

IP LICENSING & TECH TRANSACTIONS UPDATE



New EU Consumer Law Protections Applicable to Digital Goods and Digital Content Services Providers Take Effect, Requiring Ts & Cs Review

From 1 January, 2022, contracts governed by French or German law for the sale of digital content and services, and goods with digital elements, will be subject to harmonised European rules that grant additional legal protections to consumers, and impose additional obligations on sellers and professional service providers. In Germany, the new provisions apply to agreements entered prior to that date, where the services under the agreement are provided on or after 1 January 2022. Moreover, in Germany the rules on the information obligations will change on 28 May 2022. In the United Kingdom, consumer law primarily reflects harmonised EU law that was in effect before the end of the Brexit transition period at the end of 2020.

The EU rules provide that a legal guarantee of conformity will now explicitly apply to the supply of digital content and services (such as videos, music files, software, live streaming events, and social media), and to goods with an integrated digital element (such as a smartphone or connected device).

The French and German changes are the result of the transposition across Europe of EU Directives 2019/770 (the "Digital Content Directive", "**DCD**") and 2019/771 (the "Sale of Goods Directive", "**SDG**"). Since the source of the rules is a directive, individual Member States have been left to implement the requirements into national law, which can give rise to national variations. However, in comparison to other European directives, the risk of variations from the Directives may be limited since, according to Art. 4 DCD and Art. 4 SGD provide that the Member States shall not maintain or introduce national rules that diverge from the DCD and SGD, unless otherwise provided for in the directives.

In the United Kingdom at the end of the UK-EU transition period the legal basis on which EU-derived law applies changed. Post-transition, EU directives which were in force but not applicable before the end of the UK-EU transition period have not been implemented into law in the UK. This includes the Digital Content Directive and the Sale of Goods Directive. Therefore, the DCD and SDG rules have not been transposed into UK national consumer law. However, many of the areas covered by the DCD and the SDG are currently governed in the UK by the Consumer Rights Act 2015 ("CRA 2015") in similar but not identical terms, and the CRA 2015 will continue to apply to sales of such goods to UK consumers. Included in the table below are the equivalent CRA 2015 provisions that will apply in the UK.

Set out below is a table summarizing the **principal new obligations** (non-exhaustive) imposed on sellers and service providers in relation to the legal guarantee of conformity, as reflected in the national consumer laws of France and Germany, and an overview of how UK consumer law addresses the same principles. With respect to France, in particular noteworthy are: the enhanced **pre-contractual information obligations**, and the extension of the protections to so-called "**non-professionals**", defined in the French Consumer Code as "any legal person that is not acting for professional purposes" (*toute personne morale qui n'agit pas à des fins professionnelles*). German consumer law does not have the concept of "non-professional" although the law does give the traders (merchants) the option to take recourse against their suppliers. This can lead to a chain of recourse measures impacting B2B traders/suppliers.

Other differences between the regimes relate to how compliance with data protection legislation is addressed and the potential value of fines that may be imposed for non-compliance. The changes have potential impact for digital B2B goods and services providers and all professionals should ensure that their terms of business and operations are updated to satisfy the new requirements and although the Directives will not have legislative effect in the UK for sales by UK businesses to UK consumers, UK traders selling to consumers in EU markets will need to comply with the Directives, as adopted in the applicable member states' national law.

Requirements / Provisions	France		Germany		United Kingdom
	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	Consumer Rights Act 2015 Consumer contracts for goods, digital content and services
National Law	Ordonnance n°2021-1247 of 29 September 2021 Articles 224-25-1 to 224-25-31 of the Consumer Code	Ordonnance n°2021-1247 of 29 September 2021 Articles 217-1 and following of the Consumer Code	Act transposing the directive on certain aspects of contract law relating to the provision of digital content and digital services of 25 June 2021 Articles 327 to 327u of the German Civil Code	Act regulating the sale of goods with digital elements and other aspects of the contract of sale of 25 June 2021 Articles 433 to 479 of the German Civil Code	UK National Law
Scope of Application	Contracts for the provision of « Digital Content » : defined as “data produced and provided in digital form”; and « Digital Services » : a service that allows the consumer to create, process, store or access data in digital form, or a service that allows sharing or other interaction with data in digital form that is uploaded or created by the consumer or other consumers of that service ; Whether in exchange for a price or other benefit instead of or in addition to a price (therefore freely provided content/services are in scope) (Art.224-25-2) There are exceptions to the application of the new rules, including the provision of free or open software, where no price is charged and the consumer's personal data is processed for limited purposes.	Contracts for the sale of “Goods including digital components”: any tangible property that incorporates or is interconnected with digital content or a digital service in such a way that the absence of such digital content or digital service would prevent the property from performing its functions.	Contracts for the provision of « Digital Content » (Definition please see column 1); and « Digital Services »: a service that allows the consumer to create, process, store or access data in digital form, or a service that allows <i>joint use</i> or other interaction with data in digital form that is uploaded or created by the consumer or other users of that service; Whether in exchange for a price (including the digital representation of a value) or the provision of personal data or the obligation to do so. Digital products developed according to the specifications of the consumer are in scope. The provision of physical data carriers that serve exclusively as carriers of digital content is also in scope. There are exceptions to the application of the new rules, please see column 1.	Contracts for the sale of “Goods including digital components”: (Definition please see column 2) Whether in exchange for a price (including the digital representation of a value) or the provision of personal data or the obligation to do so. Digital products developed according to the specifications of the consumer are in scope. The provision of physical data carriers that serve exclusively as carriers of digital content is also in scope. There are exceptions to the application of the new rules, please see column 1.	Contracts between a trader and a consumer for the trader to supply goods, digital content or services. The contract can be written or oral or implied from the parties’ conduct, or more than one of these combined “Goods” means any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for supply in a limited volume or set quantity. “Digital content” means data which are produced and supplied in digital form. “Trader” means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.
Who is Protected	“Consumers” and “Non-professionals” as defined by the preliminary Article of the Consumer Code. A “Consumer” is: any natural person who acts for purposes that do not fall within the scope of their commercial, industrial, craft, liberal or agricultural activity. A “Non-professional” is: any legal person who is not acting for professional purposes. According to case law from the French Cour de Cassation , a company is acting as a non-professional when it enters into a contract that is not directly related to its professional activity.	“Consumers” A “Consumer” is any natural person who enters into a legal transaction for purposes that do not predominantly fall within the scope of their commercial nor to self-employed professional activity. (Art. 13) There is no such thing as “Non-professionals” in Germany. However, Art. 327u gives the trader the option to take recourse against its supplier. This can lead to a chain of recourse measures impacting b2b traders/suppliers.	“Consumers” (Definition please see column 3) However, Art. 445a and 478 give the trader (merchant) the option to take recourse against its supplier. This can lead to a chain of recourse measures impacting B2B traders/suppliers.	“Consumers” A Consumer is an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession. A trader claiming that an individual was not acting for purposes wholly or mainly outside the individual's trade, business, craft or profession must prove it.	

Requirements / Provisions

Information Obligations

	France		Germany		United Kingdom
	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	Consumer Rights Act 2015 Consumer contracts for goods, digital content and services
Information Obligations	<p>Among the new information that must be provided before the consumer is bound:</p> <ul style="list-style-type: none"> The essential characteristics of the digital service or digital content, taking into account their nature and the communication medium used, including the functionality, compatibility and interoperability of the digital asset, digital content or digital service, as well as the existence of any software installation restrictions; The price or any other benefit provided in lieu of or in addition to the payment of a price. Where the contract does not provide for the payment of a price, the trader shall specify the nature of the benefit provided by the consumer; The existence, the conditions of implementation and the content of the legal guarantees, in particular the legal guarantee of conformity for the goods, the digital content and the digital services, as well as the guarantee relating to the latent defects; Information relating to the right of retraction if applicable; For each service provided, the minimum service level offered, if any, or where no level of service is offered, this shall be mentioned; Other information specified in Art. 224-25-4, such as the term and renewal conditions and any minimum usage requirements; The nature of the measures that the professional would take in response to a security incident, threat or other vulnerability. <p>All required information must be provided in a clear and comprehensible manner and in an easily downloadable or hardcopy format, and must be furnished on request in a format accessible to a person with disabilities.</p>	<p>Among the new information that must be provided before the consumer is bound:</p> <ul style="list-style-type: none"> The essential characteristics of the digital service or digital content, taking into account their nature and the communication medium used, including the functionality, compatibility and interoperability of the digital asset, digital content or digital service, as well as the existence of any software installation restrictions; The price or any other benefit provided in lieu of or in addition to the payment of a price. Where the contract does not provide for the payment of a price, the trader shall specify the nature of the benefit provided by the consumer; The existence, the conditions of implementation and the content of the legal guarantees, in particular the legal guarantee of conformity for the goods, the digital content and the digital services, as well as the guarantee relating to the latent defects; Information relating to the right of retraction if applicable; The producer of goods with digital components shall inform the professional seller of the duration during which the software updates, which the producer provides, remain compatible with the functionalities of the goods. The seller shall make this information available to the consumer in accordance with procedures specified by decree. <p>All required information must be provided in a clear and comprehensible manner and in an easily downloadable or hardcopy format, and must be furnished on request in a format accessible to a person with disabilities.</p>	<p>Currently, no new information is required before the consumer is bound. However, the already existing information obligations apply.</p> <p>However, the information obligations will change on 28. May 2022 and will then contain a different wording in some of its subitems: (Art. 246 Introductory Act to the Civil Code)</p> <ul style="list-style-type: none"> The existence of a statutory liability rights for the goods or the <i>digital products</i> and, if applicable, the existence and conditions of after-sales services and warranties If applicable, the <i>functionality of the goods with digital elements or the digital products</i>, including applicable technical protection measures Where applicable, to the extent material, the <i>compatibility and interoperability of the goods with digital elements or the digital products</i>, to the extent that this <i>information</i> is known or must be known by the trader. <p>If there is a necessary update, the trader is under an obligation inform the consumer. (Art. 327f (2) No. 1)</p> <p>If a change in the digital product affects the availability for the consumer, the trader must inform the consumer within a reasonable period before the date of the change by means of a durable medium. (Art. 327r (2))</p>	<p>Currently, no new information is required before the consumer is bound. However, the already existing information obligations apply.</p> <p>However, the information obligations will change on 28. May 2022 and will then contain a different wording in some of its subitems: (Art. 246 Introductory Act to the Civil Code)</p> <ul style="list-style-type: none"> If applicable, the <i>functionality of the goods with digital elements or the digital products</i>, including applicable technical protection measures Where applicable, to the extent material, the <i>compatibility and interoperability of the goods with digital elements or the digital products</i>, to the extent that this <i>information</i> is known or must be known by the trader. <p>If there is a necessary update, the trader is under an obligation inform the consumer. (Art. 475b (5) No. 1)</p>	<p>The CRA 2015 requires traders to provide pre-contractual information to consumers in accordance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCR 2013").</p> <p>The CRA 2015 makes the pre-contract information traders are required to provide a term of the contract. If the information is incorrect, Traders will have breached that term.</p> <p>Under the CCR 2013 traders must give consumers all of the following information:</p> <ul style="list-style-type: none"> Main characteristics of the goods, services or digital content Trader's trading name Total price of the goods or services, including all taxes Delivery and any other costs, where appropriate In an indefinite or subscription contract, the total costs per billing period If the consumer has a right to cancel, the time limit, conditions and procedures for cancelling Duration of the contract, or if the contract is indefinite, the conditions for termination <p>This information must be provided in good time, in a clear, comprehensible manner before the consumer enters into the contract.</p>

Requirements / Provisions

Guarantee of Conformity

	France		Germany		United Kingdom
	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	Consumer Rights Act 2015 Consumer contracts for goods, digital content and services
Guarantee of Conformity	<p>The digital content or services must be in conformity with the terms of the contract as per Art. 224-25-13, and the criteria for conformity set out in Art. 224-25-14.</p> <p>When the content or service is provided once, or as a series of distinct operations, then the professional must address conformity defects existing at the moment of delivery and that appear within two years from delivery.</p> <p>When the content or services is provided on a continuous basis (e.g. pursuant to a SaaS agreement), then the obligation of conformity lasts for the full term of the contract.</p> <p>The professional must also respond to conformity defects resulting from faulty integration* of the digital content or services into the digital environment* of the consumer, when this has been undertaken by, or under the supervision of, the professional, or as a result of inadequate instructions furnished with the content or services.</p> <p>*Both "integration" and "digital environment" are new defined terms, aligned with the Directive definitions.</p> <p>"integration" means linking and integrating digital content or a digital service with components of the consumer's digital environment to enable the digital content or digital service to be used in accordance with the compliance criteria.</p> <p>"digital environment" means any computer hardware, software and network connection used by the consumer to access or use digital content or a digital service.</p>	<p>The seller shall deliver goods that are in conformity with the terms of the contract and with the criteria set out at Arts. 217-4 and 217-5.</p> <p>When a sales contract provides for the for delivery of digital content or services for a period less than or equal to 2 years, the seller is responsible for any conformity defects that appear in the 2 years following delivery.</p> <p>If the sales contract provides for the delivery of digital content or services for more than 2 years, the seller shall remain responsible for conformity defects for the entire period during which the content or services are provided.</p> <p>During the same periods, the seller shall be responsible for conformity defects relating to the packaging, assembly instructions or installation problems arising from errors or omissions in the instructions provided by the seller.</p>	<p>The digital content or services must be in conformity with the terms of the contract as per Art. 327e (2), and the criteria for conformity set out in Art. 327e (3), 327g.</p> <p>When the content or service is provided once, or as a series of distinct operations, the trader must address conformity defects existing at the moment of delivery. If a defect becomes apparent within one year of this date, it is presumed that it was already present from the beginning. The trader has the burden of proof this was not the case. There are some exceptions to this assumption.</p> <p>The obligation of conformity regarding updates lasts for the full term of the obligation to update.</p> <p>For content or services provided on a continuous basis and defects resulting from faulty integration of the digital content or services into the digital environment of the consumer please see column 1.</p>	<p>The digital content or services must be in conformity with the terms of the contract as per Art. 434 (2), 475b (3), and the criteria for conformity set out in Art. 434 (3), 435, 475b (4), (6), 475c.</p> <p>The trader must address conformity defects existing at the moment of delivery. If a defect becomes apparent within one year of this date, it is presumed that it was already present from the beginning. The trader has the burden of proof this was not the case. There are some exceptions to this assumption.</p> <p>The obligation of conformity regarding updates lasts for the full term of the obligation to update.</p> <p>If, when purchasing goods with digital elements, a permanent provision for the digital elements is agreed to, the obligation of conformity lasts for the full term of the contract, but at least a period of two years.</p> <p>The trader must also respond to conformity defects resulting from faulty assembly or installation.</p>	<p>All goods should be fit for purpose, as described and of satisfactory quality (as explained below). The CRA 2015 requires conformity with pre-contract information about functionality (including updates) and compatibility, as provided by the trader to comply with the CCR 2013.</p> <p>Goods do not need to be fit for a particular purpose if the circumstances show that the consumer does not rely, or it is unreasonable for the consumer to rely, on the trader's skill or judgement.</p> <p>There is no requirement for digital content and digital services to integrate correctly with the consumer's digital environment, unless the description of the digital content implies that it will be compatible. The trader must ensure the content is properly described so that the consumer can determine whether it will integrate with their digital environment.</p> <p>There is no time-frame for performance in respect of the supply of digital content. All services (digital and non-digital) must be performed within a reasonable time, if no time has been fixed by the parties.</p>

Requirements / Provisions

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Criteria of Conformity

<p>The goods, or the digital content or services will be in conformity if they:</p> <ul style="list-style-type: none"> Adhere to the description, type, quantity, and quality, including in relation to functionality, compatibility, interoperability, or all other characteristics set out in the contract; Comply the special usage requirements communicated by the consumer and accepted by the professional, at the latest at the time the contract was concluded; Are furnished with all accessories, including packaging, installation instructions, customer assistance, that a consumer can legitimately expect; Are updated in accordance with the terms of the contract; Are suitable for the use habitually expected of digital content or services of the same type, taking into account EU law, national law, technical norms or sectoral codes of conduct; Presents the qualities that the professional presented to the consumer in a trial version before conclusion of the contract; Are furnished in the most recent version available at the time the contract is concluded; In relation to content or services provided on a continuous basis, these are furnished on an uninterrupted basis; Are furnished with the updates that the consumer can legitimately expect, in accordance with the relevant provisions of the Consumer Code (see below); Subject to limited exceptions, they conform with the quantity, quality and other characteristics including functionality, compatibility, accessibility, continuity, security, that the consumer can legitimately expect for digital content or services of the same type, given the nature of the content or services and also the public declarations made by the professional and by all other person in the contract chain, or any person acting on their behalf, including by advertising and packaging. 	<p>The goods, or the digital content or services will be in conformity if they:</p> <ul style="list-style-type: none"> Conform to the agreed characteristics, including quantity, functionality, compatibility, interoperability Are suitable for the use presumed under the contract Are provided as agreed with accessories, instructions and after safes services Are furnished with the updates that are agreed to in the contract Are suitable for common use Have characteristics, including quantity, functionality, compatibility, accessibility, continuity, and security, that are usual to digital products of the same type and that the consumer can expect, taking into account the nature of the digital product as well as public statements made, in particular in advertising or on the label Correspond to the nature of a test version or preview that the trader has provided to the consumer before the conclusion of the contract Are provided with the accessories and instructions that the consumer can expect to receive Are furnished with the updates that the consumer can legitimately expect, in accordance with the relevant provisions of the Civil Code (see below) Unless otherwise agreed by the parties, are provided in the latest version available at the time of the conclusion of the contract Can be used by the consumer without violating third-party rights To the extent that integration is to be performed, the integration has to be carried out properly or an improper integration is not due to the trader or incorrect instructions provided by the trader 	<p>The goods including digital components will be in conformity if they:</p> <ul style="list-style-type: none"> Conform to the agreed characteristics, including type, quantity, quality, functionality, compatibility, interoperability and other characteristics which the parties have agreed to. Are suitable for the use presumed under the contract Are provided as agreed with accessories and instructions For the digital elements, the updates agreed in the contract are provided during the relevant period Are suitable for common use Have a quality which is usual for goods of the same kind and which the buyer can expect, considering the nature of the goods and public statements made, in particular in advertising or on the label Correspond to the nature of a sample or specimen that the seller has provided to the buyer before the conclusion of the contract Are provided with the accessories, including packaging and instructions regarding assembly and installation, the buyer can expect to receive Are provided with necessary updates for the conformity of the goods with the contract during the period that can be expected, given the nature and purpose of the goods and their digital elements, and taking into account the circumstances and the nature of the contract, and the consumer is informed about these updates Are free of third-party rights 	<p>Certain standards apply to every transaction for the sale and supply of goods. The trader transferring or selling the goods must have the right to do so and the goods must:</p> <ul style="list-style-type: none"> Be of a satisfactory quality. Goods must be of a standard that a reasonable person would regard as satisfactory. In assessing quality, all relevant circumstances must be considered, including price, description and your or the manufacturer's advertising. Quality is a general term, which covers a number of matters, including: <ul style="list-style-type: none"> fitness for all the purposes for which goods of that kind are usually supplied; appearance and finish; freedom from minor defects; safety; and durability; Be fit for a particular purpose. When a consumer indicates that goods are required for a particular purpose, or where it is obvious that goods are intended for a particular purpose and a trader supplies them to meet that requirement, the goods should be fit for that specified purpose; Match the description, sample or model. When a consumer relies on a description, sample or display model the goods supplied must conform to it. If the goods do not conform, an offence may have been committed; and Be installed correctly, where installation has been agreed as part of the contract. <p>Digital content should also be fit for the purpose for which digital content of that kind is usually supplied.</p> <p>There is no mention in the CRA 2015 of functionality, compatibility, accessibility, continuity and security, nor updates (save that updates must not affect conformity). No reference to consideration of EU and national law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct. No reference to accessories and instructions. However, quality must be assessed by reference to "all relevant circumstances".</p>
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Implementation of the Guarantee / Remedies	<p>In case of non-conformity, the consumer has the right to:</p> <ul style="list-style-type: none"> Have the goods, or content or service brought into conformity, or repaired or replaced (at consumer's choice; subject to conditions), at no cost and without unjustified delay; or Have a reduction in price, or Have the contract terminated. <p>A further decree will specify the conditions for making a good compliant</p>		<p>In case of non-conformity, the consumer has the right to:</p> <ul style="list-style-type: none"> Have the goods, content or service brought into conformity (except in case of disproportionate discrepancy) without undue delay and significant inconveniences (Art. 327l) Subject to conditions, have the contract terminated (Art. 327m (1), (2), (4), (5), Art. 327o) Subject to conditions, demand compensation (Art. 327m (3)) Subject to conditions, have a reduction in price (Art. 327n) 		<p>In case of non-conformity, the consumer has the right to:</p> <ul style="list-style-type: none"> Have the goods brought into conformity by either repairment or preplacement at the consumers choice (except in case of disproportionate discrepancy) without undue delay and significant inconveniences (Art. 437 No. 1, 439) Subject to conditions, have the contract terminated. (Art. 437 No. 2, 475d) Subject to conditions, demand compensation (Art. 437 No. 3, 475d) Subject to conditions, have a reduction in price (Art. 437 No. 2, 441) 	<p>If the goods do not conform to the contract (the consumer has the burden of proof), the consumer may reject the goods within the first 30 days. A trader is not responsible for unsatisfactory quality if a defect is specifically drawn to the consumer's attention before the contract is made.</p> <p>Alternatively, the consumer can obtain the repair or replacement, subject to them both being possible and one not being disproportionate to the other. The consumer can request a repair and, if that is not possible, a replacement, or vice versa. Once the consumer has requested a repair or replacement, they must allow the trader a reasonable time to attempt this before seeking either the alternative remedy or exercising the right to reject or a reduction in price. However, the consumer does not need to allow the trader reasonable time if that would cause significant inconvenience to the consumer.</p> <p>There is no express right to withhold payment but the consumer does have the right to a price reduction or final rejection after one failed repair or replacement attempt.</p> <p>The right to a repair or replacement, reduction in price or rejection for a refund (as noted above) also apply to digital content where it does not conform to the contract terms.</p> <p>The consumer has the right to a remedy where digital content (whether paid for or not) causes damage to a consumer's device or other digital content which could have been avoided with reasonable care and skill.</p>
Consequences of Termination	<ul style="list-style-type: none"> Refund fees (may be proportionate), within 14 days; Make available to the consumer, at no cost and within a reasonable period, all content other than personal data furnished or crated by the consumer during the period of use of the content or service; Refrain from using the content created or provided by the consumer, unless such content was created with others or if other consumers can continue to make use of the content, unless the content has no use outside the service or has been aggregated with other data and cannot be disaggregated without disproportionate efforts. 		<ul style="list-style-type: none"> Please see column 1 The consumer has to refrain from using the product after the termination. The trader is allowed to prevent further use by the consumer. (Art. 327p (1)) The Consumer must return a physical data carrier provided by the trader if the trader requests this no later than 14 days after the termination. (Art. 327o (5)) 		<ul style="list-style-type: none"> Refund fees. If the termination is due to deficiency of the goods, the refund includes the cost of returning the goods (Art. 475 (6)) If the termination is due to deficiency of the goods, proof of return is equivalent to the return of the goods. (Art. 475 (6)) 	<ul style="list-style-type: none"> Traders have no obligation to make available any digital content provided or created by the consumer on termination and no obligation to cease use of such digital content. There is no obligation on consumers to stop using digital content post-termination or to return tangible media, though termination of a licence to use such content would likely mean that its continued use would be in breach of the trader's intellectual property rights.

Requirements / Provisions	France		Germany		United Kingdom
	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	EU Directive 2019/770 Digital Content & Services	EU Directive 2019/771 Sale of Goods	Consumer Rights Act 2015 Consumer contracts for goods, digital content and services
Provisions concerning Personal Data	<ul style="list-style-type: none"> The professional must provide information regarding the personal data necessary for the provision of digital content and services, or that are collected in the context of the provision of such content and services. This obligation is without prejudice to Article 13 of the GDPR. (Art. 224-25-4, 7°) If as part of the agreement, data processing is undertaken by the professional, a breach of the professional's GDPR or obligations under the French Data Protection Act, will also be considered a failure of conformity, without prejudice to other laws (Art. 224-25-15). Upon termination of the agreement, the professional will respect the provisions of the GDPR 	<ul style="list-style-type: none"> If as part of the agreement, data processing is undertaken by the seller, a breach of the professional's GDPR or obligations under the French Data Protection Act, will also be considered a failure of conformity, without prejudice to other laws (Art. 217-6) Upon termination of the agreement, the professional will respect the provisions of the GDPR. 	<ul style="list-style-type: none"> The exercise of data protection rights by the consumer does not affect the effectiveness of the contract. (Art. 327q (1)) If the consumer revokes his consent under data protection law and objects to the processing of his data, the trader may terminate the contract with immediate effect, if weighing up the interests of both parties, the continuation of the contractual relationship until the agreed end or until the expiry of a statutory or contractual notice period cannot reasonably be expected of him. (Art. 327q (2)) The regulations of the GDPR apply. 	<ul style="list-style-type: none"> No special provisions concerning personal data 	<ul style="list-style-type: none"> No provisions relating to personal data.
Provisions concerning Updates	<p>Definition of "Updates": (Art. 224-25-24 and 217-18 in relation to goods) updates or modifications aimed at the maintenance, adaptation or evolution of the functionality of the digital content or service, including security updates.</p> <p>A distinction is made between necessary and unnecessary updates or modifications. The professional will not be responsible for non-conformity issues if the consumer has not installed necessary updates, provided fault lies with the consumer.</p> <p>The agreement must provide for the professional's right to introduce unnecessary modifications and the consumer is not obligated to accept such modifications and, in some circumstances, may terminate the agreement.</p>	<p>The trader must provide updates necessary to uphold the contractual conformity of the digital product, including security updates.</p> <p>The trader will not be responsible for non-conformity issues if the consumer has not installed necessary updates, provided fault lies with the consumer. For this to happen, the trader has to inform the consumer of the availability of the update and give the necessary instructions how to install the update.</p> <p>For updates that are not necessary, please see column 1</p>	<p>The trader must provide updates necessary to uphold the contractual conformity of the of the goods including digital components.</p> <p>The trader will not be responsible for non-conformity issues if the consumer has not installed necessary updates, provided fault lies with the consumer. For this to happen, the trader has to inform the consumer of the availability of the update and give the necessary instructions how to install the update.</p>	<p>The trader can reserve the right to add new features and enhance existing features, provided the digital content continues to match the description and conform to the pre-contractual information. No express requirement for notice or to give consumers a right to terminate, but, depending on the modification, this may be required to achieve fairness.</p> <p>The time limit for a consumer to make a claim relating to an update is within 6 years of when the digital content was first supplied.</p>	
Sanctions	<p>Without limitation to damages that may be recoverable, a fine for non-compliance may be imposed of up to €300,000. This amount may be increased, in a manner proportionate to the advantages gained from the non-conforming conduct, to 10% of annual global revenue calculated on the last three years of declarations as of the date of the decision.</p> <p>In addition, administrative sanctions of between €3,000 (for individuals) – €75,000 (for legal entities) are possible.</p>	<p>Currently, there are no special sanctions regarding the new consumer law.</p> <p>On 28. May 2022 a new regulation will come into effect that introduces fines up to €50,000 or, if the revenue in the EU-Member-Countries, in which the offence was committed, has been over €1,250,000 in the last year, up to 4% of the yearly revenue. (Art. 246e Introductory Act to the Civil Code)</p>			<p>There are no special sanctions under the CRA 2015.</p>
Notable	<p>The provisions are "public order" rules and no contractual derogations are possible.</p>	<p>The provisions are "public order" rules and (with few exceptions) no contractual derogations are possible. This does not affect the ability to contractually limit damages.</p>			<p>Traders cannot exclude liability in relation to the implied terms of goods and services (e.g. quality and fitness for purpose). The CRA also introduced a "fairness" test. Any term which causes "a significant imbalance" in the parties' respective positions, to the detriment of the consumer and in a way which is contrary to the requirement of good faith, will be regarded as "unfair".</p> <p>A term that is "unfair" is not binding on the consumer, and the consumer can treat it as struck out of the contract. The remainder of the contract will stand if it is capable of doing so according to the usual principles of severability.</p>