

JOINT SESSION OF PARLIAMENTARY COMMITTEES OF ITALY'S CHAMBER OF DEPUTIES

Committee on Transport, Post and Telecommunications

and

Committee on Industry, Trade and Tourism

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Digital contracts for Europe - Unleashing the potential of e-commerce (COM(2015) 633 final)

Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content (COM(2015) 634 final)

APPROVED FINAL DOCUMENT

The Committee on Transport, Post and Telecommunications and the Committee on Industry, Trade and Tourism of Italy's Chamber of Deputies,

having examined, pursuant to Rule of Procedure No. 127 of the Chamber of Deputies, the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Digital contracts for Europe - Unleashing the potential of e-commerce (COM(2015) 633 final) and the Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content (COM(2015) 634 final),

whereas:

The market for digital products in the EU is expanding rapidly, particularly as regards mobile applications, music and video games;

At present, however, around 56 per cent of those who access online content outside their country of residence experience connection and download difficulties;

Currently, no specific remedies exist at the EU level for defects in digital content products. In particular, users are not adequately protected if they find themselves unable to download products, if the products are not compatible with other types of hardware or software, or if the products do not work properly or even cause damage to the user's hardware. The absence of protection is largely the result of pre-formulated standard contracts;

Contracts for the supply of digital content (service, lease and sale agreements) are defined differently from one Member State to another, and propose diverse remedies for the protection of consumers, which puts companies that intend to operate across borders in a state of legal uncertainty regarding their obligations, and leaves users uncertain about their rights;

The proposal includes rules on the conformity of digital content, determines the remedies available to consumers where the digital content fails to conform to the contract, and sets out procedures for the exercise of these remedies;

The proposed Directive is without prejudice to national legislation on aspects that the Directive itself does not cover (legislation on the formation and validity of contracts, and on the lawfulness of content) and refers to all digital content, regardless of the means used for its delivery (transmission on a durable medium, downloading by consumers on their devices or web-streaming);

The Directive allows digital content to be provided also in exchange for counter-performance other than money in the form of the consumer-authorised use of personal data;

With a view to full harmonisation, the proposal precludes Member States from imposing formal or substantive requirements in addition to those contained in the Directive, including any that would offer consumers a different level of protection, whether more or less stringent than that envisaged in the Directive;

Mindful that the present Final Document needs to be forwarded without delay to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council;

express their favourable opinion of Communication COM(2015) 633 final;

and express their favourable opinion also of the Proposal for a Directive (COM(2015) 634 final),

with the following condition:

In light of the provision that digital content may be supplied also in exchange for counter-performance other than money in the form of the consumer-authorised use of personal data, it is necessary to ban commercial profiling, i.e. all those activities involving the processing of user-provided data through which a company can "tag" a customer according to his or her tastes and preferences. In respect of profiling, the new Regulation on personal data has increased the level of consumer protection, with particular reference to the consumer's right to object to the use of personal data, and reasserts that the consumer's free and informed consent must be obtained also in an online environment. In order to prevent these protections from being undermined by the provisions of article 3.1 concerning the scope of the Directive, it might be opportune to recast the reference to "counter-performance other than money in the form of personal data or any other data" so that the article in question limits itself to merely highlighting whether or not the digital content is provided free of charge. In particular, it is imperative to ensure the adequate protection of minors, whose data may not be transferred in any circumstances, irrespective of who has entered into the contract;

and with the following remarks:

- a) Full regulatory harmonisation, which would preclude Member States from introducing more stringent rules of consumer protection, must not be allowed to lead to the weakening of the standards already in place;
- b) The scope of the system of compensation needs to be clarified so that it refers not only to economic but also to non-economic damage.