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DIGITAL REVOLUTION AND CHALLENGES FOR EUROPEAN LEGISLATION

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ABSTRACT

The paper delves into the profound impact of the digital revolution on the European Union's legislative framework, with particular attention to the Digital Directives Package. It examines how the rapid acceleration of digital market dynamics necessitated the introduction of the Directive (EU) 2019/770, which addresses contracts for the supply of digital content and services, and Directive (EU) 2019/771, which governs contracts for the sale of goods. The analysis highlights the significance of these directives in enhancing the functionality of the Digital Single Market, promoting innovation, and ensuring robust consumer protection across EU member states. The paper underscores the EU's proactive stance in adapting its legal structures to meet the challenges of the digital era, ensuring that the regulatory environment keeps pace with technological advancements. By harmonizing rules across the single market, these directives not only foster cross-border trade but also safeguard consumer rights, laying the groundwork for a more integrated and competitive digital economy.

KEYWORDS

digital single market, digital single act, contracts for the sale of goods, contracts for the supply of digital content

INTRODUCTION

The development of digital technologies and the digital revolution has affected every aspect of our lives, from our private life habits to the way we do business. As a result, there was a need to create a legislative framework for contemporary trends, not only at the national but also at the global level. Some of the key challenges of the digital era faced by legislators, with an emphasis on European ones, include data protection, intellectual property rights, cyber security, the digital divide and competition. To address these challenges, European legislation needs to be agile and adaptive. In order to maintain citizens' trust in the legislative framework, the legislator should keep pace with rapid changes in technology and ensure the promotion of innovations and thus the protection of citizens' rights.

This involves close collaboration between policy makers, businesses and citizens to create a digital ecosystem that benefits everyone. The European Union responded in a timely manner to the challenges (Synodinou et al, 2020) of the digital revolution in several ways: including public policies and a legal

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framework aimed at creating a single digital market, which created the foundations for promoting innovation and competitiveness and protecting the rights and privacy of citizens (Turillazzi, 2022).

With the initiative to create the Digital Single Market, the European legislator created a single market for digital goods, services and content in 27 EU member states regulated by uniform rules. The DSM removes barriers to cross-border digital trade and creates a level playing field for European businesses, consumers and citizens across the single market.

Also, by answering the digital revolution challenges, the European Union has introduced several regulations aimed at regulating digital services and platforms, including the General Data Protection Regulation (GDPR), the Digital Markets Act, and the Digital Services Act.

In the segment of business and competitiveness, the digital revolution has also transformed the sale of goods. With the advent of e-commerce and other digital platforms, the sale of goods has become more complex, as transactions can occur across international borders and involve various parties, such as intermediaries and payment processors. As a result, regulating contracts for the sale of goods in this digital landscape presents several challenges such as contract formation, authentication, jurisdiction, consumer protection and data privacy.

This paper analyses the framework and importance of adequate regulatory framework and the necessity of the on-time reaction in time when today is yesterday and tomorrow is now. It is structured in four chapters and after the introduction, paper analyses the Digital Single Market and European legislation that ensures the balancing of competing interests, including the need to facilitate e-commerce, protect consumers, and ensure that contracts are enforceable across borders and legal systems.

THE EUROPEAN DIGITAL SINGLE MARKET AND DIGITAL SERVICES ACT (DSA)

The European Digital Single Market (DSM) is an initiative of the European Union that aimed to create a single market for digital goods, services and content in the 27 EU member states. The ultimate goal of the DSM was to remove obstacles in cross-border digital trade and to create uniform legal rules for companies, consumers and citizens across the European Union.

It is precisely the promotion of economic growth, innovation and competitiveness in the digital sector and the simultaneous protection of consumer rights and privacy that DSM creates for its residents. With its structure and regulation, DSM has a direct impact on economic growth and member states as its key component, and at the same time provides benefits to consumers. By removing obstacles in cross-border digital trade and expanding the market, i.e. enabling greater accessibility to the customer market and increasing competitiveness, DSM directly affects the growth of the economy of the single European market. New opportunities have also been created for digital start-ups and entrepreneurs, which can drive innovation and job creation.

As Inglese (2019) states "The protection of consumers has been one of the key areas to guarantee the smooth functioning of the internal market of the European Union" and it is DSM that provides consumers with large number of benefits from the digital goods and services, at lower prices and with higher quality. It can also ensure that consumers are protected from fraudulent or harmful digital content or practices.

Also, harmonized legal framework and deregulation as one of the features within the DSM improves the efficiency of cross-border digital transactions, reducing costs and time needed for businesses to enter



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the new markets. This benefit both small and large businesses by reducing administrative burdens and creating a more streamlined environment for digital trade.

Finally, the DSM promotes digital innovation by providing a larger pool of data and resources for digital start-ups and businesses to draw from. It also encourages collaboration and innovation across different industries and sectors, which can drive innovation in areas such as health care, education, and energy.

Analysing the facts above, it is clear that the DSM is an important European element of adequate answer to the digital era challenges since it ensures economic growth, promotes innovation and competitiveness in the digital sector while ensuring that consumers and citizens are protected. By creating a single market for digital goods, services, and content, the European legislator also created a more efficient, innovative, and inclusive digital environment for all EU citizens and businesses.

In order for the single digital market to function on a legal basis, the European legislator passed a single act that regulates activities within that market, but also outside its framework.

In December 2020, the European Commission issued the Digital Services Act (DSA), a legislative proposal for a single market of digital services (Turillazzi et al. 2022).

The European Digital Services Act aims to regulate digital services, such as social media platforms, online marketplaces, and search engines, to ensure their accountability, transparency, and responsibility in protecting the rights of users and fostering innovation.

With the aim of providing an adequate response to the challenges of the digital revolution, such as the previously mentioned spread of misinformation, hate speech and illegal content, and preventing healthy competition on the digital market, the DSA constitutes a legislative entity and legal protection (Digital Services Art. 9.).

It is the DSA that forms the basis of the requirement for digital service providers to take measures to prevent the spread of illegal content (for example, terrorist propaganda and hate speech). Also, all digital service providers must ensure the protection of personal data and the provision of effective legal protection mechanisms for users who have been harmed by their actions (Digital Services Act, Par., P. 9.).

Under the Article 21., DSA also proposes the creation of a Digital Services Coordinator within the EU (for a maximum period of five years), who is responsible for coordinating the enforcement of the DSA across member states and ensuring that digital services providers comply with their obligations.

The DSA came into force on 16 November 2022. and its adoption is seen as a crucial step in the regulation of the digital market in the EU (also Katulić et al, 2023).

DIGITAL DIRECTIVES PACKAGE (DDP)

International trend has led "towards adopting new (ex ante) rules and/or revising existing legal frameworks, most notably competition law frameworks, with a view to tackling a range issues observed on digital markets comprising the products and services of large online platforms" (Akman, 2022). In order to reduce legal uncertainty and promote cross-border digital trade, the Digital Single Market is based on harmonized legal framework for digital services and content, which makes it easier for businesses to navigate regulations and standards across different member states.



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Directive on contracts for the supply of digital content and services¹

The European Union has introduced harmonised regulatory framework to regulate contracts for the supply of digital content, including the Directive on contracts for the supply of digital content and services (DCD).

The DCD in its content analyzes and regulates in detail Subject matter and purpose (Art. 1), Definitions (Art. 2.), Scope (Art. 3.), Level of harmonisation (Art. 4), Supply of the digital content or digital service (Art. 5.), Conformity of the digital content or digital service (Art. 6.)

Subjective requirements for conformity (Art. 7.), Objective requirements for conformity (Art. 8.), Incorrect integration of the digital content or digital service (Art. 9.), Third-party rights (Art. 10.) Liability of the trader (Art. 11.), Burden of proof (Art. 12.), Remedy for the failure to supply (Art. 13.), Remedies for lack of conformity (Art. 14.), Exercise of the right of termination (Art. 15.), Obligations of the trader in the event of termination (Art. 16.), Obligations of the consumer in the event of termination (Art. 17.), Time limits and means of reimbursement by the trader (Art. 18.), Modification of the digital content or digital service (Art. 19.), Right of redress (Art. 20.), Enforcement (Art. 21.) Mandatory nature (Art. 22.), Amendments to Regulation (EU) 2017/2394 and Directive 2009/22/EC (Art. 23. Transposition (Art. 24.), Review (Art. 25.), Entry into force (Art. 26.).

As it is stated in the Art. 1. DCD covers the supply of both digital content and digital services. It means that the DCD applies to contracts between businesses and consumers for the supply of digital content as well as contracts for online services.

The Directive applies to "digital content that is supplied to the consumer directly in digital form (for example by downloading or streaming) and to digital content that is supplied on a tangible medium, where the tangible medium is merely the carrier of the digital content."

DCD Art 3(3) and it "does not apply to goods with what are now termed "digital elements", that is, essential embedded or interconnected software: these will fall within the new Directive on Sale of Goods" (Beale, 2022).

According to Art 4 and Recs 3-9, the Directive is a "full harmonisation" Directive and Member States may not provide either less or more stringent measures of consumer protection. The Directive permits Member States to have different rules on one issue only (Beale, 2022).

Under the DCD, the trader shall supply the digital content or digital service to the consumer without undue delay after the conclusion of the contract (Art. 5.). In order to conform with the contract, the digital content or digital service shall, in particular, where applicable: be of the description, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the contract; be fit for any particular purpose for which the consumer requires it and which the consumer made known to the trader at the latest at the time of the conclusion of the contract, and in respect of which the trader has given acceptance; be supplied with all accessories, instructions, including on installation, and customer assistance as required by the contract; and be updated as stipulated by the contract (Art. 7.)

In addition to complying with any subjective requirement for conformity, the digital content or digital service shall: be fit for the purposes for which digital content or digital services of the same type would normally be used and be of the quantity and possess the qualities and performance features. The trader shall ensure that the consumer is informed of and supplied with updates, including security updates that are necessary to keep the digital content or digital service in conformity (Art. 8). Under the same Article

¹ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services



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it is stated that “Where the contract provides for a continuous supply of digital content or digital service over a period of time, the digital content or digital service shall be in conformity throughout the duration of that period and unless the parties have agreed otherwise, digital content or a digital service shall be supplied in the most recent version available at the time of the conclusion of the contract.”

Any failure to achieve conformity that arises from the incorrect integration of digital content or a digital service into the consumer's digital environment shall be considered a lack of conformity of that digital content or service. This is particularly the case when the integration was carried out by the trader, or under the trader's responsibility, or when the consumer undertook the integration based on instructions provided by the trader, and those instructions were inadequate or flawed. In such circumstances, the responsibility for the non-conformity lies with the trader, especially when the consumer's incorrect integration can be traced back to the trader's failure to provide clear, precise, and accurate guidance (Art. 9.).

This provision is crucial in ensuring that consumers are protected when they rely on the trader's expertise or instructions for integrating digital content or services into their personal digital environments. It emphasizes the trader's duty to ensure that all instructions provided are comprehensive and free from errors that could lead to integration failures. When these conditions are not met, the digital content or service is deemed non-conforming, and the trader may be held accountable for any resulting issues, ensuring that consumer rights are upheld in the digital marketplace.

In Article 11. DCD regulates “the trader shall be liable for any failure to supply the digital content or digital service” The burden of proof with regard to whether the digital content or digital service was correctly supplied in accordance shall be on the trader. Where the trader has failed to supply the digital content or digital service, the consumer shall call upon the trader to supply the digital content or digital service (Art. 13.).

In the case of a lack of conformity, the consumer shall be entitled to have the digital content or digital service brought into conformity, to receive a proportionate reduction in the price, or to terminate the contract, under the conditions in Article 14.

The Directive also includes provisions that protect the personal data of consumers, which is becoming increasingly important in the digital era. Suppliers must obtain explicit consent from consumers to use their personal data, and must provide clear and transparent information about how the data will be used. (Art. 16.)

Beale (2022) points out some gaps in Directive, like the question of damages that is entirely left to Member States. According to him damages for loss of enjoyment and strict versus fault-based liability are the areas that may be problematic.

Generally speaking, the Directive is particularly important in the digital era because its set of rules is aimed for protecting consumer rights, promoting innovation, encouraging cross border trade and protecting personal data. Also, it sets out specific requirements for the quality and performance of digital content and services, and provides consumers with clear and enforceable rights in case of non-conformity.

Finally, the Directive harmonizes the legal framework for the supply of digital content and services across the EU that can be encouraging for the suppliers who are hesitant to expand their businesses if they face different legal frameworks in different countries.



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Directive on certain aspects concerning contracts for the sale of goods¹

As stated in Directive's Proposal, E-commerce is a key driver for growth within the internal market. However, its growth potential was and still is far from being fully exploited. Changing market structure and the rise of online platforms (Busch et al., 2019.) showed a need for new legal framework that define contract formation, authentication, consumer protection and data privacy.

When analysing Directive on contracts for the supply of digital content and services and Directive on certain aspects concerning contracts for the sale of goods, we can see that more or less, "their subject-matter is essentially the same (conformity of goods, digital content or digital services with the contract, remedies in the event of a lack of such conformity, modalities for the exercise remedies) but, the directives are complementary and do not overlap." (Rutecka, 2022)

The Sale of Goods Directive is applicable "to sales contracts between a consumer and a seller". Art. 2. p.1. defines sales contract as "any contract under which the seller transfers or undertakes to transfer ownership of goods to a consumer, and the consumer pays or undertakes to pay the price thereof" and a consumer as "any natural person who, in relation to contracts covered by the Directive, is acting for purposes which are outside that person's trade, business, craft or profession" In Art 2. p. 2. and in p. 3. of the same Article seller is defined as "any natural person or any legal person, irrespective of whether privately or publicly owned, that is acting, including through any other person acting in that natural or legal person's name or on that person's behalf, for purposes relating to that person's trade, business, craft or profession, in relation to contracts covered by the Directive".

And as Rutecka (2022) continues it applies to "digital content or digital services which are incorporated in or interconnected with goods, and are provided with the goods under the sales contract, irrespective of whether such digital content or digital service is supplied by the seller or by a third party. In case of doubt as to whether the supply of incorporated or interconnected digital content or an incorporated or interconnected digital service forms part of the sales contract, the digital content or digital service will be presumed to be covered by the sales contract."

Also, it applies "to the sale of any kind of "smart" equipment, such as a smartphone, smart TV or smart watch. Digital content can be pre-installed upon the conclusion of the sales contract or, where that contract so provides, can be installed subsequently. Once such installation is provided for in the contract, it will be covered by the Sale of Goods Directive" (Rutecka, 2022).

Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods aims to harmonize and improve the legal framework for contracts for the sale of goods across the EU and in Art. 4. it defines 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".

The seller shall deliver goods to the consumer which are "by the description, type, quantity and quality, possess the functionality, compatibility, interoperability and other features, as required by the sales contract; are fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance; are delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and are supplied with updates as stipulated by the

¹ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.



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sales contract" (Art. 5. and 6.). The seller is responsible to the consumer for any defects or non-conformities in the goods that are present at the time of delivery. This liability extends to any issues that become apparent within two years from the date of delivery. According to Article 10, if a lack of conformity surfaces within the first year after the goods have been delivered, it is presumed that the defect existed at the time of delivery unless proven otherwise or unless such a presumption is inconsistent with the nature of the goods or the specific defect in question (as stated in Article 11).

Should any non-conformity arise, the consumer has the right to have the goods brought into conformity. This can be done through repair or replacement, at the consumer's choice. Additionally, the consumer may opt for a proportionate reduction in the price of the goods or, in more severe cases, may choose to terminate the contract entirely (as outlined in Article 13). This ensures that the consumer is protected and has multiple avenues to remedy the situation should the goods fail to meet the agreed-upon standards.

Article 14. explains how "Repairs or replacements shall be carried out free of charge; within a reasonable period of time from the moment the seller has been informed by the consumer about the lack of conformity; and without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods." The reduction of price shall be proportionate to the decrease in the value of the goods which were received by the consumer compared to the value the goods would have if they were in conformity. (Art. 15.) In case of termination of the sales contract, the consumer shall exercise the right to terminate the sales contract by means of a statement to the seller expressing the decision to terminate the sales contract.

When the consumer chooses to terminate the entire sales contract, or a portion of it relating to specific goods delivered under the contract, the consumer shall return the goods to the seller at the seller's expense. Upon receiving the returned goods, or upon receiving proof from the consumer that the goods have been sent back, the seller is obligated to promptly reimburse the consumer for the price paid for those goods. (Article 16)

The directive came into force on 11 June 2019 and it is applicable to contracts concluded on or after 1 January 2022.

CONCLUSION

The digital revolution has fundamentally transformed our society, economy, and daily lives, but it has also introduced a range of challenges for European legislation. Among the most pressing issues are data privacy, intellectual property rights, and cybersecurity. To address these challenges and foster a cohesive digital economy, the European Union launched the Digital Single Market initiative. This strategic effort aims to remove barriers to cross-border digital trade, creating a level playing field for businesses, consumers, and citizens across the EU, thereby enhancing competitiveness.

Central to this initiative are two key pieces of legislation: the Digital Content Directive (Directive (EU) 2019/770) and the Sale of Goods in the Digital Era Directive (Directive (EU) 2019/771). These directives provide a harmonized and predictable legal framework for the sale and supply of digital content, digital services, and goods within the European Union.

The directives establish clear rules and standards for the supply of digital content and services, offering robust consumer protection and promoting fair competition in the digital economy. Before these directives, the European consumer law framework lacked specific regulations governing the supply of digital content and services, leaving gaps that these new laws now fill. As part of the broader legal



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framework for the digital era, these directives ensure that the digital economy operates transparently and fairly, safeguarding consumers when purchasing digital content, services, and goods online.

However, the successful implementation and enforcement of these regulations will continue to pose challenges that must be addressed over time. Ensuring compliance across the diverse and rapidly evolving digital landscape of the EU will require ongoing efforts, cooperation among member states, and adaptation to new technological developments.

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