

## Three consumer directives that reshape EU e-commerce: A snapshot of local implementation

It has been quite some time since the EU introduced three new directives that significantly reshape the rules protecting consumers in the digital single market – the Omnibus Directive (Omnibus), Sale of Goods Directive (SGD) and Digital Content Directive (DCD). Even though the rules are yet to be implemented in many member states, it is already clear that some have chosen to go even beyond the protections offered by the directives.

In cooperation with our TMT teams all around Europe and our partner law firm Sorainen, we have prepared a summary of the implementation process showing how different member states are handling the task at hand. In our questionnaire, we focused on the current legislative status of the implementing laws, the divergences in warranty periods prescribed for different categories of products and the most notable deviations found in the local laws.

However, before we dive into the details of national law transpositions, let's quickly recap the most important changes brought by each of the directives.

### Omnibus Directive

Directive (EU) 2019/2161 amends four existing consumer protection directives. It aims to strengthen the enforcement of EU consumer laws and to modernize EU consumer protection while keeping up with market developments. Key changes and new obligations include:

- **Digital content and digital services** incorporated into the definition of goods and services in existing EU provisions; as a result, consumers contracting for digital content or services will benefit from traditional consumer rights, such as the right to withdraw within 14 days;
- **GDPR-style penalties** for cross-border infringements amounting to 4 percent of the trader's annual turnover;
- **Increased transparency of traders and online marketplaces**, including information duties for online marketplaces concerning the identification of sellers and the algorithms used for search result rankings, as well as rules to ensure transparency in consumer reviews;
- **New rules for price reductions and dynamic pricing**;
- **Additional pre-contractual disclosures** such as details about compatibility;
- **Payment with personal data** is recognized, ensuring that goods and services provided in exchange for personal data are treated as paid-for;
- **"Dual quality of products,"** i.e. goods branded as identical in different markets, but in fact are not, are expressly prohibited as an unfair commercial practice.

### Sale of Goods Directive

Directive (EU) 2019/771 rewrites the current rules for consumer sales contracts. In addition, it further recognizes a new category of goods with digital elements, such as smart TVs, smartphones and other digital appliances. Key changes and new obligations include:

- **Revised requirements for objective and subjective conformity** of goods with the contract, distinguishing new categories of defects and taking into account technical standards as well as the reasonable expectations of the consumer;
- **Goods with digital elements** must remain free of any defects in the accompanying digital content or digital service and be provided with the necessary updates;
- **One-year for reversed burden of proof**, during which it is on the trader to establish that the provided goods were free of defects, extended from the previously required six months.

### Digital Content Directive

Directive (EU) 2019/770 extends some of the contractual warranties customary in consumer sales contracts to contracts for the supply of digital content—such as movies, e-books, music, software, and for digital services—such as streaming services, cloud storage, online editing tools or social networks. Additional rules specific to digital content and services are also prescribed. Key changes and new obligations include:

- **Requirements for objective and subjective conformity** similar to those introduced by the SGD, including requirements concerning quality, functionality, interoperability, instructions, installation, as well as compliance with industry standards; unless otherwise expressly agreed, the digital content or service must also be provided in its latest version and updated as appropriate;
- **Reversed burden of proof**, lasting for the whole duration of the continuous supply of the digital content or service or for one year in case of a single act of supply;
- **Traditional consumer remedies** entitle consumers to claim repairs, a reduction in price or termination in case of defects or a failure to supply without undue delay;
- **Payment with personal data** is recognized, ensuring that the requirements for digital content or services apply even if they are provided in exchange for personal data;
- **Rules on data portability and user-generated content** allow the consumers to retrieve any content they created or provided and require the provider to refrain from any further use of such user-generated content unless specific exceptions apply;
- **Limits on modifications and depreciation** of the provided digital content or service are imposed to guarantee that the user experience will not be negatively affected.

To learn more about payments with personal data under the DCD, check out another of our articles in the 26th issue of the TMT Bites available [here](#).

### Main takeaways from local implementation

While most of the rules contained in the directives require straightforward transposition to ensure a high level of harmonization across EU member states, there is still room for divergence. Most noticeably, the SGD offers member states the option to extend the periods for the warranty of conformity and the reversed burden of proof as well as – on the other hand – to stipulate limitation periods for consumer claims or require consumers to notify defects within certain time. To some degree, all three of the directives offer member states autonomy in laying down additional rules or exceptions.

Indeed, some member states made use of the implementation process (often requiring a major review of national civil law rules) to create further obligations for traders or to fix other discrepancies by means of the amended legal texts, such as to remedy incorrect implementations of prior EU law. For example, several countries are implementing the DCD rules in the form of a new standalone type of contract with some rules extending also to B2B relationships, or offering additional remedies to consumers.

It follows that traders engaging in business across several member states should pay close attention to transposition of the Omnibus, SGD and DCD not only because the new rules will significantly impact retail businesses but also because, in some cases, a uniform EU-wide approach may not be possible. Finally, traders should not forget that good quality, customer-facing documentation is a cornerstone as it may often assist them in better adapting the requirements to their individual business model.

	Legislative status			Warranty period			
	Omnibus Directive	Sale of Goods Directive	Digital Content Directive	Goods	Goods with digital elements	Digital content/digital service (single supply)	Digital content/digital service (continuous)
Belgium							
Czech Republic							
Estonia							
France							
Germany							
Hungary							
Ireland							
Italy							
Latvia							
Lithuania							
Luxembourg							
Netherlands							
Poland							
Romania							
Slovak Republic							
Spain							

#### Legislative status

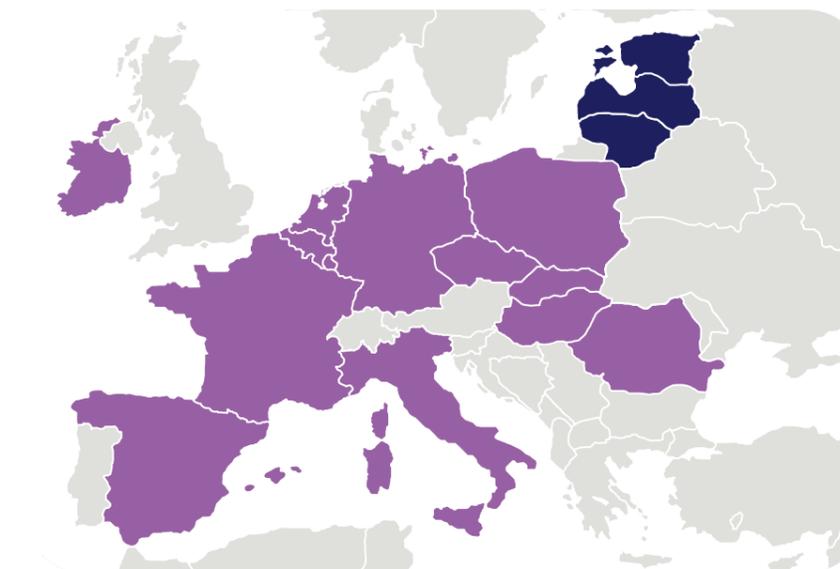
- no legislative drafts are available
- draft implementing legislation published
- bill has been submitted to parliament
- implementing law has been enacted
- implementing law is in full effect

#### Warranty period

- is longer or calculated more favorably to the consumer
- corresponds to the text of the directive

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## Key deviations and unique aspects of local implementation

### Czech Republic

- DCD rules will be implemented in the form of a new “supply of digital content/service” contract type with some rules extending to B2B.
- New right to withdraw from a contract within 90 days for consumers affected by an unfair commercial practice.
- Consumers have no obligation to notify a defect within a certain amount time.

### France

- In line with Art. 11 SGD, the period for reversed burden of proof is extended to two years.

### Germany

- Consumers are now entitled to raise individual claims of damage if they have been harmed by unfair commercial practices of companies.

### Hungary

- As a result of implementation of the directives, many Hungarian laws will change, such as the Civil Code and the laws regulating B2C relationships.

### Ireland

- Instead of a warranty period, the implementing bill provides that the consumer may only bring a claim within six years from the time of supply or—for goods with digital elements or a continuous supply of digital content/service—within six years from the moment the lack of conformity occurred or became apparent.

### Italy

- Any claim under the SGD or DCD of defects that have not been fraudulently concealed by the seller will be subject to a limitation period of 26 months from the delivery of the goods.

- The final seller who has complied with the remedies exercised by the consumer is entitled to pursue (within a one-year period) remedies against the liable person(s).
- SGD provisions are extended to exchange and supply contracts, procurement and service contracts, as well as to contracts for the supply of goods to be manufactured or produced.
- Where the contract has a close connection with the territory of an EU member state, any contractual term governed by non-EU law that denies consumer protections afforded by the DCD will be null and void.

### Lithuania

- The consumer must notify the seller of the lack of conformity within two months from the date they detected the lack of conformity.

### Luxembourg

- For used vehicles, a shorter warranty period applies if the vehicle was first sold more than one year before the re-sale.
- A warranty statement must be provided in French or German.
- Under DCD rules, if the trader fails to fulfil their obligations, the consumer may fully or partially suspend payment of the price.

### Netherlands

- The DCD rules are implemented in the form of a new “supply of digital content/service” contract type extending some rules to B2B.

### Poland

- Local law implementing the SGD introduces a possibility to extend the period of presumed nonconformity with the contract to two years from the time of delivery of the goods to the consumer.

- Local law implementing the SGD specifies a 14-day period for a refund, analogous to Article 18.1 DCD.

### Romania

- The SGD provides for a different warranty period for continuous supply, depending on the uptime: (i) for goods with an uptime of up to five years, the warranty period is two years from the moment of delivery of the digital elements of the goods and (ii) for goods with an uptime that is longer than five years, the warranty period is five years from the moment of delivery of the digital elements of the goods.

- For continuous supply longer than five years, the trader is liable for any lack of conformity that occurs or becomes apparent within the period of time during which the digital content or digital service is to be supplied under the contract.

- For a single act of supply or a series of individual acts of supply of digital content or digital service, the trader is liable for any lack of conformity that exists at the time of supply and becomes apparent within five years from the time of supply.

### Slovak Republic

- The DCD rules are implemented in the form of a new consumer digital contract type under the Civil Code
- In line with Art. 11 SGD, the period for reversed burden of proof is extended to two years.

### Spain

- In certain cases, the warranty period is extended to up to three years.