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7.6.2016

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on the Internal Market and Consumer Protection and the
Committee on Legal Affairs

on 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)0634 – C8-0394/2015 – 2015/0287(COD))

Rapporteur: Marju Lauristin

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SHORT JUSTIFICATION

The digital revolution is profoundly impacting our society. As our reliance on IT-products and -services grows, it is becoming increasingly important to ensure that our rights are upheld in the digital world. Currently, while on a daily basis millions of European consumers access, purchase or use digital content in the broad sense of the word (e.g. video streaming, apps, games, cloud services or social networks), their rights online are not protected as they are in the offline world. This situation erodes consumer confidence and endangers online privacy since faulty or insecure digital products and services will not properly protect the vast amount of our personal data that is available online.

Your Rapporteur aims to increasing consumer confidence and online privacy by ensuring adequate protection for the purchase of digital content. Scope and definition of digital content have to be further clarified to ensure that all consumers - also those that are less tech-savvy or less technically intimate with the online environment - have their rights guaranteed. The online world - and thus the use of digital content - has become much more than simply a way for us to perform specific tasks. Our personal photos, address books and medical information are usually in the cloud. Many of our intimate conversations take place and are often stored online. And in our online activities we leave so many digital traces behind that companies can draw a surprisingly intimate portrait of us. It is therefore clear that in the online environment the protection of our personal data is even more pressing than in the offline world. This proposal, while focussing on the relation between supplier and consumer of digital content, is therefore inextricably linked to the issue of the protection of our personal data online. It is therefore important to ensure that this Directive should comply with the general rules of the new General Data Protection Regulation (2016/679) in order to ensure consistency in citizens' fundamental right to privacy and strengthen the trust of consumers in the supply of safe and secure digital content.

Your rapporteur would like to further strengthen and clarify the proposal on the following points. For these points it is important to keep in mind that this proposal aims at full harmonization, which prohibits Member States from maintaining or introducing national rules that will go further than this Directive in terms of consumer protection:

- Active provision by consumer of personal data: the proposal only covers types of contracts whereby the consumer either pays or "actively provides" personal data as counter-performance. This seems to be too limited, as often nowadays consumers' personal data (such as location data, personal contacts, shopping history etc) are being used in a form of counter-performance while consumers are unaware of it. Furthermore, this limitation could create a perverse incentive for suppliers to not ask for the consumer's consent. It might therefore be advisable to broaden this provision in such a way as to include all contracts for the supply of digital content involving the use of the consumer's personal data.
- A definition of personal data, based on Regulation 2016/679 has to be added, to ensure a clear differentiating line between personal data and any other data mentioned throughout the text.
- Conformity of digital content: the proposal stipulates that digital content should be in conformity with what was stipulated in the contract and only if nothing has been

stipulated in the contract more objective criteria (like technical standards or industry codes of conducts) could be used to assess its conformity. However, one could wonder if, in the light of the complexity of digital content products, the consumer is really able to fully grasp the terms and conditions of the contract and to make an informed decision. It might therefore be advisable to use more often objective and subjective criteria (such as technical standards or legitimate expectations) to ascertain conformity;

- Suppliers' liability for damages: the proposal limits the supplier's liability to only the damages done to the hardware and software of the consumer. However, there might be cases where a consumer suffers serious economic or immaterial loss quite apart from any damage to its digital environment (for example if software contains a bug that allows hackers to gain access to a consumer's computer and steal his password for his bank account). It might therefore be advisable to broaden the scope for damages to include all damage done to the consumer. Furthermore, it might be interesting to allow Member States, in setting the detailed rules on damages, to make a differentiation between those suppliers that did everything in their power to limit the possibility of damages (e.g. by compliance to a certain IT security baseline or standards) and those that did not have "their house in order" (e.g. did not fix security vulnerabilities in their products/services that were known or reported to them) in order to encourage a stronger sense of responsibility and accountability among suppliers.
- Termination of the contract: the proposal should be clear what exact data have to be given back to the consumer when the contract is terminated.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs, as the committees responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The Directive should address problems across different categories of digital content and its supply. In order to cater for fast technological developments and to maintain the future-proof nature of the notion of digital content, this notion as used in this Directive should be broader than in Directive 2011/83/EU of the European Parliament and of the Council¹. In particular it should cover services which

Amendment

(11) The Directive should address problems across different categories of digital content and its supply. In order to cater for fast technological developments and to maintain the future-proof nature of the notion of digital content, this notion as used in this Directive should be broader than in Directive 2011/83/EU of the European Parliament and of the Council¹. In particular it should cover services which

allow the creation, processing or storage of data. While there are numerous ways for digital content to be supplied, such as transmission on a durable medium, downloading by consumers on their devices, web-streaming, allowing access to storage capabilities of digital content or access to the use of social media, this Directive should apply to all digital content independently of the medium used for its transmission. Differentiating between different categories in this technologically fast changing market is not desirable because it would hardly be possible to avoid discriminations between suppliers. A level-playing field between suppliers of different categories of digital content should be ensured. ***However this Directive should not apply to digital content which is embedded in goods in such a way that it operates as an integral part of the goods and its functions are subordinate to the main functionalities of the goods.***

¹. OJ L 304, 22.11.2011, p.64.

allow the creation, processing or storage of data. While there are numerous ways for digital content to be supplied, such as transmission on a durable medium, downloading by consumers on their devices, web-streaming, allowing access to storage capabilities of digital content or access to the use of social media, this Directive should apply to all digital content independently of the medium used for its transmission. Differentiating between different categories in this technologically fast changing market is not desirable because it would hardly be possible to avoid discriminations between suppliers. A level-playing field between suppliers of different categories of digital content should be ensured.

¹. OJ L 304, 22.11.2011, p.64.

Or. en

Justification

Given the expected increase in the near future of the Internet of Things with all types of "smart devices" with embedded software incorporated, it is important to clarify under what rules such "smart devices" and its embedded software fall. In the future it will probably become rather difficult to differentiate what would be the predominant element of the product between the digital content and the tangible good. Therefore, the chosen exemption seems unworkable in practice and a separate Commission proposal on this issue would be preferable.

Amendment 2

Proposal for a directive Recital 14

Text proposed by the Commission

(14) As regards digital content supplied not in exchange for a price but against counter-performance other than money, this Directive should apply **only** to contracts where the **supplier requests and the consumer actively provides** data, **such as name and e-mail address or photos**, directly or indirectly **to** the supplier for example **through individual registration or** on the basis of a contract which allows access to consumers' **photos**. This Directive should not apply to situations where the supplier collects data necessary for the digital content 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.**

Amendment

(14) As regards digital content supplied not in exchange for a price but against counter-performance other than money, this Directive should **also** apply to contracts where the **consumer provides personal** data **that may be used** directly or indirectly **by** the supplier, for example on the basis of a contract which allows access to **and use of** consumers' **personal data, such as personal preferences or location data**. This Directive should not apply to situations where the supplier collects data **absolutely** necessary for the digital content 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.

Or. en

Justification

In the proposal only contracts are covered whereby the consumer either pays for or "actively provides" personal data as counter-performance. This is too limited, as often nowadays consumers' personal data (such as location data, personal contacts, shopping history etc) are automatically collected and used as counter-performance while consumers are unaware of it. Exceptions could be allowed for suppliers collecting data that are absolutely necessary for the digital content to function (such as specific location-based services).

Amendment 3

Proposal for a directive Recital 17

Text proposed by the Commission

(17) Digital content is highly relevant in the context of the Internet of Things. **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**.

Amendment

(17) Digital content is highly relevant in the context of the Internet of Things. **Further measures may be necessary with a view to addressing** specific issues of liability related to the Internet of Things, including the liability for data and machine-to-machine contracts.

Or. en

Justification

Given the expected increase in the near future of the Internet of Things with all types of "smart devices" with embedded software incorporated, it is important to clarify under what rules such "smart devices" and its embedded software fall. A separate Commission proposal on this issue seems desirable.

Amendment 4

Proposal for a directive Recital 22

Text proposed by the Commission

(22) **The protection of individuals with regard to the processing of personal data is governed by Directive 95/46/EC of the European Parliament and of the Council¹** and by Directive 2002/58/EC of the European Parliament and of the Council² which are fully applicable in the context of contracts for the supply of digital content. **Those Directives** already establish a legal framework in the field of personal data in the Union. The implementation and application of this Directive should be made in full compliance with that legal framework.

Amendment

(22) **The pursuit of activities falling within the scope of this Directive involves the processing of personal data. 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 of the European Parliament and of the Council¹** and Directive 2002/58/EC of the European Parliament and of the Council², **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. Those 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**. The implementation and application of this Directive should be made in full compliance with that legal framework.*

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

¹. *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

². OJ L 201, 31.7.2002, p. 37–47.

². OJ L 201, 31.7.2002, p. 37–47.

Or. en

Justification

It is important to ensure that the processing of personal data which is conducted for the provision of digital content fully complies with EU data protection legislation, including the new General Data Protection Regulation, which is of a horizontal nature.

Amendment 5

Proposal for a directive Recital 25

Text proposed by the Commission

(25) In cases where the contract does not stipulate sufficiently clear and comprehensive benchmarks to ascertain the conformity of the digital content with the contract, it is 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 for which digital content of the

Amendment

(25) In cases where the contract does not stipulate sufficiently clear and comprehensive benchmarks to ascertain the conformity of the digital content with the contract, **or where it cannot be assumed that consumers could sufficiently comprehend and assess those benchmarks**, it is necessary to set conformity criteria to ensure that consumers are not deprived of their rights.

same description would normally be used.

In such cases, the conformity with the contract should be assessed considering the purpose for which digital content of the same description would normally be used, ***as well as consumers' legitimate expectations.***

Or. en

Justification

In the proposal, digital content has to be in conformity with what was stipulated in the contract and only if nothing has been stipulated in the contract more objective criteria (like technical standards or codes of conducts) could be used to assess its conformity. However, digital content products are often so complex that the consumer cannot be expected to fully grasp the terms and conditions of the contract and to make an informed decision. It would therefore be advisable to use more often criteria such as technical standards or legitimate expectations to ascertain conformity.

Amendment 6

Proposal for a directive Recital 27

Text proposed by the Commission

(27) While data-driven services and technologies bring significant benefits, they also create some vulnerabilities. As recognised by the Digital Single Market Strategy 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 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

Amendment

(27) While data-driven services and technologies bring significant benefits, they also create some vulnerabilities. As recognised by the Digital Single Market Strategy 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 ***the protection of online*** privacy and 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 greatest possible extent.*** In particular, quality in terms of security and reliability is becoming an important concern for

concern for innovative, composite services that have to rely on the interconnection of diverse systems in different domains.

innovative, composite services that have to rely on the interconnection of diverse systems in different domains.

Or. en

Amendment 7

Proposal for a directive

Recital 37

Text proposed by the Commission

(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 to conformity is not possible and the non-conformity impairs the main performance features of the digital content. Where the consumer terminates the contract, the supplier 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***

Amendment

(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 to conformity is not possible and the non-conformity impairs the main performance features of the digital content. Where the consumer terminates the contract, the supplier 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 ***the consumer's*** data, 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.

course of the duration of the contract for the supply of the digital content.

Or. en

Amendment 8

Proposal for a directive Recital 44

Text proposed by the Commission

(44) The principle of the supplier's liability for damages is an essential element of the contracts for supply of digital content. 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, consumers should be entitled to 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, 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.

Amendment

(44) The principle of the supplier's liability for damages is an essential element of the contracts for supply of digital content. 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 ***they sustain damage*** by digital content which is not in conformity with the contract. Therefore, consumers should be entitled to a compensation for damages caused to the ***consumer*** by a lack of conformity with the contract or a failure to supply the digital content. However, 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. ***It should be possible for Member States, when laying down the rules in that regard, to provide for a reduced or increased degree of liability for damages in order to differentiate between suppliers that have done everything in their power to limit the possibility of damage, for example by observing industry codes of best practice,***

security baselines or international standards, and those that have been negligent in this respect.

Or. en

Justification

The proposal limits the supplier's liability to economic damages suffered by the hardware and software of the consumer. This is too limited since there might be cases where a consumer suffers serious economic or immaterial loss quite apart from any damage to its digital environment. Furthermore, in order to encourage a stronger sense of responsibility and accountability among suppliers, Member States should be allowed, in setting the detailed rules on damages, to make a differentiation between those suppliers that did everything in their power to limit the possibility of damages and those that did not.

Amendment 9

**Proposal for a directive
Article 2 – paragraph 1 – point a**

Text proposed by the Commission

(a) data which is produced and supplied in digital form, ***for example*** video, audio, applications, digital games and any other software,

Amendment

(a) data which is produced and supplied in digital form, ***including*** video, audio, applications, digital games and any other software,

Or. en

Amendment 10

**Proposal for a directive
Article 2 – paragraph 5**

Text proposed by the Commission

5. 'damages' means a sum of money to which consumers may be entitled as compensation for ***economic damage to their digital environment***;

Amendment

5. 'damages' means a sum of money to which consumers may be entitled as compensation for ***material and non-material damage***;

Or. en

Justification

The proposal limits the supplier's liability to economic damages suffered by the hardware and software of the consumer. This is too limited since there might be cases where a consumer suffers serious economic or immaterial loss quite apart from any damage to its digital environment, for example if a software contains a bug that allows hackers to gain access to a consumer's computer and steal his identity in order to perform identity fraud. A similar provision is also included in the new General Data Protection Regulation

Amendment 11

Proposal for a directive

Article 3 – paragraph 1 and 1 a (new)

Text proposed by the Commission

1. This Directive shall apply to any contract where the supplier supplies digital content to the consumer or undertakes to do so and, in exchange, a price is to be paid ***or the consumer actively provides counter-performance other than money in the form of personal data or any other data.***

Amendment

1. This Directive shall apply to any contract where the supplier supplies digital content to the consumer or undertakes to do so and, in exchange, a price is to be paid.

1a. It shall also apply to contracts as referred to in paragraph 1 where personal data, as defined in Article 4(1) of Regulation (EU) 2016/679, are provided by the consumer.

Or. en

Justification

In the proposal only contracts are covered whereby the consumer either pays for or "actively provides" personal data as counter-performance. This is too limited, as often nowadays consumers' personal data (such as location data, personal contacts, shopping history etc) are automatically collected and used as counter-performance while consumers are unaware of it.

Amendment 12

Proposal for a directive

Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

In order to conform with the contract, the digital content shall, where relevant:

The contract shall include all relevant elements enabling the conformity of the digital content to be assessed, as well as all relevant information regarding the processing of personal data, to be provided in a concise, transparent, intelligible and easily accessible form in clear and plain language. In this regard, in order to conform with the contract, the digital content shall, where relevant:

Or. en

Amendment 13

Proposal for a directive

Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. 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:

2. 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, ***or where it cannot be assumed that consumers could sufficiently comprehend and assess these requirements***, 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:

Or. en

Justification

In the proposal, digital content has to be in conformity with what was stipulated in the contract and only if nothing has been stipulated in the contract more objective criteria (like technical standards or codes of conducts) could be used to assess its conformity. However, digital content products are often so complex that the consumer cannot be expected to fully

grasp the terms and conditions of the contract and to make an informed decision. It would therefore be advisable to use more often criteria such as technical standards or legitimate expectations to ascertain conformity.

Amendment 14

Proposal for a directive

Article 6 – paragraph 2 – point a

Text proposed by the Commission

(a) whether the digital content is supplied in exchange for **a price** or other counter-performance **than money**;

Amendment

(a) whether the digital content is supplied in exchange for **money** or other counter-performance **pursuant to Article 3(1a)**;

Or. en

Amendment 15

Proposal for a directive

Article 6 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) consumers' legitimate expectations;

Or. en

Justification

In the proposal, digital content has to be in conformity with what was stipulated in the contract and only if nothing has been stipulated in the contract more objective criteria (like technical standards or codes of conducts) could be used to assess its conformity. However, digital content products are often so complex that the consumer cannot be expected to fully grasp the terms and conditions of the contract and to make an informed decision. It would therefore be advisable to use more often criteria such as technical standards or legitimate expectations to ascertain conformity.

Amendment 16

Proposal for a directive Article 13 – paragraph 2 – point b

Text proposed by the Commission

(b) the supplier shall take all measures ***which could be expected*** in order to 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 with the exception of the content which has been generated jointly by the consumer and others who continue to make use of the content;

Amendment

(b) the supplier shall take all ***necessary*** measures in order to refrain from the use of the ***personal data of*** the consumer ***collected*** 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 with the exception of the content which has been generated jointly by the consumer and others who continue to make use of the content. ***Where personal data of the consumer have been transferred to third parties, the supplier shall inform those third parties of the termination of the contract;***

Or. en

Justification

To bring the provisions in line with the provisions in the newly adopted General Data Protection Regulation.

Amendment 17

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The supplier shall be liable to the consumer for any ***material and non-material*** damage to 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

digital content had been duly supplied and been in conformity with the contract.

content had been duly supplied and been in conformity with the contract.

Or. en

Justification

The proposal limits the supplier's liability to economic damages suffered by the hardware and software of the consumer. This is too limited since there might be cases where a consumer suffers serious economic or immaterial loss quite apart from any damage to its digital environment, for example if a software contains a bug that allows hackers to gain access to a consumer's computer and steal his identity in order to perform identity fraud.

Amendment 18

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The Member States shall lay down detailed rules for the exercise of the right to damages. ***When laying down those rules, Member States may provide for a reduced or increased degree of liability for damages based on objective criteria for assessing the efforts made by the supplier to avoid non-conformity of the digital content and the occurrence of damage.***

Or. en

Justification

In order to encourage a stronger sense of responsibility and accountability among suppliers, Member States should be allowed, in setting the detailed rules on damages, to make a differentiation between those suppliers that did everything in their power to limit the possibility of damages (e.g. by compliance to a certain IT security baseline or standards) and those that did have "their house in order" (e.g. did not fix security vulnerabilities in their products/services that were known or reported to them).

Amendment 19

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that **adequate and** effective means exist to ensure compliance with this Directive.

Amendment

1. Member States shall ensure that effective **and dissuasive** means exist to ensure compliance with this Directive.

Or. en

Justification

Real enforcement of these new consumers' rights will only take place if truly effective and dissuasive sanctions are put in place by the Member States, given also the important commercial advantages that providers of digital content could gain by aggressively increasing their market share at the detriment of consumers' rights.

Amendment 20

Proposal for a directive Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Data protection

Processing of personal data carried out in the context of activities conducted pursuant to this Directive shall comply with Regulation (EU) 2016/679 and Directive 2002/58/EC.

Or. en

Justification

It is important to ensure that the processing of personal data which is conducted for the provision of digital content fully complies with EU data protection legislation, including the new General Data Protection Regulation, which is of a horizontal nature.

