a lack of conformity with the contract at the time indicated in becomes apparent:***
  - a) ***within two years of the date of supply of the digital content or digital service,***
  - b) ***within the duration of the contract, where the contract provides for continuous supply of digital content or digital service or delivery of embedded digital content or digital service over a period of time.***
2. Paragraph ***1*** shall not apply where the ~~supplier~~ ***trader*** shows that the digital environment of the consumer is not compatible with interoperability and other technical requirements of the digital content ***or digital service*** and where the ~~supplier~~ ***trader*** informed the consumer of such requirements ***in a clear and comprehensible manner*** before the conclusion of the contract.
3. The consumer shall cooperate with the ~~supplier~~ ***trader*** to the extent possible and necessary to ~~determine~~ ***ascertain*** the consumer's digital environment ***in order to establish whether the lack of conformity of the digital content or digital service existed at the time of supply.*** The obligation to cooperate shall be limited to the technically available means which are the least intrusive for the consumer. ***Only in exceptional and duly justified circumstances where there are no other means available, the consumer shall grant the trader upon request virtual access to the consumer's digital environment.*** Where the consumer fails to cooperate ***and where the trader informed the consumer of such requirement in a clear and comprehensible manner before the conclusion of the contract,*** the burden of proof with respect to the ~~non-conformity~~ ***lack of conformity*** with the contract shall be on the consumer.

## **CA 59 on recital 32**

### **Supported by EPP, S&D, ECR**

Compromise amendment replacing all relevant amendments, including AMs 257 (Voss/Maydell), 258 (Niebler), 259 (Kallas/Charanzova), 260 (Le Grip), 261 (Gebhardt et al.), 262 (Zullo), 277 (Köster).

- (32) Due to the specific nature of digital content ***and digital services*** with ~~its~~ ***their*** high complexity as well as the ~~supplier's~~ ***trader's*** better knowledge and access to know

how, technical information and high-tech assistance, it is the ~~supplier~~ **trader** who is in a better position than the consumer to know the reasons for the digital content **or digital service** not being in conformity with the contract. The ~~supplier~~ **trader** is also in a better position to assess whether the lack of conformity with the contract is due to incompatibility of the consumer's digital environment with the technical requirements for the digital content **or digital service**. Therefore, in case of a dispute, it should be for the ~~supplier~~ **trader** to prove that the digital content **or digital service** is in conformity with the contract, unless the ~~supplier~~ **trader** proves that the consumer's digital environment is not compatible with the digital content **or digital service**. ~~Only~~ Where the ~~supplier~~ **trader** proves that the consumer's digital environment is not compatible with the interoperability and other technical requirements, it should be for the consumer to prove that the digital content **or service** is not in conformity with the contract. ***The period of time during which the burden of proof for the lack of conformity with the contract is on the trader should be two years from the time when the digital content or digital service was supplied. This time limit should be reduced to one year in the case of digital content or a digital service embedded in goods. In the case of long-term contracts for the supply of digital content or a digital service, the burden of proof should remain on the trader throughout the duration of the contract.***

#### **CA 59a on recital 32**

##### **Alternative compromise supported by GUE, Greens**

Compromise amendment replacing all relevant amendments, including AMs 257 (Voss/Maydell), 258 (Niebler), 259 (Kallas/Charanzova), 260 (Le Grip), 261 (Gebhardt et al.), 262 (Zullo), 277 (Köster).

(32) Due to the specific nature of digital content **and digital services** with ~~its~~ **their** high complexity as well as the ~~supplier's~~ **trader's** better knowledge and access to know how, technical information and high-tech assistance, it is the ~~supplier~~ **trader** who is in a better position than the consumer to know the reasons for the digital content **or digital service** not being in conformity with the contract. The ~~supplier~~ **trader** is also in a better position to assess whether the lack of conformity with the contract is due to incompatibility of the consumer's digital environment with the technical requirements for the digital content **or digital service**. Therefore, in case of a dispute, it should be for the ~~supplier~~ **trader** to prove that the digital content **or digital service** is in conformity with the contract, unless the ~~supplier~~ **trader** proves that the consumer's digital environment is not compatible with the digital content **or digital service**. ~~Only~~ Where the ~~supplier~~ **trader** proves that the consumer's digital environment is not compatible with the interoperability and other technical requirements, it should be for the consumer to prove that the digital content **or service** is not in conformity with the contract. ***The period of time during which the burden of proof for the lack of conformity with the contract is on the trader should be two years from the time when the digital content or digital service was supplied. In the case of long-term contracts for the supply of digital content or a digital service, the burden of proof should remain on the trader throughout the duration of the contract.***

#### **CA 60 on recital 33**

##### **Supported by EPP, S&D, ECR, ALDE, GUE, Greens**

Compromise amendment replacing all relevant amendments, including AMs 263 (Schwab), 258 (Niebler), 264 (Reda), 260 (Le Grip), 265 (Voss/Maydell), 266 (Gebhardt et al.), 267 (Guoga), 268 (Zullo)

(33) Without prejudice to the fundamental rights to the protection of private life, including confidentiality of communications, and the protection of personal data of the consumer, the consumer should cooperate with the ~~supplier~~ **trader** in order to allow the ~~supplier~~ **trader** to ascertain the consumer's digital environment with the use of the least intrusive means which are at the disposal of both parties in the circumstances, **with the aim of determining whether the lack of conformity existed at the time of the supply of the digital content or digital service**. This may often be done for instance by providing the ~~supplier~~ **trader** with automatically generated incident reports or details of the consumer's internet connection. Only in exceptional and duly justified circumstances where with the best use of all other means there is no other way possible, this may also be done by allowing virtual access to the consumer's digital environment. However, where the consumer does not cooperate with the ~~supplier~~ **trader**, it should be for the consumer to prove that the digital content **or digital service** is not in conformity with the contract, **provided that the consumer was informed about this consequence**.

## **12. Compromise amendments on the remedy for failure to supply (Article 11; recital 35)**

### **CA 61 on Article 11**

**Supported by EPP, S&D, ECR, ALDE, GUE, EFDD**

Compromise amendment replacing all relevant amendments, including AM 687 (Reda), AM 688 (Voss, Maydell), AM 689 (Karas), AM 690 (Voss, Maydell), AM 691 (Guoga), AM 692 (Zullo), AM 693 (Gebhardt), AM 694 (Cavada), AM 695 (Gebhardt et al.), AM 696 (Voss, Maydell), AM 697 (Gebhardt, Tarabella, Regner), AM 698 (Voss, Maydell).

#### *Article 11*

##### *Remedy for the failure to supply*

1. Where the ~~supplier~~ **trader** has failed to supply the digital content *or digital service* in accordance with Article 5, the consumer shall **call upon the trader to supply the digital content or digital service**. ***If the trader fails to supply the digital content or digital service without undue delay, or within an additional period of time as expressly agreed to by the parties, the consumer shall be entitled to terminate the contract immediately under Article 13.***

2. **The first paragraph shall not apply:**

(a) *where the trader has refused to supply the digital content or digital services; or*

(b) *where supply within the agreed period is essential taking into account all the circumstances attending the conclusion of the contract or where the consumer informs the trader, prior to the conclusion of the contract, that supply by or on a specified date is essential.*

***In those cases, if the trader fails to supply at the relevant time pursuant Article 5(2), the consumer shall be entitled to terminate the contract immediately.***

3. **Where the consumer terminates the contract, Articles 13, 13a, 13b and 13c shall apply.**

### **CA 62 on recital 35**

**Supported by EPP, S&D, ECR, ALDE, GUE, EFDD**

Compromise amendment replacing all relevant amendments, including AM 278 (Reda), AM 279 (Voss, Maydell), AM 280 (Gebhardt et al.), AM 281 (Buda), AM 282 (Zullo).

(35) ~~A failure of~~ **Where the supplier trader fails** to supply the digital content *or digital services* to the consumer in accordance with the contract ~~is a serious breach of the main contractual obligation of the supplier, which~~ **the consumer should call upon the trader to make the supply**. ***Any failure to supply the digital content or digital service without undue delay should allow the consumer to immediately terminate the contract, unless the parties expressly agree to an additional period of time for the supply of the digital content or digital service.***

Where the ~~supplier~~ *trader* has initially not failed to supply the digital content *or digital services*, interruptions of the supply making the digital content *or digital services* not available or accessible to the consumer over a short period of time should be treated as non-conformity with the contract, and not a failure to supply. In particular, the requirement of proper continuity of the digital content *or digital services* should also cover more than negligible short term interruptions of the supply.

### **13. Compromise amendments on remedies for the lack of conformity (Article 12, Article 2(11a) and recitals 36 and 37; Article 3(9) and recital 10)**

#### **CA 63 on Article 12**

**Supported by EPP, S&D, ECR, ALDE, GUE, EFDD**

Compromise amendment replacing all relevant amendments, including AM 700 (Gebhardt et al.), AM 701 (Reda), AM 702 (Zullo), AM 703 (Reda), AM 704 (Mizzi), AM 705 (Voss, Maydell), AM 706 (Gebhardt et al.), AM 707 (Zullo), AM 708 (Voss, Maydell), AM 709 (Gebhardt et al.), AM 710 (Reda), AM 711 (Zullo), AM 712 (Niebler), AM 713 (Reda), AM 714 (Gebhardt et al.), AM 715 (Schwab), AM 716 (Zullo), AM 717 (Voss, Maydell), AM 718 (Kallas, Charanzova), AM 719 (Reda), AM 720 (Voss, Maydell), AM 721 (Schwab), AM 722 (Gebhardt et al.), AM 723 (Zullo), AM 724 (Karas), AM 725 (Reda), AM 726 (Voss, Maydell), AM 727 (Gebhardt et al.), AM 728 (Rozière), AM 729 (Zullo), AM 730 (Voss, Maydell), AM 731 (Schwab), AM 732 (Gebhardt et al.), AM 733 (Zullo), AM 734 (Reda), AM 735 (Voss, Maydell), AM 736 (Schwab), AM 737 (Gebhardt et al.), AM 738 (Reda), AM 739 (Voss, Maydell), AM 740 (Gebhardt et al.), AM 741 (Reda), AM 742 (Voss, Maydell), AM 743 (Reda), AM 744 (Gebhardt et al.), AM 745 (Voss, Maydell), AM 746 (Gebhardt et al.), AM 747 (Voss, Maydell), AM 748 (Reda), AM 749 (Zullo), AM 750 (Gebhardt et al.), AM 751 (Comi et al.), AM 752 (Schwab), AM 753 (Reda), AM 754 (Voss, Maydell), AM 755 (Gebhardt et al.), AM 756 (Reda), AM 757 (Rozière), AM 758 (Voss, Maydell), AM 759 (Kallas, Charanzova), AM 760 (Collin-Langen), AM 761 (Le Grip), AM 762 (Zullo), AM 766 (Voss, Maydell), AM 767 (Zullo), AM 769 (Gebhardt et al.), 36 LIBE, 37 LIBE.

#### *Article 12*

##### **Remedies for the lack of conformity with the contract**

- 1. *In the case of a lack of conformity with the contract, the consumer shall be entitled to have the digital content or digital service brought into conformity, or to receive a proportionate reduction in the price, or to terminate the contract under the conditions set out in this Article.***
1. ~~In the case of a lack of conformity with the contract, the consumer shall be entitled to have the digital content or digital service brought into conformity with the contract free of charge, unless this is impossible, disproportionate or unlawful.~~ ***In the first place case of a lack of conformity with the contract, the consumer shall be entitled to have the digital content or digital service brought into conformity with the contract free of charge, unless this is impossible, disproportionate or unlawful.***
- Bringing the digital content ***or digital service*** into conformity with the contract shall be deemed to be disproportionate ***in particular*** where the costs it imposes ***imposed*** on the supplier ***trader*** are unreasonable. The following shall be taken into account when deciding whether the costs are unreasonable:
- (a) the value the digital content ***or digital service*** would have if it were in conformity with the contract; and
  - (b) the significance of the lack of conformity with the contract for attaining the purpose for which the digital content ***or a digital service*** of the same description would normally be used.

2. The ~~supplier~~ **trader** shall bring the digital content *or digital service* in conformity with the contract pursuant to paragraph 1 within a reasonable time from the time the ~~supplier~~ **trader** has been informed by the consumer about the lack of conformity with the contract, *free of charge* and without any significant inconvenience to the consumer, taking account of the nature of *the* digital content *or the digital service* and the purpose for which the consumer required this digital content *or digital service*.
- The consumer shall be entitled to withhold the payment of any outstanding part of the price, or where the lack of conformity is minor, of an appropriate proportion thereof, until the trader has brought the digital content or digital service into conformity with the contract.*
3. The consumer shall be entitled to either a proportionate reduction of the price in the manner set out in paragraph 4 where the digital content *or the digital service* is supplied in exchange for a payment of a price, or *may* terminate the contract under paragraph 5 and Articles 13, *13a, 13b and 13c* where
- (a) the remedy to bring the digital content *or digital service* in conformity is impossible, disproportionate or unlawful, *in accordance with paragraph 1*;
  - (b) the ~~supplier~~ **trader** has not completed the remedy within the time specified *brought the digital content or digital service in conformity in accordance with paragraph 2*;
  - (*ba*) *a lack of conformity appears despite the trader's attempt to bring the digital content or digital service in conformity; or*
  - (c) ~~the remedy to bring the digital content in conformity would cause significant inconvenience to the consumer; or~~
  - (d) the ~~supplier~~ **trader** has declared, or it is equally clear from the circumstances, that the ~~supplier~~ **trader** will not bring the digital content *or digital service* in conformity with the contract *within a reasonable time or without significant inconvenience for the consumer*.
4. *The consumer shall exercise the right to a proportionate reduction of the price by means of an unequivocal statement setting out his decision, notified to the trader.* The reduction in price shall be proportionate to the decrease in the value of the digital content *or digital service* which was received by the consumer compared to the value ~~of that~~ the digital content *or digital service would have if it was that is* in conformity with the contract.
- Where the contract stipulates that the digital content or digital service is to be supplied over a period of time in exchange of the payment of a price, and for a certain period the digital content or digital service did not conform to the contract, the price reduction shall apply to the period during which the digital content or digital service has not been in conformity with the contract.*
5. The consumer may terminate the contract only if the lack of conformity with the contract *is not minor* ~~impairs functionality, interoperability and other main performance features of the digital content or digital service such as its accessibility, continuity and security where required by Article 6 paragraphs (1) and (2).~~ The burden of proof that the lack of conformity with the contract does not impair functionality, interoperability and other main performance features of the digital content *or digital service* shall be on the ~~supplier~~ **trader**.



5a. *The consumer shall not be entitled to a remedy to the extent that the consumer has contributed to the lack of conformity with the contract or its effects.*

**CA 64 on Article 2, point 11a (new), definition of ‘minor lack of conformity’**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

11a. *‘minor lack of conformity’ means a lack of conformity that is not impairing the functionality, interoperability and other main performance features of the digital content or digital service such as its accessibility, continuity and security where required by paragraphs 1 and 2 of Article 6.*

**CA 65 on recital 36**

Supported by EPP, S&D, ECR, ALDE, GUE, EFDD

Compromise amendment replacing all relevant amendments, including AM 283 (Gebhardt et al.), AM 284 (Rozière), AM 285 (Reda), AM 286 (Voss, Maydell), AM 287 (Buda), AM 288 (Zullo), AM 289 (Voss, Maydell), AM 290 (Gebhardt et al.)

(36) In the case of non-conformity with the contract, consumers should as a first step be entitled to have the digital content *or digital service* brought ~~to~~ *into* conformity with the contract. Depending on technical characteristics of the digital content *or digital service*, the ~~supplier~~ *trader* may select a specific way of bringing the digital content *or digital service* to conformity with the contract, for example by issuing updates or requiring the consumer to access a new copy of the digital content. *To avoid any significant inconvenience for the consumer, the trader should not be entitled to make more than one attempt to rectify the same defect.* Given the diversity of digital content *and digital services*, it is not appropriate to set fixed deadlines for the exercise of rights or the fulfilling of obligations related to that digital content *or digital service*. Such deadlines may not capture this diversity and be either too short or too long, depending on the case. It is therefore more appropriate to refer to reasonable deadlines. *The reasonable time for bringing the digital content or digital service in conformity with the contract should be objectively ascertained, having regard to the nature of the digital content or service and the lack of conformity.* The digital content *or digital service* should be brought into conformity with the contract ~~within a reasonable time and~~ free of any costs; in particular the consumer should not incur any costs associated with the development of an update for the digital content.

**CA 66 on recital 37**

Supported by EPP, S&D, ECR, ALDE, GUE, EFDD

Compromise amendment replacing all relevant amendments, including AM 291 (Rozière), AM 292 (Collin-Langen), AM 293 (Voss, Maydell), AM 294 (Gebhardt et al.), AM 295 (Cavada), AM 296 (Dzhambazki), AM 297 (Kallas, Charanzova), AM 298 (Zullo), AM 299 (Reda), AM 300 (Le Grip), LIBE 10

(37) As a second step, the consumer should be entitled to have the price reduced or the contract terminated. The right of a consumer to have the contract terminated should be limited to those cases where for instance bringing the digital content *or digital service into* ~~to~~ conformity is not possible and the non-conformity impairs the main performance features of the digital content *or digital service*. ***In the case of contracts concluded by digital means, the trader should provide the consumer with an easy digital means to terminate the contract, for instance, an online form.*** Where the consumer terminates the contract, the ~~supplier~~ ***trader*** should reimburse the price paid by the consumer ~~or, where the digital content is supplied not in exchange for a price but against access to data provided by the consumer, the supplier should refrain from using it, from transferring that data to third parties or allowing third parties to access it after termination of the contract.~~ Fulfilling the obligation to refrain from using data should mean in the case when the counter performance consists of personal data, that the supplier should take all measures in order to comply with data protection rules by deleting it or rendering it anonymous in such a way that the consumer cannot be identified by any means likely reasonably to be used either by the supplier or by any other person. Without prejudice to obligations of a controller under Directive 95/46/EC the supplier should not be obliged to undertake any further steps in relation to data which the supplier has lawfully provided to third parties in the course of the duration of the contract for the supply of the digital content.

#### **Hidden defects and short-term right to reject**

##### **CA 67 on Article 3(9)**

**Supported by EPP, S&D, ECR, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including AM 42 (draft report), AM 507 (Buda), AM 508 (Maydell), AM 782 (Anderson et al.)

9. ~~In so far as not regulated in this Directive, *†This*~~ Directive shall not affect national general contract laws such as rules on *the* formation, ~~the~~ validity or effects of contracts, including the consequences of the termination of a contract, *in so far as they are not regulated in this Directive. This Directive shall not affect national rules on remedies for ‘hidden defects’ or the short-term right to reject. Member States may maintain or introduce national rules on remedies for ‘hidden defects’. Member States may maintain national rules on the short-term right to reject, where available in Member States’ legal orders on the date of entry into force of this Directive.*

##### **CA 68 on recital 10**

**Supported by EPP, S&D, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including AM 150 (Anderson et al.), AM 151 (Marias), AM 152 (Voss/Maydell)

- (10) This Directive should not affect national laws to the extent that the topics concerned are not regulated by this Directive, such as national rules providing for obligations of

the consumer towards the supplier of digital content or regulating the qualification, formation and validity of contracts or the legality of the content. Member States should also remain free to provide rules for the detailed conditions for the exercise of rights, such as the right to damages to the extent not covered by the Directive, or rules which provide for the consequences of termination of the contract which apply in addition to restitution rules regulated by this Directive. ***Member States should be allowed to maintain or introduce national rules on remedies for 'hidden defects'. Member States should be allowed to maintain national rules on the short-term right to reject where available in Member States' legal orders on the date of entry into force of this Directive.***

## **14. Compromise amendments on termination (Articles 13, 13a, 13b and 13c)**

### **CA 69 on Articles 13, 13a, 13b and 13c, termination**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AMs 770, 772, 786, 789, 801, 813, 815, 824, 830, 836, 839, 841, 845, 851 (Gebhardt et al.), 771, 781, 796, 808, 827, 833, 838, 843 (Zullo), 773 (Buda), 774, 826 (Kallas/Charanzová), 775, 791, 807, 814, 816, 817 (Dalton/Ford), 776, 795, 806 (Dzhambazki), 777, 809 (Charanzová), 778, 787, 792, 800, 828, 842 (Guoga), 779, 784, 825, 832, 834, 840, 846, 850 (Voss/Maydell), 780, 788 (Niebler), 783 (Dalton/Ford/Van Bossuyt), 790, 804, 812, 819, 821, 823, 829, 835 (Reda), 793, 803 (Kallas, Cavada, Charanzová), 794, 811 (Collin-Langen), 797, 805 (Rozière), 798 (Mizzi), 799, 820 (Schwab), 802 (Cavada), 810 (Le Grip), 818 (De Jong), 831, 837 (Comi/Gardini/Maullu), 844 (Karas), 38 LIBE, 39 LIBE.

#### *Article 13*

##### *Exercise of the right of termination*

4. — The consumer shall exercise the right to terminate the contract by ~~notice~~ ***means of an unequivocal statement setting out his decision to terminate the contract, notified to the supplier/trader given. In case, or in any event of contracts concluded by digital means, the trader shall provide the consumer with an easy digital means to terminate the contract. The termination shall become effective 14 days after the notification, or a later date indicated by the consumer.***

#### *Article 13a*

##### *Obligations of the trader in the event of termination*

- 2.1. ~~Where the consumer terminates~~ ***In the event of termination of the contract:***
- ~~(a) the supplier/trader shall reimburse to the consumer the price all sums paid under the contract, without undue delay and in any event not later than 14 days from receipt of the notice;~~
- In case the contract provides for the supply of digital content or a digital service in exchange for a payment of a price and over a period of time, where the consumer terminates a part of such contract in accordance with [paragraph 5 of Article 12], the trader shall reimburse to the consumer the part of the price corresponding to the period of time during which the digital content or digital service was not in conformity with the contract and any part of the price paid by the consumer in advance for any remaining period of the contract had it not been terminated.***
- 1a. ***In respect of personal data of the consumer, the trader shall comply with the obligations applicable under Regulation (EU) 2016/679.***
2. ~~(b) The trader shall take all measures which could be expected in order to refrain from the use of any user-generated content to the extent that it does not constitute personal data, the counter-performance other than money which was provided or~~

~~created by the consumer has provided in exchange for when using the digital content or digital service supplied by the trader, and any other data collected by the supplier in relation to the supply of the digital content including any content provided by the consumer with the exception of:~~

- ~~(a) the content that cannot be refrained from using without disproportionate and unreasonable effort because it has no utility outside the context of the digital content or digital service supplied by the trader,~~
- ~~(b) the content that cannot be refrained from using without disproportionate and unreasonable effort because it only relates to the consumer's activity when using the digital content or digital service supplied by the trader,~~
- ~~(c) the content which has been generated jointly by the consumer and others, when other consumers can who continue to make use of the content;~~
- ~~(d) the content that has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts.~~

3. ~~(e) The supplier trader shall, upon request by the consumer, provide shall make available to the consumer with technical means to retrieve all any user-generated content to the extent that it does not constitute personal data, which was provided or created by the consumer and any other data produced or generated through the consumer's use of when using the digital content or digital service supplied by the trader to the extent that data has been retained by the supplier. The consumer shall be entitled to retrieve the content free of charge, without significant inconvenience, in reasonable time and in a commonly used and machine-readable data format.~~

~~The obligation to make available such user-generated content shall not apply in case the user-generated content:~~

- ~~(a) cannot be made available without disproportionate and unreasonable effort because it has no utility outside the context of the digital content or digital service supplied by the trader,~~
- ~~(b) cannot be made available without disproportionate and unreasonable effort because it only relates to the consumer's activity when using the digital content or digital service supplied by the trader, or~~
- ~~(c) has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts~~

~~(d) where the digital content was not supplied on a durable medium, the consumer shall refrain from using the digital content or making it available to third parties, in particular by deleting the digital content or rendering it otherwise unintelligible;~~

- ~~(e) where the digital content was supplied on a durable medium, the consumer shall:~~
- ~~(i) upon the request of the supplier, return, at the supplier's expense, the durable medium to the supplier without undue delay, and in any event not later than 14 days from the receipt of the supplier's request; and~~
  - ~~(ii) delete any usable copy of the digital content, render it unintelligible or otherwise refrain from using it or making it available to third parties.~~

- 3.4. Upon termination, the ~~supplier~~ **trader** may prevent any further use of the digital content **or digital service** by the consumer, in particular by ~~making~~ **rendering** the digital content **or digital service** ~~not~~ **in**accessible to the consumer or disabling the user account of the consumer, without prejudice to ~~point (e) of paragraph 23.~~

#### *Article 13b*

##### *Obligations of the consumer in the event of termination*

1. *After termination of the contract, the consumer shall refrain from using the digital content or digital service and from making it available to third parties, for instance by deleting the digital content or any usable copy or rendering the digital content or digital service otherwise inaccessible.*
2. *In case of embedded digital content or an embedded digital service, the consumer shall, upon the request of the trader, return, at the trader's expense, the good in which the digital content or digital service is embedded to the trader without undue delay, and in any event not later than 14 days from the receipt of the trader's request. If the trader decides to request the return of the good in which the digital content or digital service is embedded, that request shall be made within 14 days from the day on which the trader is informed of the consumer's decision to terminate the contract.*
- 4.3 The consumer shall not be liable to pay for any use made of the digital content **or digital service** in the period prior to the termination of the contract **during which the digital content or the digital service was not in conformity.**
- ~~5. Where the digital content has been supplied in exchange for a payment of a price and over the period of time stipulated in the contract, the consumer may terminate the contract only in relation to that part of the period of time where the digital content has not been in conformity with the contract.~~
- ~~6. Where the consumer terminates a part of the contract in accordance with paragraph 5, paragraph 2 shall apply, with the exception of point (b) in regards to the period during which the digital content was in conformity with the contract. The supplier shall reimburse to the consumer the part of the price paid corresponding to the period of time when the digital content was not in conformity with the contract.~~

#### *Article 13c*

##### *Time limits and means of reimbursement by the trader*

1. *Any reimbursement to be done by the trader to the consumer pursuant to [Article 12(4) or 13a(1)] due to price reduction or termination of the contract shall be done without undue delay and in any event within 14 days from the day on which the trader is informed by means referred to in Articles 12 and 13 of the consumer's decision to invoke his right for a price reduction or his right to terminate the contract.*

2. *The trader shall carry out the reimbursement using the same means of payment as the consumer used to pay for the digital content or digital service, unless the consumer expressly agrees otherwise.*
3. *The trader shall not impose any fee on the consumer in respect of the reimbursement.*

#### **CA 70 on recital 15**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 198 (Kallas, Charanzova), AM 199 (Reda), AM 200 (Marias), AM 201 (Guoga)

- (15) Content generated by consumers should be treated on the same basis as any other digital content *or digital services* that the consumer provides or stores throughout the period of duration of the contract such as music and video files, pictures, games or applications, *unless specifically provided for in this Directive*. Content generated by consumers comprises a wide range of examples including digital images, video and audio files, blogs, discussion forums, text-based collaboration formats, posts, chats, tweets, logs, podcasting, content created on mobile devices, content created in the context of online virtual environments, ratings and collections of links referring to online content.

#### **CA 71 on recital 38**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 304 (Reda), 305 (Dalton, Ford), 306 (Kallas, Charanzová), 307 (Gebhardt et al.), 308 (Cavada), 11 LIBE.

- (38) Upon termination the ~~supplier~~**trader** should refrain from using the content generated by the consumer. However, in those cases where more than one consumer generated particular content *and other consumers can continue to make use of it, or the user-generated content either has no utility outside the eco-system or only relates to the consumer's activity, or has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts*, the ~~supplier~~**trader** is entitled to continue to use the content generated by the consumer. *This includes individual content contributions by a consumer to a collaborative project that other consumers continue to make use of, which should be reusable by the trader under the conditions under which they were originally provided by the consumer also after the contract is terminated.*

#### **CA 72 on recital 39**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 311 (Kallas, Charanzová), 312 (Dalton, Ford), 313 (Cavada), 314 (Buda), 315 (Dzhambazki), 316 (Zullo), 317 (Rozière), 12 LIBE.

(39) — In order to ensure that the consumer benefits from effective protection in relation to the right to terminate the contract, the ~~supplier~~**trader** should allow the consumer to retrieve all data uploaded by the consumer, produced by the consumer with the use of the digital content **or the digital service** or generated through the consumer's use of the digital content **or the digital service**. This obligation should extend to data which the ~~supplier~~**trader** is obliged to retain under the contract for the supply of the digital content **or the digital service** as well as to data which the supplier has effectively retained in relation to the contract.

#### CA 73 on recital 40

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AMs 318 (Voss, Maydell), 319 (Kallas, Charanzová), 320 (Dzhambazki)

(40) ~~Where, f~~Following the termination of the contract because of a lack of conformity with the contract, the ~~supplier~~**trader should make available to** provides the consumer **any user-generated content not constituting personal data, unless such content has no utility outside the context of the digital content or digital service supplied by the trader, only relates to the consumer's activity when using the digital content or digital service supplied by the trader, or has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts.** ~~with the technical means to retrieve the data, t~~The consumer should be entitled to retrieve the **content** data-free of any costs, **and for example the cost of employing in a commonly used and machine-readable data format. with the exception of costs generated by the consumer's own digital environment including the costs of a network connection as they are not specifically linked with the retrieval of the data.**

#### CA 74 on recital 41

Supported by EPP, S&D, ECR, ALDE, GUE, Greens,

Compromise amendment replacing all relevant amendments, including: AMs 321 (Niebler), 322 (Buda), 323 (Voss, Maydell), 324 (Zullo)

(41) Where the contract is terminated, the consumer should not be required to pay for the use of digital content **or a digital service** ~~which that~~ is not in conformity with the contract because that would deprive the consumer of effective protection.

#### CA 75 on recital 42

Supported by EPP, S&D, ECR, ALDE, GUE, Greens,

Compromise amendment replacing all relevant amendments, including: AMs 325 (Buda), 326 (Gebhardt et al.), 327 (Zullo), 328 (Voss, Maydell)

(42) Considering the need to balance legitimate interests of consumers and ~~suppliers~~**traders**, where the digital content **or the digital service** provided over a period of time in exchange for a payment of a price, gives rise to the right to terminate, the consumer should be entitled to terminate only the part of the contract which corresponds to the **period of** time when the digital content **or the digital service** was not in conformity with the contract. ~~However where the~~



~~digital content is provided against a counter performance other than money partial termination is not feasible because it is impossible to proportionally apportion a counter performance other than money.~~

**15. Political agreement not to include the commercial guarantee on lifespan in the Digital Content proposal**

Political agreement not include the commercial guarantee on lifespan in the Digital Content proposal, without prejudice to the political negotiations within the framework of the Sales of Goods proposal:

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

This entails that AM 635 will not be supported

## **16. Compromise amendments on damages (Article 14 and recital 44)**

### **CA 76 on Article 14**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including AM 855 (Voss, Maydell), AM 856 (Collin-Langen), AM 857 (Gebhardt et al.), AM 858 (Buda), AM 859 (Schwab), AM 860 (Zullo), AM 861 (Guoga), AM 862 (Dalton, Ford), AM 863 (Cavada), AM 864 (Rozière), AM 865 (Reda), AM 866 (Reda), AM 867 (Rozière), AM 868 (Le Grip), AM 869 (Rozière), AM 870 (Gebhardt et al.), 40 LIBE, 41 LIBE.

#### *Article 14*

##### **Right to damages**

1. ~~The supplier shall be liable to the consumer for any economic damage to the digital environment of the consumer caused by a lack of conformity with the contract or a failure to supply the digital content. Damages shall put the consumer as nearly as possible into the position in which the consumer would have been if the digital content had been duly supplied and been in conformity with the contract. Member States shall ensure that the consumer is entitled to claim compensation for the damages caused by a failure to supply the digital content or digital service or a lack of conformity of the digital content or digital service with the contract.~~

2. ~~The Member States shall lay down detailed rules for the exercise of the right to damages.~~

### **CA 77 on recital 44**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including AM 336 (Voss, Maydell), AM 337 (Reda), AM 338 (Buda), AM 339 (Gebhardt et al.), AM 340 (Guoga), AM 341 (Zullo), AM 342 (Guoga), 13 LIBE.

(44) ~~The principle of the supplier trader's liability for damages is an essential element of the contracts for supply of digital content or digital service. In order to increase consumers' trust in digital content this principle should thus be regulated at Union level to ensure that consumers do not suffer a detriment if their hardware or software is damaged by digital content which is not in conformity with the contract. Therefore, the consumer should be entitled to claim for a compensation for damages caused to the consumer's digital environment by a lack of conformity with the contract or a failure to supply the digital content. However, if the existence of such a right to claim damages should be ensured in all Members States, it should not be regulated at Union level and should be determined by national law. it should be for Member States to lay down the detailed conditions for the exercise of the right to damages while taking into account that discounts on prices for future supplies of the digital content, especially when offered by suppliers as an exclusive compensation for losses, do not necessarily put the consumer as nearly as possible into the position in which the consumer would have been if the digital content had been duly supplied and been in conformity with the contract.~~

## **17. Compromise amendment on modification of digital content (Article 15 and recitals 45 and 45a (new))**

### **CA 78 on Article 15**

**Supported by EPP, S&D, ECR, ALDE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 61, 62, 63, 64, 65, 66, 67, 68 draft report (Gebhardt/Voss); AMs 873, 877, 898, 902 (Zullo), 874, 875, 881, 883, 887, 891, 896, 897 (Maydell), 876, 894, 903 (Reda), 878, 888, 905 (Kallas/Charanzová), 879 (Le Grip), 880, 882, 885, 889, 895 (Rozière), 884, 890, 899 (Guoga), 886, 901 (Dalton/Ford), 892 (Schwab), 893 (Dzhambazki), 900 (Maydell/Thun), 904 (Collin-Langén), 906 (Gebhardt et al.), 42 LIBE, 43 LIBE, 44 LIBE, 45 LIBE.

#### *Article 15*

##### *Modification of the digital content or digital service*

1. Where the contract provides that the digital content *or the digital service* ~~shall is to be~~ supplied *or made accessible* over ~~the a~~ period of time stipulated in the contract, the ~~supplier~~ *trader* may *only* alter ~~the~~ functionality, interoperability and other main performance features of the digital content *or digital service beyond what is necessary to maintain in conformity the digital content or digital service in accordance with Article 6a* ~~such as its accessibility, continuity and security, to the extent those alternations adversely affect access to or use of the digital content by the consumer,~~ *only if:*
  - (a) ~~the contract so stipulates~~ *allows for and gives a valid reason for such a modification;*
  - (aa) *such a modification can reasonably be expected by the consumer;*
  - (ab) *the modification is provided without additional cost for the consumer; and*
  - (b) ~~the trader notifies the consumer is notified~~ *reasonably in advance of the modification, in a clear and comprehensible manner and on a durable medium of the modification and, where applicable, of his right to terminate the contract under the conditions provided in paragraph 1a* ~~by an explicit notice on a durable medium;~~
  - (c) ~~the consumer is allowed to terminate the contract free of any charges within no less than 30 days from the receipt of the notice; and~~
  - (d) ~~upon termination of the contract in accordance with point (c), the consumer is provided with technical means to retrieve all content provided in accordance with Article 13(2)(c).~~
- 1a. *The consumer shall be entitled to terminate the contract if the modification negatively impacts the access to or the use of the digital content or digital service by the consumer, unless such negative impact is only minor. In this case, the consumer shall be entitled to terminate the contract free of charge within 30 days from the receipt of*

*the notice or from the time when the digital content or digital service is altered by the trader, whichever is later.*

2. Where the consumer terminates the contract in accordance with paragraph 1a, ~~where relevant, Articles 13, 13a and 13b shall apply accordingly.~~
  - (a) ~~the supplier shall reimburse to the consumer the part of the price paid corresponding to the period of time after modification of the digital content;~~
  - (b) ~~the supplier shall refrain from the use of the counter performance other than money which the consumer has provided in exchange for the digital content and any other data collected by the supplier in relation to the supply of the digital content including any content provided by the consumer.~~

#### **CA 79 on recitals 45 and 45a (new)**

**Supported by EPP, S&D, ECR, ALDE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 343 (Kallas/Charanzová), 344 (Gebhardt et al.), 345 (Voss/Maydell), 346 (Zullo), 347 (Dzhambazki), 348 (Le Grip)

- (45) ~~Due to technological or other reasons the supplier trader might be compelled~~ *allowed under certain conditions to change modify main performance features of the digital content or digital service supplied over a period of time, such as its accessibility and continuity provided the contract gives a valid reason for such a modification. Such valid reasons could encompass cases where the modification is necessary to adapt the digital content or digital service to a new technical environment or to an increased number of users or for other important operational reasons.* These changes are often to the advantage of the consumer as they improve the digital content *or digital service*. Consequently, the parties to the contract may include respective clauses in the contract which allow the ~~supplier trader~~ to undertake modifications. However, where such modifications negatively affect the way the consumer benefits from main performance features of the digital content *or digital service*, they may disturb the balance of the contract or the nature of the performance due under the contract to an extent that the consumer may not have concluded such a contract. ~~Therefore, in such cases these modifications should be subject to certain conditions.~~ *In order to balance consumer and business interests, such a possibility offered to the trader should be coupled with a right of the consumer to terminate the contract where these modifications negatively impact the use of or access to the digital content or digital service in a more than only minor manner. To what extent modifications negatively impact the use of or access to the digital content or digital service by the consumer should be objectively ascertained having regard to the nature and purpose of the digital content or digital service and to the quality, functionality, interoperability and other main features which are normal in digital content or a digital service of the same type. The rules concerning such updates, upgrades or similar modifications should however not concern situations where, for instance as*

*a consequence of distributing a new version of the digital content or digital service, the parties conclude a new contract for the supply of the digital content or digital service.*

- (45a) Where such a modification negatively impacts the access or use of the digital content or digital service by the consumer, the consumer should enjoy as a result of such a modification the right to terminate the contract free of any cost. Where the conditions under which the modification is allowed are not satisfied, the consumer's rights to remedies for the lack of conformity remain unprejudiced. Similarly, where, subsequently to a modification a lack of conformity of the digital content or digital service occurs that has not been caused by the modification, the consumer should continue to be entitled to rely on remedies for the lack of conformity in relation to this digital content or digital service as provided for in this Directive.*

## **18. Compromise amendments on long-term contracts (Article 16 and recital 46)**

### **CA 80 on Article 16**

**Supported by EPP, S&D, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AMs 907 (Voss/Maydell), 908-909-919-926-932-958 (Schwab), 910 (Cavada), 911-922-937-946 (Dzhambazki), 912 (Jaakonsaari), 913 (Juvin), 914-936-947 (Dalton/Ford), 915-929-938-949-954-960 (Zullo), 916-930-950 (Rozière), 917-935-944-953-955-957 (Reda), 918-923-928-933-940-943-961 (Gebhardt et al.), 920-941-945-959 (Kallas/Charanzová), 921-948 (Charanzová), 924 (Niebler), 925-931-934-942-952-956-962 (Guoga), 927 (Le Grip), 939-951 (Collin-Langen), 46 LIBE, 47 LIBE

#### *Article 16*

##### **Right to terminate long term contracts**

1. Where the contract provides for the supply of the digital content *or digital service* for an ~~indefinite period or where the~~ initial *fixed* contract duration *exceeding 12 months* or *where* any combination of *subsequent contracts or* renewal periods ~~exceed~~ *exceeds* 12 months *from the moment of conclusion of the initial contract*, the consumer shall be entitled to terminate the contract *free of any additional charges* any time after the expiration of the first 12 months period.
  - 1a. *Where the consumer terminates a fixed term contract and the contract duration or any combination of renewal periods exceed 12 months, the trader shall be entitled to proportionate compensation for those advantages he has given to the consumer because of the contract duration exceeding 12 months.*

*Before the consumer is bound by a contract, or any corresponding offer, the trader shall provide the consumer with information on the conditions for terminating a contract with a duration of more than 12 months in a clear and comprehensible manner, if that information is not already apparent from the context, and on the consequences of early termination in case an advantage had been granted to the consumer because of the duration of the contract.*
2. The consumer shall exercise the right to terminate the contract by notice to the ~~supplier~~ *trader* given by ~~any~~ *means of an unequivocal statement setting out his decision to terminate the contract*. The termination shall become effective 14 days after the receipt of the notice, *or a later date indicated by the consumer*.
3. Where the digital content *or digital service* is supplied in exchange for a payment of a price, the consumer remains liable to pay the part of the price for the digital content *or digital service* supplied corresponding to the period of time before the termination becomes effective.
4. When the consumer terminates the contract in accordance with this Article ~~the trader~~ *shall in respect of personal data comply with the obligations applicable under Regulation 2016/679 and Directive 2002/58/EC*.

~~(a) — the supplier shall take all measures which could be expected in order to refrain from the use of other counter performance than money which the consumer has provided in exchange for the digital content and any other data collected by the supplier in relation to the supply of the digital content including any content provided by the consumer;~~

~~(b) — the supplier shall provide the consumer with technical means to retrieve all any content provided by the consumer and any other data produced or generated through the consumer's use of the digital content to the extent this data has been retained by the supplier. The consumer shall be entitled to retrieve the content without significant inconvenience, in reasonable time and in a commonly used data format; and~~

4a. Where applicable, the consumer shall delete any usable copy of the digital content *or digital service*, render it unintelligible or otherwise refrain from using it including by making it available to a third party.

5. Upon termination, the ~~supplier~~ *trader* may prevent any further use of the digital content *or digital service* by the consumer, in particular by making the digital content *or digital service* not accessible to the consumer or disabling the user account of the consumer.

#### CA 81 on recital 46

Supported by EPP, S&D, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 349 (Voss/Maydell), 350 (Dzhambazki), 351 (Marias), 352 (Zullo), 353 (Reda),

(46) Competition is an important element for a well-functioning digital single market. In order to stimulate such a competition, consumers should be enabled to respond to competitive offers and to switch between ~~suppliers~~ *traders*. In order to make this work in practice, they should be able to do so without being hindered by legal, technical or practical obstacles, including contractual conditions or lack of means for retrieving all data uploaded by the consumer, produced by the consumer with the use of the digital content or generated through the consumer's use of the digital content. However, it is also important to protect existing investments and the trust in concluded contracts. Therefore consumers should be given the right to terminate long-term contracts under certain balanced conditions. This does not preclude that consumer contracts may be concluded for longer contractual periods. ***Any advantages resulting from the conclusion of contracts exceeding 12 months should be reimbursed proportionately in case of an earlier termination. The trader should provide information about the conditions and consequences for early termination of fixed-term contracts exceeding 12 months.*** However, the consumer should be entitled to terminate any contractual relation that altogether lasts for a period ~~longer than~~ ***exceeding 12 months***. In order to prevent any circumvention of this right it should cover any contract which results in the consumer being bound by the contract ~~for more than~~ ***exceeding 12 months***, irrespective of whether the contract ~~is of indeterminate~~ ***has an initial fixed duration exceeding 12 months*** or is extended automatically or following a ***combination of a subsequent agreement by the parties contracts or renewal periods exceeding 12 months.***



## **19. Compromise amendments on right of redress (Article 17 and recital 47)**

### **CA 82 on Article 17: right of redress**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 963 (De Jong), AM 964 (Gebhardt et al.), AM 965 (Voss, Maydell), AM 966 (Zullo), AM 967 (Reda), AM 968 (Anderson et al.)

#### *Article 17*

##### **Right of redress**

Where the **supplier trader** is liable to the consumer because of any failure to supply the digital content *or digital service* or a lack of conformity with the contract resulting from an act or omission by a person in **earlier previous** links of the chain of transactions, the **supplier trader** shall be entitled to pursue remedies against the person or persons liable in the chain of **financial** transactions. The person against whom the **supplier trader** may pursue remedies and the relevant actions and conditions of exercise, shall be determined by national law.

### **CA 83 on recital 47: right of redress**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 172 (Anderson et al.), AM 354 (Reda), AM 355 (Voss, Maydell), AM 356 (Kallas, Charanzova)

- (47) The lack of conformity with the contract of the final digital content *or digital service* as supplied to the consumer is often due to one of the **financial** transactions in a chain, from the original designer to the final **supplier trader**. While the final **supplier trader** should be liable towards the consumer in case of lack of conformity with the contract between these two parties, it is important to ensure that the **supplier trader** has appropriate rights vis-a-vis different members of the chain of **financial** transactions in order to be able to cover his liability towards the consumer. *These rights should be strictly limited to financial transactions and not extend to situations where, for instance, the trader re-uses free third party software that the trader did not pay for.* However, it should be for the applicable national law to identify the members of the chains of transactions against which the final **supplier trader** can turn and the modalities and conditions of such actions. *Member States should ensure that national law adequately protects the trader when determining the person against whom the trader may pursue remedies, the time periods and the relevant actions and conditions of exercise.*

## **20. Compromise amendments on enforcement (Article 18 and recital 48)**

### **CA 83bis on enforcement: Article 18**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 969 (Gebhardt et al.), AM 970 (Reda), AM 971 (Gebhardt et al.), AM 972 (Gebhardt et al.), AM 973 (Gebhardt et al.), AM 974 (Reda), LIBE 48, LIBE 49

#### *Article 18*

##### **Enforcement and information**

1. Member States shall ensure that adequate ~~and~~, effective ***and dissuasive*** means exist to ensure compliance with this Directive, ***taking account in particular of the need for consumers to be informed about, and enabled to enforce, their rights in practice.***
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions transposing this Directive are applied:
  - (a) public bodies or their representatives;
  - (b) consumer organisations having a legitimate interest in protecting consumers;
  - (c) professional organisations having a legitimate interest in acting-;
  - (d) ***not-for-profit bodies, organisations or associations, active in the field of the protection of data subjects' rights as defined in Art. 80 of the Regulation (EU) 2016/679.***

### **CA 83ter on enforcement: recital 48**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 358 (Marias)

(48) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual ***and data protection*** rights should be afforded the right to initiate proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings. ***These complaints or proceedings should be sufficient as a deterrent.***

## **21. Compromise amendments on Amendments to Directive 1999/44/EC, Regulation (EC) No 2006/2004, Directive 2009/22/EC (Article 20 and recital 50)**

### **CA 84 on Article 20**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 976 (Vaidere), AM 977 (Gebhardt et al.), AM 978 (Gebhardt et al.), AM 979 pc 1 (Reda), AM 980 pc 1 (Gebhardt et al.), AM 981 (Vaidere)

#### Article 20

#### **Amendments to Directive 93/13/EC, Directive 1999/44/EC, Regulation (EC) No 2006/2004, Directive 2009/22/EC**

**-1. In the Annex to Directive 93/13/EC, the following points are added in paragraph 1:**

**"(a) enabling the trader to unduly limit the interoperability of digital content or a digital service with hardware and other digital content or digital services;**

**(b) requiring the consumer to conclude an additional contract for the supply of digital content or a digital service or a contract pertaining to hardware with the trader or a third party;**

**(c) circumventing by contractual means the rights of the data subject under Regulation (EU) 2016/679 governing the protection of consumers' personal data."**

**(d) restrict uses of digital content permitted under Directive 2001/29/EC, Directive 96/9/EC, Directive 2009/24/EC or Directive 2012/28/EU;**

**Commented [DM2]:** Separate vote, as additions, on AMs 980, pc 2 (pc 2 concerns point ac of AM 980, point (c) here) and 979, pc 2 (pc 2 concerns point ac of AM 979, point (d) here)

1. In Article 1 (2) of Directive 1999/44/EC, point (b) is replaced by the following:

**"(b) consumer goods: shall mean any tangible movable item, with the exception of:**

**goods sold by way of execution or otherwise by authority of law,**

- **water and gas where they are not put up for sale in a limited volume or set quantity,**
- **electricity,**
- **~~a durable medium incorporating digital content where it has been used exclusively as carrier of the digital content to the consumer as referred to in embedded digital content or digital services as covered by Directive (EU) N/XXX<sup>4</sup>.~~**

2. In the Annex to Regulation (EC) No 2006/2004, the following point is added:

<sup>4</sup>

Directive (EU) N/XXX of the European Parliament and of the Council of ... on contracts for the supply of digital content (OJ ...)

"23.1. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on **certain aspects concerning** contracts for the supply of digital content or digital services (OJ...)"

3. In Annex I to Directive 2009/22/EC the following point is added:

"16. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on **certain aspects concerning** contracts for the supply of digital content or digital services (OJ...)"

### **CA 85 on Recital 50**

**Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

Compromise amendment replacing all relevant amendments, including: AM 359 (Gebhardt et al.), 360 (Rozière), AM 361 (Voss, Maydell)

(50) Directive 1999/44/EC of the European Parliament and of the Council[1] should be amended to reflect the scope of this Directive in relation to ~~a durable medium incorporating digital content where it has been used exclusively as a carrier of the digital content to the consumer~~ **embedded digital content or digital services.**

[1] OJ L 171, 7.7.1999, p.12.

## **22. Compromise amendment on review (Article 22)**

### **CA 86 on review: Article 22**

Supported by EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

Compromise amendment replacing all relevant amendments, including: AM 982 (Gebhardt et al.), AM 983 (Rozière), AM 984 (Kallas et al.), AM 985 (Ford/Dalton), AM 986 (Guoga), AM 987 (Reda), LIBE 51

#### *Article 22*

##### **Review**

The Commission shall, not later than on [the date of five years after entry into force] review the application of this Directive and submit a report to the European Parliament and the Council *and the European Economic and Social Committee taking full account of the process of scrutiny and review on the application and implementation of this Directive. The review process shall include consultation of the Member States and consumer, legal and business organisations at Union level.* The report shall examine, inter alia, *interaction and compliance with the application of Regulation (EU) 2016/679 and* the case for harmonisation of rules applicable to contracts for the supply of digital content *or digital services* against *collection of personal data by the trader* ~~counter-performance~~ other than that covered by this Directive, in particular supplied against advertisement ~~or indirect collection of data.~~