



Brussels, 31 May 2017
(OR. en)

9833/17

**Interinstitutional File:
2015/0287 (COD)**

**JUSTCIV 131
CONSOM 239
DIGIT 152
AUDIO 81
DAPIX 217
DATAPROTECT 110
CULT 81
CODEC 946**

NOTE

From:	the Czech delegation
To:	Coreper/Council
No. prev. doc.:	9641/17 + ADD 1
No. Cion doc.:	15251/15
Subject:	Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content (First reading) - Statement by the Czech delegation to be included in the minutes of the Coreper/Council

The Czech Republic welcomes and supports the objective of this Directive to contribute to faster growth of the Digital Single Market, for the benefit of both consumers and businesses. We also believe that with a targeted full harmonisation approach we could eliminate the key contract law-related obstacles to cross-border supply of digital content. The Czech Republic has participated in the negotiations on the proposal in an active and constructive manner and we are pleased that some problems have been resolved to reach a balanced compromise.

Nevertheless, we consider that some key elements of the proposal are unclear and only lead to legal uncertainty. Moreover, by accepting these provisions we would lower the level of consumer protection guaranteed by national law. In particular, we express our disappointment with regard to the ambiguous interpretation of the definition of “embedded digital content” (Article 2(12)) as it is not clear what rules should apply to what digital content. We also regret that the wording of Article 5 has changed at the last stage of negotiation and the text was watered down.

Moreover, the Czech Republic is not satisfied that the principle of full harmonization, which we have supported in the long term, could not be maintained in Article 9a. Nevertheless, to compensate the minimum harmonization in Article 9a, we were of the opinion that at least the time limit for reversal burden of proof should be 2 years, i.e. the same length as the time limit for the supplier’s liability for non-conformity.

Finally, as we were pleading to maintain the level of protection for the Czech consumers we regret that our proposal for the recital concerning Article 12(2) was not accepted to ensure for the consumer legal certainty when establishing for us so problematic “reasonable time” for bringing the digital content and service into conformity by the supplier.
