

消費者法規翻譯叢書之二十七

外國消費者保護法

(第二十七輯)

行政院消費者保護處 編印
中華民國 110 年 11 月

序言

美國總統甘乃迪於 1962 年揭示消費者享有一講求安全、知道真相、選擇及表達意見四大權利；1963 年國際消費者組織聯盟（IOCU）再加入基本需求、請求賠償、消費教育及健康環境四大權利，宣示消費者應享有八大權利，並負五大義務—認知、行動、關懷、環保、團結義務；聯合國繼於 1985 年通過「保護消費者指導方針」。從以上之宣示，消費者保護事務已成為世界各國政府的共通關注之議題。

我國為更有效保護消費者權益，並順應世界潮流，於歷經個別立法保護時期及消費者保護方案時期後，終於民國（下同）83 年 1 月 11 日經總統公布施行消費者保護法，使我國正式進入消費者保護法時期，為我國消費者保護法制展開新紀元，嗣後並於 92 年、94 年、104 年修訂部分條文。

值此保障消費者之思想已蔚為世界潮流之際，為健全並周延我國有關消費者保護法制及充實消費者保護之新知，原行政院消費者保護委員會於 84 年起，即著手編印外國消費者保護法規選輯，自 84 年 6 月出版外國消費者保護法第 1 輯，而行政院消保處自 101 年 1 月 1 日改制後，仍承繼原行政院消費者保護委員會編印出版之初衷，賡續編印出版，截至 109 年止，共計出版 26 輯。選輯內容，則包括派員出國考察或開會時所蒐集，及經由國外政府機關、國際組織網站下載之消費者保護相關法規，並將之譯介，彙編成書，以供作該會及各界瞭解各國消費者保護相關法規及比較研究之參考。

本書為本處譯介外國消費者保護法第 27 輯，內容包括歐盟數位內容以及數位服務提供契約之特定層面、商品銷售之契約特定層面、歐盟消費者保護規則之優化執法與現代化等 3 指令，本書採用中文翻譯及英文左右對照方式印刷，俾供讀者閱讀之便利。

本選輯中譯文部分，係由資策會科技法律研究所資深研究協理邱映曦博士負責翻譯；謹此敘明，並表謝忱。

行政院消費者保護處 謹識

中華民國 110 年 11 月

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歐洲議會暨歐盟理事會 2019/770 指令(EU)

2019 年 5 月 20 日

關於數位內容以及數位服務提供契約之特定層面

歐洲議會暨歐盟理事會

依據「歐盟運作條約」，特別是第 114 條，

依據歐盟執行委員會之提案，

經過提供法制草案予各國議會，

參考歐洲經濟社會委員會之意見，

按照一般之立法程序，

鑒於：

- (1) 歐盟之電子商務成長潛能尚未被充分開發。為了釋放這樣的潛能，需要透過歐洲數位單一市場策略，全面因應歐盟跨境電子商務發展的主要障礙。確保消費者對於數位內容以及數位服務有更佳的近用，並讓企業提供數位內容與數位服務更加容易，以提振歐盟數位經濟及促進整體的成長。

**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

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union,
and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social
Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The growth potential of ecommerce in the Union has not yet been fully exploited. The Digital Single Market Strategy for Europe tackles in a holistic manner the major obstacles to the development of cross-border e-commerce in the Union in order to unleash this potential. Ensuring better access for consumers to digital content and digital services, and making it easier for businesses to supply digital content and digital services, can contribute to boosting the Union's digital economy and stimulating overall growth.

- (2) 歐盟運作條約(TFEU)第 26 條第(1)項及第(2)項讓歐盟得以採取以建立或確保內部市場運作功能為目的之相關措施。包括沒有內部邊界限制的區域，以確保商品與服務的自由流通。歐盟運作條約第 169 條第(1)項，與第 169 條第(2)項第(a)點規定，於內部市場完備之情況下，歐盟將依據歐盟運作條約第 114 條之規定，採取相關措施，為實現提供高層級之消費者保護作出貢獻。本指令之目標在於確保對於輔助性原則尊重之情況下，為實現高層級之消費者保護，與促進企業競爭力之間取得適當的平衡。
- (3) 與提供數位內容或數位服務相關之特定契約層面必須具有一致性，並以高層級的消費者保護為基礎，以期實現真正的數位單一市場，提升法律的確定性並降低交易成本，特別是針對中小型企业(SMEs)而言。
- (4) 企業，尤其是中小企業，於提供跨境數位內容或數位服務時，時常會因為國家強制性的消費者契約法律條款，以及法律的不確定性，而面臨額外的成本。企業也時常需要面對各國規範差異的成本，亦即為了符合特定國家提供數位內容或數位服務之特定強制性規範，而修訂其已應用於部分會員國的契約條款，於特定國家管制此類契約之規範間，創造範圍與內容之差異。

- (2) Article 26(1) and (2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to adopt measures with the aim of establishing or ensuring the functioning of the internal market, which is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. Article 169(1), and point (a) of Article 169(2), TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU in the context of the completion of the internal market. This Directive aims to strike the right balance between achieving a high level of consumer protection and promoting the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.
- (3) Certain aspects concerning contracts for the supply of digital content or digital services should be harmonised, taking as a base a high level of consumer protection, in order to achieve a genuine digital single market, increase legal certainty and reduce transaction costs, in particular for small and medium-sized enterprises ('SMEs').
- (4) Businesses, especially SMEs, often face additional costs, stemming from differences in national mandatory consumer contract law rules, and legal uncertainty when offering cross-border digital content or digital services. Businesses also face costs when adapting their contracts to specific mandatory rules for the supply of digital content or digital services, which are already being applied in several Member States, creating differences in scope and content between specific national rules governing such contracts.

- (5) 消費者對於跨境購買並非總是有信心，尤其當購買是在網路上完成時。其中一個消費者欠缺信心的主要因素，在於不確定他們擁有的關鍵契約權利，以及欠缺對於數位內容或數位服務清楚的契約架構。許多消費者經歷了涉及數位內容或數位服務之品質或接取的問題。例如，他們接收到錯誤或有瑕疵的數位內容或數位服務，或無法接取系爭數位內容或數位服務。最終導致消費者遭受財產上或非財產上的損害。
- (6) 為了解決此類問題，企業與消費者對於與數位內容或數位服務提供有關之核心領域，皆需要有能夠仰賴之跨歐盟，協調一致的契約權利。如此於關鍵規範層面之協調一致，將大幅提高對消費者與企業的法律明確性。
- (7) 所有會員國共通一致的消費者契約法律條款，將使得企業（尤其是中小企業）更容易於整個歐盟提供數位內容或數位服務。當企業提供數位內容或數位服務於其他會員國時，共通條款將可以為企業提供穩定的契約法制環境。共通條款亦可防止新興規制特定數位內容與數位服務之個別國家法律規範，所可能造成之法律碎片化。
- (8) 消費者應從提供數位內容及數位服務，並提供高水準保護的共通一致性權利中獲益。當他們從歐盟之任何地方收到或接取數

- (5) Consumers are not always confident when buying cross border and especially when it is done online. One of the major factors for consumers' lack of confidence is uncertainty about their key contractual rights and the lack of a clear contractual framework for digital content or digital services. Many consumers experience problems related to the quality of, or access to, digital content or digital services. For instance, they receive wrong or faulty digital content or digital services, or they are not able to access the digital content or digital service in question. As a result, consumers suffer financial and non-financial detriment.
- (6) In order to remedy such problems, both businesses and consumers should be able to rely on fully harmonised contractual rights in certain core areas concerning the supply of digital content or digital services across the Union. Full harmonisation of some key regulatory aspects would considerably increase legal certainty for consumers and businesses.
- (7) Harmonised consumer contract law rules in all Member States would make it easier for businesses, especially SMEs, to supply digital content or digital services across the Union. They would provide businesses with a stable contract law environment when supplying digital content or digital services in other Member States. They would also prevent legal fragmentation that otherwise would arise from new national legislation regulating specifically digital content and digital services.
- (8) Consumers should benefit from harmonised rights for the supply of digital content and digital services that provide a high level of

位內容或數位服務時，應要擁有清楚的強制性權利。擁有這樣的權利，將增加他們獲取數位內容或數位服務的信心。而存在一系列明確的權利供消費者解決獲取數位內容或數位服務可能面臨之問題，亦將有助於減少消費者目前所遭受到的損害。

- (9) 本指令將針對目前尚未於聯盟或個別國家層級進行規制的關鍵規則進行充分一致的協調。
- (10) 本指令需以清晰且明確的方式界定其適用範圍，並就適用範圍內之數位內容或數位服務建立清楚的實質性規則。無論是指令適用範圍以及實質性規則，皆須秉持技術中立性與未來性。
- (11) 本指令需針對企業經營者與消費者間之數位內容或數位服務提供相關契約，建立通則性的要求。為達成此一目的，關於數位內容或數位服務契約之符合性規則，或當欠缺上述符合性或產生履行契約錯誤時之救濟措施、行使那些救濟措施之方式，以及對於數位內容或數位服務之修改等規則，皆須完全一致。一些消費者契約法之基本要素建構完全一致的規則，將讓企業，尤其是中小企業，更容易於其他會員國提供他們的產品。消費者亦會因為一致性的關鍵規範，而自高層級的消費者保護與福祉中獲益。會員國於本指令規範範圍內，應避免再提出進一步之形式或實質性的要求。例如，會員國不應建立與本指令規範不相同之舉證責任倒置規定，或課予消費者必須針對欠缺符合性事宜，於特定期間內通知企業經

protection. They should have clear mandatory rights when they receive or access digital content or digital services from anywhere in the Union. Having such rights should increase their confidence in acquiring digital content or digital services. It should also contribute to reducing the detriment consumers currently suffer, since there would be a set of clear rights that will enable them to address problems they face with digital content or digital services.

- (9) This Directive should fully harmonise certain key rules that have, so far, not been regulated at Union or national level.
- (10) This Directive should define its scope in a clear and unequivocal manner and provide clear substantive rules for the digital content or digital services falling within its scope. Both the scope of this Directive and its substantive rules should be technologically neutral and future-proof.
- (11) This Directive should lay down common rules on certain requirements concerning contracts between traders and consumers for the supply of digital content or a digital service. For this purpose, rules on the conformity of digital content or a digital service with the contract, remedies in the event of a lack of such conformity or a failure to supply and the modalities for the exercise of those remedies, as well as on the modification of digital content or a digital service, should be fully harmonised. Fully harmonised rules on some essential elements of consumer contract law would make it easier for businesses, especially SMEs, to offer their products in other Member States. Consumers would benefit from a high level of consumer protection and

營者之義務。

(12) 本指令不應及於國家法律中非屬於本指令規範拘束之事宜，例如國家法律針對契約之成立、生效、無效或契約效果之規定，或數位內容或數位服務之合法性規定等。本指令亦非用以決定數位內容或數位服務提供契約之法律性質，以及諸如這些契約是否構成例如銷售、服務、租賃或屬特殊契約等問題，應留待國家法律決定之。本指令亦不影響非以消費者契約之關注為重點的國家法規，以及針對於締約當時不明顯的瑕疵類型，設置特定之救濟措施。換句話說，國家法律可以針對隱藏的瑕疵，建立對企業經營者的責任規範。於涉及數位內容或數位服務之提供欠缺一致性之情形，本指令亦不應影響國家法律所規定，讓消費者得以針對先前交易鏈環節所涉對象，或協助他們實現交易之其他人，可提出之非契約救濟程序。

(13) 會員國仍得自由規範消費者對企業經營者以外，提供或承擔數位內容或數位內容提供之第三人的相關責任。例如，非屬

welfare gains by fully harmonising key rules. Member States are precluded within the scope of this Directive from providing for any further formal or substantive requirements. For example, Member States should not provide for rules on the reversal of the burden of proof that are different from those provided for in this Directive, or for an obligation for the consumer to notify the trader of a lack of conformity within a specific period.

- (12) This Directive should not affect national law to the extent that the matters concerned are not regulated by this Directive, such as national rules on the formation, validity, nullity or effects of contracts or the legality of the digital content or the digital service. This Directive should also not determine the legal nature of contracts for the supply of digital content or a digital service, and the question of whether such contracts constitute, for instance, a sales, service, rental or sui generis contract, should be left to national law. This Directive should also not affect national rules that do not specifically concern consumer contracts and provide for specific remedies for certain types of defects that were not apparent at the time of conclusion of the contract, namely national provisions which may lay down specific rules for the trader's liability for hidden defects. This Directive should also not affect national laws providing for non-contractual remedies for the consumer, in the event of lack of conformity of the digital content or digital service, against persons in previous links of the chain of transactions, or other persons that fulfil the obligations of such persons.
- (13) Member States also remain free, for example, to regulate liability claims of a consumer against a third party other than a trader that

本指令規範之企業經營者的開發人員(developer)。

- (14) 會員國亦仍得自由規範債務不履行的結果，或當數位內容或數位服務欠缺符合性，係源自企業經營者無法控制的障礙，或企業經營者不被預期能夠防止或克服相關障礙或結果之時，例如於不可抗力(force majeure)之情況下。
- (15) 會員國亦仍得自由規範當事人有權拒絕履行其全部或部分義務，直到他方相對人履行其義務。例如，會員國得自由規定是否消費者於欠缺契約符合性之情況下，有權拒絕全部或部分之付款，直到企業經營者提供具符合性的數位內容或數位服務。或是否企業經營者有權保留契約終止後對消費者應為之任何給付，直到消費者遵守本指令之規範將有形媒介返還至企業經營者。
- (16) 會員國亦仍得自由將本指令規範之規則，延伸適用至本指令排除之其他契約，或另外對上述契約加以規範。例如，會員國仍得自由將本指令對於消費者之保護，延伸適用至不屬於本指令消費者定義之自然人或法人，例如非政府組織、新創事業或中小企業。

supplies or undertakes to supply the digital content or digital service, such as a developer which is not at the same time the trader under this Directive.

- (14) Member States should also remain free, for example, to regulate the consequences of a failure to supply, or of a lack of conformity of, digital content or a digital service, where such failure to supply or lack of conformity is due to an impediment beyond the control of the trader and where the trader could not be expected to have avoided or overcome the impediment or its consequences, such as in the event of force majeure.
- (15) Member States should also remain free, for example, to regulate the rights of parties to withhold the performance of their obligations or part thereof until the other party performs its obligations. For example, Member States should be free to regulate whether a consumer, in cases of a lack of conformity, is to be entitled to withhold payment of the price or part thereof until the trader has brought the digital content or digital service into conformity, or whether the trader is to be entitled to retain any reimbursement due to the consumer upon termination of the contract until the consumer complies with the obligation provided for in this Directive to return the tangible medium to the trader.
- (16) Member States should also remain free to extend the application of the rules of this Directive to contracts that are excluded from the scope of this Directive, or to otherwise regulate such contracts. For instance, Member States should remain free to extend the protection afforded to consumers by this Directive also to natural

- (17) 消費者的定義應涵蓋那些於其交易、商業、專業技術或專業領域以外之自然人。然而，會員國仍得自由決定，於雙重目的契約之情形，若該締約之目的部分屬於、部分不屬於該當事人之交易，且該交易目的受到限制而不構成整體契約背景之主要部分時，是否以及在何種情況下，該當事人仍可以被視為消費者。
- (18) 本指令應適用於企業經營者提供或承諾提供數位內容或數位服務予消費者之任何契約。平台提供者其行為出於自身相關商業目的，且作為對消費者提供數位內容或數位服務之直接締約對象時，得被視為本指令所定義之企業經營者。會員國保有將本指令之規定，延伸適用至不符合上述視為企業經營者條件之平台提供者之自由。
- (19) 本指令應解決橫跨不同類型之數位內容或數位服務及其提供的問題，為了因應快速的科技發展，並維持數位內容或數位服務概念具備之未來性特質，本指令尤其應該涵蓋電腦程式、應用程式、影像檔案、音訊檔案、音樂檔案、數位遊戲、電子書或其他電子出版，以及允許以數位形式創造、處

or legal persons that are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or SMEs.

- (17) The definition of a consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, Member States should also remain free to determine, in the case of dual purpose contracts, where the contract is concluded for purposes that are partly within and partly outside the person's trade, and where the trade purpose is so limited as not to be predominant in the overall context of the contract, whether and under which conditions that person should also be considered a consumer.
- (18) This Directive should apply to any contract whereby the trader supplies or undertakes to supply digital content or digital service to the consumer. Platform providers could be considered to be traders under this Directive if they act for purposes relating to their own business and as the direct contractual partner of the consumer for the supply of digital content or a digital service. Member States should remain free to extend the application of this Directive to platform providers that do not fulfil the requirements for being considered a trader under this Directive.
- (19) The Directive should address problems across different categories of digital content, digital services, and their supply. In order to cater for fast technological developments and to maintain the future-proof nature of the notion of digital content or digital service, this Directive should cover, inter alia, computer

理、接取或儲存資料之數位服務(包括軟體即服務，softer-as-a-service)，如：影像或音訊共享，與其他雲端運算環境與社群媒體中之檔案託管、文字處理或遊戲等。由於數位內容或數位服務提供的方式眾多，例如透過傳輸、附著於有形媒介、由消費者下載至載具、網路串流、允許接取數位內容之儲存功能，或接取利用社交媒體，本指令應獨立適用於用以傳輸或接取數位內容或數位服務的媒介。然而本指令不適用於網路接取服務。

- (20) 本指令與(EU) 2019/771 指令需相輔相成。本指令係針對數位內容或數位服務的提供契約，訂立相關要求規則；而(EU)2019/771 指令，則是針對商品銷售契約訂定相關要求規則。因此，為符合消費者之期待，並確保給予企業經營者一個清晰且簡單法制架構，本指令亦將適用透過有形媒介提供的數位內容，例如 DVDs、CDs、USB 隨身碟以及記憶卡。也適用於該有形媒介本身，前提是該有形媒介為專用提供數位內容的載體。然而，就企業經營者之履行給付義務，以及消費者面對債務不履行之救濟，相對於本指令，應適用歐洲議會與歐盟理事 2011/83/EU 指令當中關於商品交易之給付以及債務不履行之救濟規定。此外，2011/83/EU 指令當中關於撤銷權，以及與商品提供性質類似的契約，亦持續適用於透過有形媒介提供的數位內容。本指令亦不影響著作權法適用於這些商品之散布權規定。

programmes, applications, video files, audio files, music files, digital games, e-books or other e-publications, and also digital services which allow the creation of, processing of, accessing or storage of data in digital form, including software-as-a-service, such as video and audio sharing and other file hosting, word processing or games offered in the cloud computing environment and social media. As there are numerous ways for digital content or digital services to be supplied, such as transmission on a tangible 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 independently of the medium used for the transmission of, or for giving access to, the digital content or digital service. However, this Directive should not apply to internet access services.

- (20) This Directive and Directive (EU) 2019/771 of the European Parliament and of the Council should complement each other. While this Directive lays down rules on certain requirements concerning contracts for the supply of digital content or digital services, Directive (EU) 2019/771 lays down rules on certain requirements concerning contracts for the sale of goods. Accordingly, in order to meet the expectations of consumers and ensure a clear-cut and simple legal framework for traders of digital content, this Directive should also apply to digital content which is supplied on a tangible medium, such as DVDs, CDs, USB sticks and memory cards, as well as to the tangible medium itself, provided that the tangible medium serves exclusively as a carrier of the digital content. However, instead of the provisions of this Directive on the trader's obligation to supply and on the

- (21) (EU)2019/771 指令適用於商品銷售相關契約，包括具備數位元素的商品。具備數位元素之商品，係指該商品與數位內容或數位服務整合或相互鏈結，欠缺該數位內容或數位服務即會導致該商品無法執行其功能者。前述與商品整合或鏈結之數位內容或數位服務，若其係以該商品之銷售契約提供，則屬於 2019/771 指令規範之範圍。至於整合或鏈結之數位商品或數位服務的提供，是否構成與賣家銷售契約之一部分，必須視所涉契約內容而定。此處應包括契約當中明示要求應整合或鏈結數位內容或數位服務的情形。也應包括該銷售契約通常被認為應該涵蓋特定數位內容或特定數位服務的提供，因為消費者可能因為該商品通常的性質，以及觀諸賣家或其他於先前交易鏈當中之人（包括生產者），所為之任何公開聲明，合理的期待該數位內容或數位服務的提供。例如，若智慧電視的廣告宣傳包括特定的影片應用程式，則該影片應用程式之提供將被認定為該銷售契約的一部分。無論數位內容或數位服務係預先安裝於商品本身，或必須事後於其他設備下載且僅與商品產生相互鏈結，皆適用之。

consumer's remedies for failure to supply, the provisions of Directive 2011/83/EU of the European Parliament and of the Council on obligations related to the delivery of goods and remedies in the event of the failure to deliver should apply. In addition, the provisions of Directive 2011/83/EU on, for example, the right of withdrawal and the nature of the contract under which those goods are supplied, should also continue to apply to such tangible media and the digital content supplied on it. This Directive is also without prejudice to the distribution right applicable to these goods under copyright law.

- (21) Directive (EU) 2019/771 should apply to contracts for the sale of goods, including goods with digital elements. The notion of goods with digital elements should refer to goods that incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions. Digital content or a digital service that is incorporated in or inter-connected with goods in that manner should fall within the scope of Directive (EU) 2019/771 if it is provided with the goods under a sales contract concerning those goods. Whether the supply of the incorporated or inter-connected digital content or digital service forms part of the sales contract with the seller should depend on the content of this contract. This should include incorporated or inter-connected digital content or digital services the supply of which is explicitly required by the contract. It should also include those sales contracts which can be understood as covering the supply of specific digital content or a specific digital service because they are normal for goods of the same type and

例如，一支智慧型手機，按照其銷售契約，可以附載已經預先安裝好之標準應用程式，例如鬧鐘應用程式，或照相應用程式等。另外一個可能的例子是智慧手錶。於此案例，手錶本身即會被認為是具備數位元素的商品，只有透過銷售契約提供之應用程式方能執行其功能，但消費者必須自行將應用程式下載至智慧型手機，之後該應用程式即成為相互鏈結的數位元素。此處亦適用於所整合或相互鏈結之數位內容或數位服務，並非由賣方所提供，而由第三方提供的情形。於懷疑數位內容或數位服務之提供是否屬於銷售契約之一部分時，為了降低企業經營者與消費者間的不確定性，(EU)2019/771 指令於此適用之。此外，要確定企業經營者與消費者間之雙邊契約關係當中，整合或鏈結的數位內容或數位服務是否構成契約的一部分，不應僅因消費者必須同意與第三方達成授權協議，以取得所涉數位內容或數位服務之利益，而受到影響。

the consumer could reasonably expect them given the nature of the goods and taking into account any public statement made by or on behalf of the seller or other persons in previous links of the chain of transactions, including the producer. If, for example, a smart TV were advertised as including a particular video application, that video application would be considered to be part of the sales contract. This should apply regardless of whether the digital content or digital service is pre-installed in the good itself or has to be downloaded subsequently on another device and is only inter-connected to the good.

For example, a smart phone could come with a standardised preinstalled application provided under the sales contract, such as an alarm application or a camera application. Another possible example is that of a smart watch. In such a case, the watch itself would be considered to be the good with digital elements, which can perform its functions only with an application that is provided under the sales contract but has to be downloaded by the consumer onto a smart phone; the application would then be the inter-connected digital element. This should also apply if the incorporated or inter-connected digital content or digital service is not supplied by the seller itself but is supplied, under the sales contract, by a third party. In order to avoid uncertainty for both traders and consumers, in the event of doubt as to whether the supply of the digital content or the digital service forms part of the sales contract, Directive (EU) 2019/771 should apply. Furthermore, ascertaining a bilateral contractual relationship, between the seller and the consumer, of which the supply of the incorporated or interconnected digital content or digital service

- (22) 相反的，若欠缺數位內容或數位服務的整合或相互鏈結，並不影響該商品功能之執行，或若消費者訂定提供數位內容或數位服務的契約，並不屬於具備數位元素之商品銷售契約的一部分，該契約即應被認為係與商品銷售契約分開，即使該賣家也擔負第二個契約與第三方提供者間之仲介，並屬於本指令規範範圍亦然。舉例而言，如果消費者自應用程式商店下載一個遊戲應用程式至智慧型手機，該遊戲應用程式提供契約則與智慧型手機銷售契約分開。(EU)2019/771 指令因此僅適用於該智慧型手機銷售契約，而於滿足本指令規範條件下，該遊戲應用程式提供契約則適用本指令。另一個例子會是當消費者明示同意購買不搭載特定作業系統的智慧型手機，且該消費者隨後與第三方簽訂作業系統提供契約之情形。於此案例，提供分開購買的作業系統，即不屬於銷售契約的一部分，因此不會落入(EU)2019/771 指令的適用範圍。但於符合本指令之要件下，將落入本指令之規範範圍。

forms part should not be affected by the mere fact that the consumer has to consent to a licensing agreement with a third party in order to benefit from the digital content or the digital service.

- (22) In contrast, if the absence of the incorporated or inter-connected digital content or digital service does not prevent the goods from performing their functions, or if the consumer concludes a contract for the supply of digital content or a digital service which does not form part of a sales contract concerning goods with digital elements, that contract should be considered to be separate from the contract for the sale of the goods, even if the seller acts as an intermediary of that second contract with the third-party supplier, and could fall within the scope of this Directive. For instance, if the consumer downloads a game application from an app store onto a smart phone, the contract for the supply of the game application is separate from the contract for the sale of the smart phone itself. Directive (EU) 2019/771 should therefore only apply to the sales contract concerning the smart phone, while the supply of the game application could fall under this Directive, if the conditions of this Directive are met. Another example would be where it is expressly agreed that the consumer buys a smart phone without a specific operating system and the consumer subsequently concludes a contract for the supply of an operating system from a third party. In such a case, the supply of the separately bought operating system would not form part of the sales contract and therefore would not fall within the scope of Directive (EU) 2019/771, but could fall within the scope of this Directive, if the conditions of this Directive are met.

(23) 以數位方式表示的價值(數位價值表示)，例如電子兌換憑證(electronic vouchers)或電子優惠券，是用來提供消費者於單一數位市場中支付購買不同的商品或服務。此類數位價值表示，於數位內容或數位服務相關提供逐漸重要，且可被認定為屬於本指令定義下的支付方式。數位價值表示，於國家法律承認的範圍內，也可以被理解為涵蓋數位貨幣。以支付方式為基礎形成的差異化，可能導致歧視或為企業提供不合理的動機，將數位內容或數位服務之提供轉而走向不利用數位價值表示之作法。然而，既然數位價值表示僅用以作為支付的工具，而無其他用途。其本身即不應被認為屬於本指令定義下的數位內容或數位服務。

(24) 數位內容或數位服務的提供，通常亦會發生於消費者並未支付價金，但向企業經營者提供個人資料時。此類商業模式常於市場上的重要部分，以不同的形式被利用。基於個人資料的保護被認為是基本權利，故個人資料不得被視為商品，本指令必須確保消費者於這種商業模式之下，有權進行契約的救濟。因此，本指令需適用於企業經營者向消費者提供或承諾提供數位內容或數位服務，而消費者相對提供或承諾提供個人資料的契約。而個人資料可以於締約當時提供給企業經營者，或於事後的一個時間點，例如當消費者同意企業經營者可以利用任何由消費者上傳，或使用數位內容或數位服務時所產生之個人資料時。歐盟法於個人資料的保護，對於個人資料如何合法的處理提供了詳盡的法律依據清單。本指令

- (23) Digital representations of value such as electronic vouchers or coupons are used by consumers to pay for different goods or services in the digital single market. Such digital representations of value are becoming important in relation to the supply of digital content or digital services, and should therefore be considered as a method of payment within the meaning of this Directive. Digital representations of value should also be understood to include virtual currencies, to the extent that they are recognised by national law. Differentiation depending on the methods of payment could be a cause of discrimination and provide an unjustified incentive for businesses to move towards supplying digital content or a digital service against digital representations of value. However, since digital representations of value have no other purpose than to serve as a method of payment, they themselves should not be considered digital content or a digital service within the meaning of this Directive.
- (24) Digital content or digital services are often supplied also where the consumer does not pay a price but provides personal data to the trader. Such business models are used in different forms in a considerable part of the market. While fully recognising that the protection of personal data is a fundamental right and that therefore personal data cannot be considered as a commodity, this Directive should ensure that consumers are, in the context of such business models, entitled to contractual remedies. This Directive should, therefore, apply to contracts where the trader supplies, or undertakes to supply, digital content or a digital service to the consumer, and the consumer provides, or undertakes to provide, personal data. The personal data could be provided to the trader

應適用於消費者向企業經營者提供或承諾提供個人資料的任何契約。例如，本指令應適用於消費者開啟一個社群媒體帳號，並提供姓名與電子郵件地址給企業經營者，而該資料被用於單純獲取數位內容或數位服務，或用於遵守法律規定以外的目的時。且亦應適用於消費者同意提供之任何可能構成個人資料之材料，被企業經營者基於行銷目處理之時，例如消費者上傳的照片或貼文。會員國仍得以國家法律規範契約之成立、存在與效力是否被滿足。

- (25) 於數位內容與數位服務的提供非基於價金之交易時，本指令不應適用於企業經營者蒐集個人資料僅是為了數位內容或數位服務提供之目的，或僅是為了符合法律要求之唯一目的時。上述情況可以包括，舉例而言，個案中消費者必須註冊之要求，係基於所適用之法律規範，為保障安全或身分識別之目的所致。本指令亦不應適用於企業經營者僅蒐集後設資料(metadata)的情形，例如與消費者之載具或瀏覽歷史相關的資訊，除非依據特定國家法律，該資料蒐集被視為契約。本指令也不適用於消費者並未與企業經營者形成契約，而僅是

either at the time when the contract is concluded or at a later time, such as when the consumer gives consent for the trader to use any personal data that the consumer might upload or create with the use of the digital content or digital service. Union law on the protection of personal data provides for an exhaustive list of legal grounds for the lawful processing of personal data. This Directive should apply to any contract where the consumer provides or undertakes to provide personal data to the trader. For example, this Directive should apply where the consumer opens a social media account and provides a name and email address that are used for purposes other than solely supplying the digital content or digital service, or other than complying with legal requirements. It should equally apply where the consumer gives consent for any material that constitutes personal data, such as photographs or posts that the consumer uploads, to be processed by the trader for marketing purposes. Member States should however remain free to determine whether the requirements for the formation, existence and validity of a contract under national law are fulfilled.

- (25) Where digital content and digital services are not supplied in exchange for a price, this Directive should not apply to situations where the trader collects personal data exclusively to supply digital content or a digital service, or for the sole purpose of meeting legal requirements. Such situations can include, for instance, cases where the registration of the consumer is required by applicable laws for security and identification purposes. This Directive should also not apply to situations where the trader only collects metadata, such as information concerning the consumer's

為接取數位內容或數位服務之目的而向廣告揭露其資料之情形。然而，會員國仍得自由將本指令規範延伸適用或為另行規範於本指令排除適用範圍之相關情形。

- (26) 本指令應適用於依據消費者特定要求量身訂做的數位內容開發契約，包括客製化的軟體。本指令並應適用於為進行 3D 列印商品而提供的電子檔案，前提是該電子檔案屬於本指令定義之數位內容或數位服務。然而，本指令並不規範任何利用 3D 列印技術產製之商品有關的權利或義務。
- (27) 鑒於本指令應適用於向消費者提供數位內容或數位服務為目標之契約，其不應適用於契約標的為提供專業服務的契約，例如翻譯服務、建築服務、法律服務或其他專業諮詢服務，此類服務通常由交易相對人(服務提供者)親自履行，而不論該相對人是否使用數位方法產製該服務的輸出，或傳輸給消費者。同樣的，本指令亦不應適用於公共服務，諸如社會安全服務或公共註冊服務，此類服務通常使用數位方式，僅是用以將服務傳輸或傳達給消費者。本指令亦不適用於公證文件與其他公證行為，無論其是否運用數位方式執行、紀錄、重製或傳輸。

device or browsing history, except where this situation is considered to be a contract under national law. It should also not apply to situations where the consumer, without having concluded a contract with the trader, is exposed to advertisements exclusively in order to gain access to digital content or a digital service. However, Member States should remain free to extend the application of this Directive to such situations, or to otherwise regulate such situations, which are excluded from the scope of this Directive.

- (26) This Directive should apply to contracts for the development of digital content that is tailor-made to the specific requirements of the consumer including tailor-made software. This Directive should also apply to the supply of electronic files required in the context of 3D printing of goods, to the extent that such files fall under the definition of digital content or digital services within the meaning of this Directive. However, this Directive should not regulate any rights or obligations related to goods produced with the use of 3D printing technology.
- (27) Given that this Directive should apply to contracts which have as their object the supply of digital content or a digital service to the consumer, it should not apply where the main subject matter of the contract is the provision of professional services, such as translation services, architectural services, legal services or other professional advice services, which are often performed personally by the trader, regardless of whether digital means are used by the trader in order to produce the output of the service or to deliver or transmit it to the consumer. Similarly, this Directive should not apply to public services, such as social security

(28) 與公共指派號碼資源不相連之號碼獨立之人際通訊服務市場，目前正在迅速發展。晚近幾年，透過網路提供人際通訊的新興數位服務出現，諸如以網路為基礎的電子郵件服務與網路訊息傳遞服務，已吸引更多消費者使用此類服務。因此，有必要對於此類服務提供有效的消費者保護。故本指令亦適用於號碼獨立之人際通訊服務。

(29) 本指令不應適用於歐洲議會與歐盟理事會 2011/24/EU 指令所定義的健康照護(healthcare)。此一排除健康照護於本指令之適用，亦涵蓋依據歐盟理事會 93/42/EEC、90/385/EEC 指令或歐洲議會與歐盟理事會 98/79/EC 指令定義下，構成醫療設備之任何數位內容或數位服務，當此類醫療設備係由 2011/24/EU 指令定義之健康專業人員所指示或提供時。然而，本指令應適用於任何無需健康專業人員指示或提供，即可由消費者自行取得之構成醫療設備的數位內容或數位服務，例如健康應用程式。

services or public registers, where the digital means are only used for transmitting or communicating the service to the consumer. This Directive should also not apply to authentic instruments and other notarial acts, regardless of whether they are performed, recorded, reproduced or transmitted by digital means.

- (28) The market for number-independent interpersonal communications services, which do not connect with publicly assigned numbering resources, is rapidly evolving. In recent years, the emergence of new digital services which allow interpersonal communications over the internet, such as web-based email and online messaging services, has led more consumers to use such services. For such reasons, it is necessary to provide effective consumer protection with respect to such services. This Directive should therefore also apply to number-independent interpersonal communications services.
- (29) This Directive should not apply to healthcare as defined in Directive 2011/24/EU of the European Parliament and of the Council. The exclusion of ‘healthcare’ from the scope of this Directive should also apply to any digital content or digital service that constitutes a medical device, as defined in Council Directive 93/42/EEC or 90/385/EEC or Directive 98/79/EC of the European Parliament and of the Council, where such medical device is prescribed or provided by a health professional as defined in Directive 2011/24/EU. However, this Directive should apply to any digital content or digital service that constitutes a medical device, such as health applications, that can be obtained by the consumer without being prescribed or provided by a health professional.

- (30) 與金融服務有關之歐盟法，包含許多消費者保護規則。根據適用該領域之相關法律定義的金融服務，尤其是歐洲議會與歐盟理事會 2002/65/EC 指令之規定，也涵蓋與金融服務相關聯或促使接取金融服務的數位內容或數位服務，因此受到歐盟金融服務法的保障。故構成金融服務相關的數位內容或數位服務契約，應排除於本指令之適用。
- (31) 本指令不適用於該數位內容或數位服務係屬於提供給閱聽大眾之藝術表演或其他活動之一部分時，例如數位電影放映或視聽戲劇表演。然而，本指令應適用於該數位內容或數位服務係透過訊號傳輸的方式提供給閱聽大眾之情形，例如數位電視服務。
- (32) 免費與開源軟體，亦即其原始碼是開放分享，而使用者可以對該軟體或其修改版本自由接取、使用、修改及再散布之軟體，可以為數位內容或數位服務市場之研究與創新作出貢獻。為了避免對於此類市場發展造成障礙，本指令必須不適用於免費與開放原始碼的軟體，前提是該軟體不是以價格作為對價，而消費者的個人資料僅被用於改善軟體的安全性、相容性與相互操作性。

- (30) Union law relating to financial services contains numerous rules on consumer protection. Financial services, as defined by the law applicable to that sector, in particular in Directive 2002/65/EC of the European Parliament and of the Council, also cover digital content or digital services relating, or giving access, to financial services and are therefore covered by the protection of Union financial services law. Contracts relating to digital content or digital services that constitute a financial service should therefore be excluded from the scope of this Directive.
- (31) This Directive should not apply to digital content or a digital service that is provided to a public audience as part of an artistic performance or other event, such as a digital cinematographic projection or an audiovisual theatrical performance. However, this Directive should apply if digital content or a digital service is provided to a public audience by signal transmission such as digital television services.
- (32) Free and open source software, where the source code is openly shared and users can freely access, use, modify and redistribute the software or modified versions thereof, can contribute to research and innovation in the market for digital content and digital services. In order to avoid imposing obstacles to such market developments, this Directive should also not apply to free and open source software, provided that it is not supplied in exchange for a price and that the consumer's personal data are exclusively used for improving the security, compatibility or interoperability of the software.

- (33) 數位內容或數位服務通常會與商品或其他服務結合，透過包裹不同要素之同一的契約，一併提供給消費者。例如購買數位電視或電子設備之條款等。於此類案例，消費者與企業經營者間訂立之契約，除涵蓋數位內容或數位服務之提供外，亦包括其他契約類型的要素，例如商品或服務的銷售契約。本指令僅適用於整體契約當中與數位內容或數位服務提供有關之部分。其他契約部分則應依國家法律適用於各該契約之規則管理，或適用其他管理特定領域或標的之歐盟法。同樣的，對於包裹契約中一個要素的終止，可能對該包裹契約之其他要素產生的任何影響，皆須受國家法律的管轄。然而，為了確保與歐洲議會與歐盟理事會(EU)2018/1972 指令針對特定領域相關包裹契約規範的一致性，當企業經營者於本指令定義下提供之數位內容或數位服務，係與以號碼基礎的人際通訊服務或網路接取服務結合，則本指令關於修訂數位內容之規定不適用於該結合之數位內容或數位服務要素。相反的，(EU)2018/1972 指令則適用於整體包裹契約之要素，包括該數位內容或數位服務。

- (34) 本指令涉及包裹契約之條款，僅適用於所包裹的不同要素係

(33) Digital content or digital services are often combined with the provision of goods or other services and offered to the consumer within the same contract comprising a bundle of different elements, such as the provision of digital television and the purchase of electronic equipment. In such cases, the contract between the consumer and the trader includes elements of a contract for the supply of digital content or a digital service, but also elements of other contract types, such as sale of goods or services contracts. This Directive should only apply to the elements of the overall contract that consist of the supply of digital content or digital services. The other elements of the contract should be governed by the rules applicable to those contracts under national law or, as applicable, other Union law governing a specific sector or subject matter. Likewise, any effects that the termination of one element of the bundle contract could have on the other elements of that bundle contract should be governed by national law. However, in order to ensure consistency with the sector-specific provisions of Directive (EU) 2018/1972 of the European Parliament and of the Council regulating bundle contracts, where a trader offers, within the meaning of that Directive, digital content or a digital service in combination with a number-based interpersonal communications service or an internet access service, the provisions of this Directive on the modification of digital content should not apply to the digital content or digital service element of the bundle. The relevant provisions of Directive (EU) 2018/1972 should instead apply to all elements of the bundle, including the digital content or digital service.

(34) The provisions of this Directive concerning bundle contracts

由同一企業經營者以單一契約提供給同一消費者的情形。本指令不應影響國家法律對於該提供數位內容或數位服務的契約，與消費者向同一或其他企業經營者簽訂之契約鏈結，或為其他契約之附隨契約時，個別契約可以採取的救濟程序，或其中一個契約終止對於其他契約產生之影響所規範之相關條件。

(35) 將數位內容或數位服務之提供與商品或其他服務包裹銷售的商業行為，為歐洲議會與歐盟理事會 2005/29/EC 指令規範之範圍。該指令主要關注歐盟內部市場事業對消費者 (business-to-consumer) 之不公平商業行為。於 2005/29/EC 指令下，此一包裹行為本身並不當然被禁止。而是透過指令所建構的標準進行逐案評估後，於認定為不公平之情況下為禁止。歐盟競爭法於該行為影響競爭過程或傷害消費者時，亦允許將其認定為搭售或捆綁行為。

(36) 本指令不應影響其他管理特定領域或標的之歐盟法，例如電信、電子商務及消費者保護。本指令並不影響歐盟與國家法對於著作權及相關權利之規定，包括線上內容服務的可攜性。

should only apply to cases where the different elements of the bundle are offered by the same trader to the same consumer under a single contract. This Directive should not affect national laws governing the conditions under which a contract for the supply of digital content or digital services can be considered to be linked with or ancillary to another contract that the consumer has concluded with the same or another trader, the remedies to be exercised under each contract or the effect that the termination of one contract would have on the other contract.

- (35) The commercial practice of bundling offers of digital content or digital services with the provision of goods or other services is subject to Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market. Such bundling is not in itself prohibited under Directive 2005/29/EC. However, it is prohibited where it is deemed unfair, following a case-by-case assessment pursuant to the criteria laid down in that Directive. Union law on competition also allows addressing tying and bundling practices, when they affect the competitive process and harm consumers.
- (36) This Directive should be without prejudice to other Union law governing a specific sector or subject matter, such as telecommunications, ecommerce and consumer protection. It should also be without prejudice to Union and national law on copyright and related rights, including the portability of online content services.

(37) 奉行本指令規範範圍之相關活動，可能涉及個人資料的處理。歐盟法對於個人資料的保護提供了一個全面的架構。特別是本指令並不影響歐洲議會與歐盟理事會(EU)2016/679 規則，以及 2002/58/EC 指令。此一架構適用於所有本指令涵蓋範圍之契約相關的任何個人資料處理。因此，個人資料僅能依據(EU)2016/679 規則與 2002/58/EC 指令之規定蒐集或處理。若本指令與歐盟法對於個人資料之保護有衝突，則適用後者。

(38) 本指令不應規範合法處理個人資料的條件，因為此一問題已由(EU)2016/679 規則特別規範之。因此，本指令規範下之契約相關的個人資料處理，僅在其行為符合(EU)2016/679 規則作為個人資料處理之法律依據時方為合法。當個人資料的處理是依據(EU)2016/679 規則第 6 條第(1)項(a)點之同意為基礎時，必須適用該規則訂定之特定條款，包括評估該同意之給予是否是基於自由意志之規定。本指令不應規範同意的有效性。(EU)2016/679 規則已涵蓋對於資料刪除與資料可攜之完整權利。本指令不應影響適用於消費者提供任何個人資料給企業經營者，或企業經營者連結任何本指令規範範圍內之契約而取得個人資料，或當消費者依據本指令之規定終止契約時之相關權利。

- (37) The pursuit of activities falling within the scope of this Directive could involve the processing of personal data. Union law provides a comprehensive framework on the protection of personal data. In particular, this Directive is without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council. That framework applies to any personal data processed in connection with the contracts covered by this Directive. Consequently, personal data should only be collected or otherwise processed in accordance with Regulation (EU) 2016/679 and Directive 2002/58/EC. In the event of a conflict between this Directive and Union law on the protection of personal data, the latter should prevail.
- (38) This Directive should not regulate the conditions for the lawful processing of personal data, as this question is regulated, in particular, by Regulation (EU) 2016/679. As a consequence, any processing of personal data in connection with a contract falling within the scope of this Directive is lawful only if it is in conformity with the provisions of Regulation (EU) 2016/679 relating to the legal grounds for the processing of personal data. Where processing of personal data is based on consent, in particular pursuant to point (a) of Article 6(1) of Regulation (EU) 2016/679, the specific provisions of that Regulation including those concerning the conditions for assessing whether consent is freely given apply. This Directive should not regulate the validity of the consent given. Regulation (EU) 2016/679 also contains comprehensive rights as to the erasure of data and data portability. This Directive should be without prejudice to those rights, which apply to any personal data provided by the

- (39) 個人資料之刪除權，與消費者撤回個人資料處理之同意的權利，於本指令所涵蓋之契約須完整的適用。消費者依據本指令擁有之終止契約權利，不應影響消費者於(EU)2016/679 規則下，得撤回其對個人資料處理之同意的權利。
- (40) 本指令不應規範當消費者撤回其對於消費者個人資料處理的同意時，本指令所涉契約產生的後果。此一後果仍應由國家法律處理之。
- (41) 企業經營者提供數位內容或數位服務予消費者之方式眾多。透過讓消費者可以取得或接取數位內容或數位服務，得以適當的對於企業經營者履行主要契約義務之模式與時間建立簡單而清晰的規則。當數位內容或數位服務，或任何得以接取或下載該數位內容或數位服務的方法已達到消費者之範圍，且企業經營者對於使消費者能夠依據契約使用數位內容或數位服務，已無進一步要求的動作時，可以認定該數位內容或數位服務已可由消費者取得或可接取。鑒於企業經營者原則上不對經營實體或虛擬設施之第三方的作為或不作為負責，例如消費者選定作為接收或儲存數位內容或數位服務之電子

consumer to the trader or collected by the trader in connection with any contract falling within the scope of this Directive, and when the consumer terminated the contract in accordance with this Directive.

- (39) The right to erasure and the consumer's right to withdraw consent for the processing of personal data should apply fully also in connection with the contracts covered by this Directive. The right of the consumer to terminate the contract in accordance with this Directive should be without prejudice to the consumer's right under Regulation (EU) 2016/679 to withdraw any consent given to the processing of the consumer's personal data.
- (40) This Directive should not regulate the consequences for the contracts covered by this Directive in the event that the consumer withdraws the consent for the processing of the consumer's personal data. Such consequences should remain a matter for national law.
- (41) There are various ways for the trader to supply digital content or digital services to consumers. It is opportune to set simple and clear rules as to the modalities and the time for performing that obligation to supply which is the main contractual obligation of the trader, by making the digital content or a digital service available or accessible to the consumer. The digital content or digital service should be considered to be made available or accessible to the consumer when the digital content or digital service, or any means suitable for accessing or downloading it, has reached the sphere of the consumer and no further action is

平台或雲端儲存設施。企業經營者於此僅需將數位內容或數位服務提供給該第三方單位即可。然而，若該實體或虛擬設施是由企業經營者所控制，或按契約要求連結到企業經營者，或雖然係由消費者選擇該實體或虛擬設施以接收數位內容或數位服務，但該選擇為企業經營者所提供之唯一得以接收或接取該數位內容或數位服務之方式時，不應被認定為是消費者選擇的設施。

當實體或虛擬設施不被認定為由消費者所選擇時，若面臨到所涉數位內容或數位服務已傳輸到該實體或虛擬設施，而按本指令之規定，消費者無法接收或接取該數位內容或數位服務時，企業經營者提供數位內容或數位服務之責任，不能被認定為已履行。於此類案件，消費者應具備如同企業經營者未為提供數位內容或數位服務時，相同之救濟。於提供時間的層面，為與市場實務與技術可能性一致，並提供某程度的彈性，除非當事人為了符合其他提供模式而另有約定，否則數位內容或數位服務之提供不能不當拖延。

required by the trader in order to enable the consumer to use the digital content or digital service in accordance with the contract. Considering that the trader is not in principle responsible for acts or omissions of a third party which operates a physical or virtual facility, for instance an electronic platform or a cloud storage facility, that the consumer selects for receiving or storing the digital content or digital service, it should be sufficient for the trader to supply the digital content or digital service to that third party. However, the physical or virtual facility cannot be considered to be chosen by the consumer if it is under the trader's control or is contractually linked to the trader, or where the consumer selected that physical or virtual facility for receipt of the digital content or digital service but that choice was the only one offered by the trader to receive or access the digital content or digital service.

Where the physical or virtual facility cannot be considered to have been chosen by the consumer, the obligation of the trader to supply the digital content or digital service should not be considered to have been fulfilled if the digital content or digital service is supplied to the physical or virtual facility but the consumer cannot receive or access the digital content or digital service in accordance with this Directive. In those cases, the consumer should have the same remedies as would apply if the trader had failed to supply the digital content or digital service. With regard to the time of supply, in line with market practices and technical possibilities, and in order to provide for a certain degree of flexibility, the digital content or digital service should be supplied without undue delay, unless the parties decide to

(42) 數位內容或數位服務必須符合企業經營者與消費者於契約之約定。尤其，其應符合契約約定之描述、數量(如：可接取的音樂檔案數量)、品質(如：照片解析度)、語言與版本。其亦須具備契約所要求的安全性、功能性、相容性、相互操作性與其他特性。契約之要求必須包括契約成立前依據 2011/83/EU 指令屬於契約組成之部分的締約前資訊。此類要求亦可於服務級別協議(service level agreement)中提出，就依據可適用之國家法律，該類型的協議屬於消費者與企業經營者契約關係之部分時。

(43) 功能性的概念，應理解為該數位內容或數位服務得以被使用的方式。舉例來說，欠缺或存在任何技術上的限制，例如透過數位權利管理機制或區域編碼，可能影響數位內容或數位服務按其目的執行所有功能。相互操作性之概念，則是涉及數位內容或數位服務是否得以透過不同於相同類型之數位內容或數位服務通常使用之硬體或軟體運作，及其可運作之程度。成功之功能運作可以包括例如數位內容或數位服務與其他軟體或硬體交換資訊，並利用該交換而來之資訊的能力。

agree otherwise in order to cater for other supply models.

- (42) The digital content or digital service should comply with the requirements agreed between the trader and the consumer in the contract. In particular, it should comply with the description, quantity, for example the number of music files that can be accessed, quality, for example the picture resolution, language and version agreed in the contract. It should also possess the security, functionality, compatibility, interoperability and other features, as required by the contract. The requirements of the contract should include those resulting from the precontractual information which, in accordance with Directive 2011/83/EU, forms an integral part of the contract. Those requirements could also be set out in a service level agreement, where, under the applicable national law, such type of agreement forms part of the contractual relationship between the consumer and the trader.
- (43) The notion of functionality should be understood to refer to the ways in which digital content or a digital service can be used. For instance, the absence or presence of any technical restrictions such as protection via Digital Rights Management or region coding could have an impact on the ability of the digital content or digital service to perform all its functions having regard to its purpose. The notion of interoperability relates to whether and to what extent digital content or a digital service is able to function with hardware or software that is different from those with which digital content or digital services of the same type are normally used. Successful functioning could include, for instance, the ability of the digital content or digital service to exchange

- (44) 鑒於數位內容與數位服務持續發展的特性，企業經營者得與消費者協議於更新或功能可取得時提供給消費者。因此，數位內容或數位服務之符合性，亦可按是否數位內容或數位服務有依據契約之規定更新來評估。若企業經營者未能按照契約之協議提供更新，應被認定為欠缺數位內容或數位服務之符合性。更有甚者，有瑕疵或不完整之更新，亦應被認定為欠缺數位內容或數位服務之符合性，因為如此意味著這樣的更新並未依照契約之規定為之。
- (45) 為了保持符合性並確保消費者的權利不被剝奪，舉例而言，若契約設定非常低的標準，此時，數位內容或數位服務的符合性不能僅符合主觀的要求，尚需另外符合本指令對於符合性所為之客觀要求。除此之外，符合性之評估必須考量同類型之數位內容或數位服務通常被利用之目的。其亦需具備消費者通常對於同類型之數位內容或數位服務，按該數位內容或數位服務之性質，一般而言可合理期待的品質與功能特性。並須將企業經營者或與本次交易鏈之先前鏈結中有關之其他人，或前兩者之代理人，對於該數位內容或數位服務之特定特徵所為之公開聲明考量在內。

information with such other software or hardware and to use the information exchanged.

- (44) Given that digital content and digital services are constantly developing, traders may agree with consumers to provide updates and features as they become available. The conformity of the digital content or digital service should, therefore, also be assessed in relation to whether the digital content or service is updated in the manner that has been stipulated in the contract. Failure to supply updates that had been agreed to in the contract should be considered a lack of conformity of the digital content or digital service. Moreover, defective or incomplete updates should also be considered a lack of conformity of the digital content or digital service, given that that would mean that such updates are not performed in the manner stipulated in the contract.
- (45) In order to be in conformity and to ensure that consumers are not deprived of their rights, for example in cases where the contract sets very low standards, the digital content or digital service should not only comply with the subjective requirements for conformity, but should in addition comply with the objective requirements for conformity set out in this Directive. Conformity should be assessed, *inter alia*, by considering the purpose for which digital content or digital services of the same type would normally be used. It should also possess the qualities and performance features which are normal for digital content or digital services of the same type and which consumers can reasonably expect, given the nature of the digital content or digital service, and taking into account any public statements on the

- (46) 本指令當中所指涉任何人可以合理期待之合理性標準，必須將該數位內容或數為服務的性質與目的，以及所涉個案實際情況與當事人之用法與實踐等，客觀的納入評估。尤其是，何謂具備符合性之數位內容或數位服務提供的合理時間，必須客觀考量欠缺符合性的特質。
- (47) 於消費者可以合理期待之一段期間內，企業經營者應提供消費者相關更新(包括安全性更新)以維持數位內容或數位服務之符合性與安全性。例如，若所涉數位內容或數位服務之目的有時間上之限制，則提供更新之責任應限縮於該時限之內。至於其他類型的數位內容或數位服務，提供消費者更新之時間可與欠缺符合性之責任期限一致，或可延伸超出該期限，尤其涉及到安全更新的個案。消費者仍可自由選擇是否安裝所提供的更新。然而，於消費者決定不安裝更新時，該消費者不應期待該數位內容或數位服務仍可維持符合性。企業經營者應告知消費者，若其決定不安裝維持該數位內容或數位服務之符合性所必要的更新(含安全更新)，將影響企業經營者維持該數位內容或數位服務相關特性之符合性的責任，前提是該相關更新原應用於符合性之維持。本指令不影響歐盟法或國家法律關於安全更新提供責任之規定。

specific characteristics of the digital content or digital service made by or on behalf of the trader or other persons in previous links of the chain of transactions.

- (46) The standard of reasonableness with regard to any reference in this Directive to what can be reasonably expected by a person should be objectively ascertained, having regard to the nature and purpose of the digital content or digital service, the circumstances of the case and to the usages and practices of the parties involved. In particular, what is considered to be a reasonable time for bringing the digital content or digital service into conformity should be objectively ascertained, having regard to the nature of the lack of conformity.
- (47) For the period of time that the consumer would reasonably expect, the trader should provide the consumer with updates, including security updates, in order to keep the digital content or digital service in conformity and secure. For instance, as regards digital content or digital services, the purpose of which is limited in time, the obligation to provide updates should be limited to that time, while for other types of digital content or digital service the period during which updates should be provided to the consumer could be equal to the liability period for lack of conformity or could extend beyond that period, which might be the case particularly with regard to security updates. The consumer should remain free to choose whether to install the updates provided. Where the consumer decides not to install the updates, the consumer should, however, not expect the digital content or digital service to remain in conformity. The trader should inform the consumer that the

- (48) (EU)2016/679 規則或任何其他關於資料保護的歐盟法，必須全面適用於本指令範圍內之任何契約有關的個人資料處理。此外，本指令不應影響(EU) 2016/679 規則所規定的權利、責任以及非契約之救濟。對(EU) 2016/679 規則規範欠缺遵守的事實，包括該規則之核心條款，如資料最小化的要求、資料保護設計與資料保護預設等規則，按個案的情況，可能亦被認定為欠缺本指令對於數位內容或數位服務之主觀或客觀要求的符合性。其中一個例子如企業經營者明確承擔之契約上責任(或該契約可以如此解釋)，也連結到了企業經營者於(EU) 2016/679 規則下之責任。於此個案，該契約承諾即可成為符合性之主觀要求的一部分。第二個例子可能在於，未遵守(EU) 2016/679 規則所規範之責任，亦可能同時導致數位內容或數位服務無法符合其預期之目的，也因此構成不符合數位內容或數位服務須具備同類型數位內容或數位服務通常被使用的目的之客觀符合性要求。

consumer's decision not to install updates which are necessary for keeping the digital content or digital service in conformity, including security updates, will affect the trader's liability for conformity of those features of the digital content or digital service which the relevant updates are supposed to maintain in conformity. This Directive should not affect obligations to provide security updates laid down in Union law or in national law.

- (48) Regulation (EU) 2016/679 or any other Union law on data protection should fully apply to the processing of personal data in connection with any contract falling within the scope of this Directive. In addition, this Directive should be without prejudice to the rights, obligations and non-contractual remedies provided for by Regulation (EU) 2016/679. Facts leading to a lack of compliance with requirements provided for by Regulation (EU) 2016/679, including core principles such as the requirements for data minimisation, data protection by design and data protection by default, may, depending on the circumstances of the case, also be considered to constitute a lack of conformity of the digital content or digital service with subjective or objective requirements for conformity provided for in this Directive. One example could be where a trader explicitly assumes an obligation in the contract, or the contract can be interpreted in that way, which is also linked to the trader's obligations under Regulation (EU) 2016/679. In that case, such a contractual commitment can become part of the subjective requirements for conformity. A second example could be where non-compliance with the obligations under Regulation (EU) 2016/679 could, at the same time render the digital content or digital service unfit for its

於某些情況下，例如，若資料加密軟體之企業經營者未執行(EU) 2016/679 規則規範之適當措施，以確保按其設計，個人資料不會向未經授權的接收者洩漏，從而導致該加密軟體無法符合其預期協助消費者將資料安全傳輸至預期接收者之目的。最終，也可有些情況企業經營者未執行其於(EU) 2016/679 規則下之責任，可能導致該數位內容或數位服務，欠缺消費者得合理期待其應具備同類型數位內容或數位服務通常應存在的功能之客觀符合性要求。例如，若提供線上購物應用程式之企業經營者，未採取符合(EU) 2016/679 規則規定之措施以保障消費者個人資料處理的安全性，導致消費者之信用卡資訊遭暴露於惡意軟體或間諜軟體，此一缺失，可能構成該數位內容或數位服務欠缺本指令所要求之符合性，因為消費者可能合理期待此類應用程式通常會具備防止付款細節被揭露之功能。當違反(EU) 2016/679 規則之事實同時構成本指令規範下對於數位內容或數位服務之主觀或客觀符合性要求之欠缺，消費者有權依據本指令關於欠缺符合性之規定提出救濟，除非該契約已喪失效力或處於按國家法律可得撤銷之情形。

intended purpose and, therefore, constitute a lack of conformity with the objective requirement for conformity which requires the digital content or digital service to be fit for the purposes for which digital content or digital services of the same type would be normally used.

This would be the case, for example, if the trader of data encryption software fails to implement appropriate measures as required by Regulation (EU) 2016/679 to ensure that by design personal data are not disclosed to unauthorised recipients, thus rendering the encryption software unfit for its intended purpose which is the secure transferring of data by the consumer to their intended recipient. Finally, there could be cases where the trader's non-compliance with its obligations under Regulation (EU) 2016/679 can also constitute a lack of conformity of the digital content or digital service with the objective requirement for conformity which requires the digital content or digital service to possess the features which are normal for digital content or digital services of the same type and which the consumer can reasonably expect. For instance, if the trader of an online shopping application fails to take the measures provided for in Regulation (EU) 2016/679 for the security of processing of the consumer's personal data and as a result the consumer's credit card information is exposed to malware or spyware, that failure could also constitute a lack of conformity of the digital content or digital service within the meaning of this Directive, as the consumer would reasonably expect that an application of this type would normally possess features preventing the disclosure of payment details. Where the facts leading to non-compliance with

- (49) 為確保足夠之彈性，可能給予當事人有機會偏離符合性之客觀要求。此一符合性之偏離，僅可能發生於消費者已被明確告知，且於其他聲明或協議之外，以積極且明確之作為接受時，該偏離方為可能。例如運用勾選框格、點選按鈕或其他類似之功能，皆可滿足上述兩個條件。
- (50) 當適用本指令時，企業經營者必須採用標準、開放的技術規範、優良實務作法以及行為準則，包括用以檢索個人資料以外，消費者於使用該數位內容或數位服務所提供或創作之內容相關之通常使用與機器可讀的格式；並包括關於資訊系統與數位環境之安全，無論是於國際層級、歐盟層級或特定產業類型之層級所建置。於此種情況下，執行委員會得呼籲發展國際與歐盟標準，並要求產業協會或其他代表性組織建立行為準則，以支持本指令實施之一致性。

requirements under Regulation (EU) 2016/679 also constitute a lack of conformity of the digital content or digital service with subjective or objective requirements for conformity as provided for in this Directive, the consumer should be entitled to the remedies for the lack of conformity provided for by this Directive, unless the contract is already void or voidable under national law.

- (49) In order to ensure sufficient flexibility, it should be possible for the parties to deviate from the objective requirements for conformity. Such a deviation should only be possible if the consumer was specifically informed about it and if the consumer accepts it separately from other statements or agreements and by way of active and unequivocal conduct. Both conditions could, for instance, be fulfilled by ticking a box, pressing a button or activating a similar function.
- (50) When applying the rules of this Directive, traders should make use of standards, open technical specifications, good practices and codes of conduct, including in relation to the commonly used and machine-readable format for retrieving the content other than personal data, which was provided or created by the consumer when using the digital content or digital service, and including on the security of information systems and digital environments, whether established at international level, Union level or at the level of a specific industry sector. In this context, the Commission could call for the development of international and Union standards and the drawing up of a code of conduct by trade associations and other representative organisations that could support the uniform implementation of this Directive.

- (51) 許多類型的數位內容或數位服務係於一定期間內持續的提供，例如雲端服務的接取。因此有必要確保該數位內容或數位服務於契約持續期間內皆具備符合性。當數位內容或數位服務之短暫中斷是不容被忽視，且有反覆發生之情形時，該短暫中斷可能被認定為是欠缺符合性的事例。更有甚者，鑒於數位內容與數位服務頻繁的改善，尤其透過更新的方式，提供給消費者之數位內容或數位服務的版本，除非雙方另有約定，應為契約訂定當時可得之最新版本。
- (52) 為了要正常運作，數位內容或數位服務必須正確的整合至消費者的硬體與軟體環境。基於錯誤的整合導致數位內容或數位服務欠缺符合性，若整合是由企業經營者或於其控制下所進行，或是由消費者按照企業經營者之指示整合，而該錯誤的整合是因為整合說明之缺漏，例如該說明不完整或不夠清晰，導致一般消費者難以使用時，應被認為是該數位內容或數位服務本身欠缺符合性。
- (53) 依據本指令對於消費者使用數位內容或數位服務之限制，可能肇因於智慧財產權人根據智慧財產權法所施加的限制。這些限制可以來自於提供該數位內容或數位服務給消費者之終端使用者授權協議。例如個案當中終端使用者授權協議，禁

- (51) Many types of digital content or digital services are supplied continuously over a period of time, such as access to cloud services. It is therefore necessary to ensure that the digital content or digital service is in conformity throughout the duration of the contract. Short-term interruptions of the supply of digital content or a digital service should be treated as instances of lack of conformity where those interruptions are more than negligible or recur. Moreover, given the frequent improvement of digital content and digital services, in particular by updates, the version of digital content or of a digital service supplied to the consumer should be the most recent one available at the time of the conclusion of the contract, unless the parties have agreed otherwise.
- (52) In order to work properly, the digital content or digital service needs to be correctly integrated into the consumer's hardware and software environment. A lack of conformity of the digital content or digital service that results from an incorrect integration should be regarded as a lack of conformity of the digital content or digital service itself, where it was integrated by the trader or under its control, or by the consumer following the trader's instructions for integration, and the incorrect integration was due to shortcomings in the required integration instructions, such as incompleteness or a lack of clarity making the integration instructions difficult to use for the average consumer.
- (53) Restrictions of the consumer's use of the digital content or digital service in accordance with this Directive could result from limitations imposed by the holder of intellectual property rights in accordance with intellectual property law. Such restrictions can

止消費者使用與該數位內容或數位服務功能性相關之特定功能時，可能會出現此類情況。若該功能為消費者就同類型數位內容或數位服務可合理期待通常應具備之功能時，此一限制可能導致數位內容或數位服務的提供違反本指令關於客觀符合性要求之規定。於此類個案，消費者應能對數位內容或數位服務之企業經營者，主張本指令關於欠缺符合性的救濟措施。企業經營者僅能透過滿足本指令對於客觀符合性要求所規定的減免條件，以免除其責任。也就是說，只有在企業經營者於契約訂定前明確告知消費者該數位內容或數位服務之特定特性，偏離了客觀符合性要求，而消費者已明示且單獨接受此一偏離。

- (54) 對於受到智慧財產權保護的數位內容或數位服務而言，法律上的瑕疵是非常重要的議題。依據本指令之規定，對於消費者使用數位內容或數位服務之限制，可能是侵害第三方權利的結果。此一侵害可能有效的限制消費者享受該數位內容或數位服務或其部分功能，例如，當消費者根本不能接取或無法合法接取數位內容或數位服務時。其發生可能是基於以下事實：第三方有權強制企業經營者停止侵害那些權利，並終止提供系爭數位內容或數位服務；或消費者無法於不違反法

arise from the end-user license agreement under which the digital content or digital service is supplied to the consumer. This can be the case when, for instance, an end-user licence agreement prohibits the consumer from making use of certain features related to the functionality of the digital content or digital service. Such a restriction could render the digital content or digital service in breach of the objective requirements for conformity laid down in this Directive, if it concerned features which are usually found in digital content or digital services of the same type and which the consumer can reasonably expect. In such cases, the consumer should be able to claim the remedies provided for in this Directive for the lack of conformity against the trader who supplied the digital content or digital service. The trader should only be able to avoid such liability by fulfilling the conditions for derogating from the objective requirements for conformity as laid down in this Directive, namely only if the trader specifically informs the consumer before the conclusion of the contract that a particular characteristic of the digital content or digital service deviates from the objective requirements for conformity and the consumer has expressly and separately accepted that deviation.

- (54) Legal defects are a particularly important issue in relation to digital content or digital services, which are subject to intellectual property rights. Restrictions on the consumer's use of digital content or a digital service in accordance with this Directive could be a result of a violation of third-party rights. Such violation might effectively bar the consumer from enjoying the digital content or digital service or some of its features, for instance when the consumer cannot access the digital content or digital service at

律的情況下使用該數位內容或數位服務。涉及違反第三方權利，而導致消費者按主觀或客觀符合性要求使用該數位內容或數位服務被禁止或限制時，消費者有權主張欠缺符合性之救濟，除非國家法律認定該契約無效或得撤銷，例如違反驅逐的法律保證等。

(55) 企業經營者必須對於消費者面臨數位內容或數位服務之欠缺符合性，以及任何未能提供數位內容或數位服務之情況負責。由於對消費者提供數位內容或數位服務可以經由一項或多項個別提供行為或於一段時間內連續的提供，故根據不同之提供型態，以建立數位內容或數位服務提供之符合性而對於相關時間加以確定，有其適當性。

(56) 數位內容或數位服務可以透過一次性的行為提供給消費者，例如消費者下載一本電子書並儲存於他們的個人設備。同樣的，該提供也可能包括一系列上述的個別行為，例如當消費者每週取得一個下載一本新書的連結。此類數位內容或數位服務的特殊之處，在於消費者於其後能夠無限期的接取與使用該數位內容或數位服務。於此類案例，數位內容或數位服務的符合性必須於提供的時點評估，因此企業經營者只有在

all or cannot do so lawfully. That might be due to the fact that the third party rightfully compels the trader to stop infringing those rights and to discontinue offering the digital content or digital service in question or that the consumer cannot use the digital content or digital service without infringing the law. In the event of a violation of third-party rights that results in a restriction that prevents or limits the use of the digital content or digital service in accordance with the subjective and objective requirements for conformity, the consumer should be entitled to the remedies for the lack of conformity, unless national law provides for the nullity of the contract, or for its rescission, for example for breach of legal warranty against eviction.

- (55) The trader should be liable to the consumer in the event of a lack of conformity of the digital content or digital service, and for any failure to supply the digital content or digital service. As digital content or digital services can be supplied to consumers through one or more individual acts of supply or continuously over a period of time, it is appropriate that the relevant time for the purpose of establishing conformity of the digital content or digital service be determined in the light of those different types of supply.
- (56) Digital content or digital services can be supplied to consumers through a single act of supply, for instance when consumers download an e-book and store it on their personal device. Similarly, the supply can consist of a series of such individual acts, for instance where consumers receive a link to download a new e-book every week. The distinctive element of this category of digital content or digital service is the fact that consumers

該單次提供行為，或每一個個別提供行為施行的時點，必須負擔任何欠缺符合性的責任。為了確保法的安定性，企業經營者與消費者必須能夠仰賴一個協調一致的最短期限，企業經營者於此期限內必須對於欠缺符合性負責。對於以單次提供行為，或一系列之個別提供行為，提供數位內容或數位服務的相關契約，若按其行為所適用之個別國家法律，企業經營者僅需針對於一段時間內顯現之符合性欠缺負責，則會員國必須確保企業經營者應承擔責任之期限不得低於提供之後起算兩年。

- (57) 數位內容或數位服務亦可能以一段時間內以連續的方式提供給消費者。持續性的提供可以包括企業經營者讓數位服務對消費者於確定或不確定的一段時間內有效，例如 2 年期限的雲端儲存契約或不確定期間的社群網站平台會員資格。此類型態的特殊之處，在於數位內容或數位服務僅於該確定期間或不確定契約執行之期間內，可由消費者取得或接取。故可以認為於此類個案，企業經營者僅需要對於該期間內所發生的欠缺符合性負責。持續性的提供並不以長期提供為要求。部分個案，例如影音片段的網路串流無論其視聽檔案實際的長度為何，皆可以被認定為於一段期間內的持續提供。部分個案係於定期或於契約約定固定期限內，或為不定期契約執行期間，提供數位內容或數位服務之特定元件，亦可被認定為屬於一段時間的持續性提供。例如，契約約定一個防毒軟

thereafter have the possibility to access and use the digital content or digital service indefinitely. In such cases, the conformity of the digital content or digital service should be assessed at the time of supply, and therefore the trader should only be liable for any lack of conformity which exists at the time when the single act of supply or each individual act of supply takes place. In order to ensure legal certainty, traders and consumers should be able to rely on a harmonised minimum period during which the trader should be held liable for a lack of conformity. In relation to contracts which provide for a single act of supply or a series of individual acts of supply of the digital content or digital service, Member States should ensure that traders are liable for not less than two years from the time of supply, if under their respective national law the trader is only liable for any lack of conformity that becomes apparent within a period of time after supply.

- (57) Digital content or digital services could also be supplied to consumers in a continuous manner over a period of time. Continuous supply can include cases whereby the trader makes a digital service available to consumers for a fixed or an indefinite period of time, such as a two-year cloud storage contract or an indefinite social media platform membership. The distinctive element of this category is the fact that the digital content or digital service is available or accessible to consumers only for the fixed duration of the contract or for as long as the indefinite contract is in force. Therefore, it is justified that the trader, in such cases, should only be liable for a lack of conformity which appears during that period of time. The element of continuous supply should not necessarily require a long-term supply. Cases

體可使用一年，此期間內並將於每個月第一天自動更新，或企業經營者會於數位遊戲新功能出現時發行更新等，且該數位內容或數位服務僅可於該契約約定期間或於不確定契約執行之期間內，由消費者取得或接取。

(58) 會員國應保有規範於其國內之期限限制的自由。然而，此類期限限制不應阻礙消費者於企業經營者應負擔欠缺符合性責任之完整期間內行使其權利。因此，雖然本指令不應協調各國期限限制的起算點，但是應確保該期限仍然足以讓消費者，於發生任何欠缺符合性情形時，至少於企業經營者擔負欠缺符合性責任之期間，得以行使關於欠缺符合性的救濟。

(59) 基於數位內容或數位服務特定的特性與高度的複雜性，以及企業經營者擁有更佳的知識與管道得以取得技能知識、技術資訊以及高科技的協助。企業經營者可能較消費者而言居於更佳的地位，得以了解數位內容或數位服務何以無法提供或

such as web-streaming of a video clip should be considered continuous supply over a period of time, regardless of the actual duration of the audio-visual file. Cases where specific elements of the digital content or digital service are made available periodically or on several instances during the fixed duration of the contract, or for as long as the indefinite contract is in force, should also be considered a continuous supply over a period of time, for instance where the contract stipulates that a copy of anti-virus software can be used for a year and will be automatically updated on the first day of each month of this period, or that the trader will issue updates whenever new features of a digital game become available, and the digital content or digital service is available or accessible to consumers only for the fixed duration of the contract or for as long as the indefinite contract is in force.

- (58) Member States should remain free to regulate national limitation periods. However, such limitation periods should not prevent consumers from exercising their rights throughout the period of time during which the trader is liable for a lack of conformity. While this Directive should therefore not harmonise the starting point of national limitation periods, it should nevertheless ensure that such periods still allow consumers to exercise their remedies for any lack of conformity that becomes apparent at least during the period during which the trader is liable for a lack of conformity.
- (59) Due to the specific nature and high complexity of digital content and digital services, as well as the trader's better knowledge and access to know-how, technical information and high-tech assistance, the trader is likely to be in a better position than the

無法具備符合性。企業經營者亦可能處於更佳的地位得以評估，是否未能提供或欠缺符合性，係基於消費者擁有之數位環境與該數位內容或數位服務的技術要求不相容。因此，於爭議發生時，消費者提供數位內容或數位服務欠缺符合性之證明，不需要證明該符合性之欠缺於數位內容或數位服務提供當時即已存在，或於持續性提供之型態，該欠缺存在於契約存續的期間。

相反的，應由企業經營者證明該數位內容或數位服務於提供當時或於該持續期間內皆具備符合性。於契約約定以單次行為，或一系列之個別行為提供，以及於契約約定期間內持續性提供之情況，當符合性之欠缺自提供時起算一年內變得顯而易見，欠缺符合性之舉證責任應由企業經營者承擔。然而，若企業經營者可以證明消費者的數位環境與技術的需求不相容，且企業經營者於締約前已採取清晰易懂之方式告知消費者，消費者即有責任證明該數位內容或數位服務的欠缺符合性於該契約係以單次行為提供或一系列之個別行為提供時，於提供當時已存在；或契約係約定持續性提供一段時間之情況時，於該契約持續期間內已存在。

consumer to know why the digital content or digital service is not supplied or is not in conformity. The trader is also likely to be in a better position to assess whether the failure to supply or the lack of conformity is due to the incompatibility of the consumer's digital environment with the technical requirements for the digital content or digital service. Therefore in the event of a dispute, while it is for the consumer to provide evidence that the digital content or digital service is not in conformity, the consumer should not have to prove that the lack of conformity existed at the time of supply of the digital content or digital service or, in the event of continuous supply, during the duration of the contract.

Instead, it should be for the trader to prove that the digital content or digital service was in conformity at that time or during that period. That burden of proof should be on the trader for a lack of conformity which becomes apparent within one year from the time of supply where the contract provides for a single act of supply or a series of individual acts of supply, and for the duration of the contract where the contract provides for continuous supply over a period of time. However, where the trader proves that the consumer's digital environment is not compatible with the technical requirements, of which the trader informed the consumer in a clear and comprehensible manner before the conclusion of the contract, the consumer should have the burden of proving that the lack of conformity of the digital content or digital service existed at the time of supply of the digital content or digital service where the contract provides for a single act of supply or a series of individual acts of supply or, where the contract provides for continuous supply over a period of time, for the duration of the contract.

- (60) 於不影響保護私人生活之基本權利，包括秘密通訊的權利，以及對消費者個人資料的保護等。消費者應與企業經營者合作，以協助企業經營者透過對消費者介入最小之技術方法，確認是否導致欠缺符合性之原因，來自於消費者之數位環境。舉例而言，此處企業經營者通常可以透過自動產生的事件報告，或透過消費者網路連結的細節資訊完成此操作。只有於例外且具備正當理由之情況，儘管採取所有最佳的其他方法，亦沒有任何方法可行時，消費者才需要允許虛擬連結至他們的數位環境。然而，若消費者不與企業經營者合作，且消費者已被告知不合作的結果時，則消費者需要證明的不僅是該數位內容或數位服務欠缺符合性，而是要併同證明該數位內容或數位服務於提供當時即不具備符合性，其情形包括該契約係以單次行為提供或一系列之個別行為提供或當該契約係約定持續性提供一段時間時，於該契約持續期間內。
- (61) 當企業經營者未為提供數位內容或數位服務時，消費者有權要求企業經營者提供該數位內容或數位服務。於此類個案，企業經營者必須於無不當延遲，或於當事人明示同意之額外期間內履行。考量數位內容與數位服務係以數位形式提供，於多數情況下，該提供不需要任何額外的時間以讓數位內容或數位服務可由消費者取得。因此，於此類個案下，所謂企

- (60) Without prejudice to the fundamental right to the protection of private life, including confidentiality of communications, and to the protection of personal data of the consumer, the consumer should cooperate with the trader in order for the trader to ascertain whether the cause of the lack of conformity lies in the consumer's digital environment using the technically available means which are least intrusive for the consumer. This can often be done for instance by providing the trader with automatically generated incident reports or with details of the consumer's internet connection. Only in exceptional and duly justified circumstances where, despite the best use of all other means, there is no other way possible, consumers may need to allow virtual access to their digital environment. However, where the consumer does not cooperate with the trader and the consumer had been informed of the consequences of non-cooperation, it should be for the consumer to prove not only that the digital content or digital service is not in conformity, but also that the digital content or digital service was not in conformity at the time of supply of the digital content or digital service where the contract provides for a single act of supply or a series of individual acts of supply or, where the contract provides for continuous supply over a period of time, for the duration of the contract.
- (61) Where the trader has failed to supply the digital content or digital service, the consumer should call upon the trader to supply the digital content or digital service. In such cases, the trader should act without undue delay, or within an additional period of time as expressly agreed to by the parties. Considering that digital content or a digital service is supplied in digital form, the supply should

業經營者提供數位內容或數位服務之無不當延遲，指的是立即的提供。若企業經營者隨後未為提供數位內容或數位服務時，消費者有權終止契約。而於特定情況下，例如企業經營者很明確的不會提供數位內容或數位服務，或於特定時間提供對於消費者而言是必要的，消費者有權不待首次致電企業經營者要求提供數位內容或數位服務，即可終止契約。

- (62) 於欠缺符合性之情況發生時，消費者有權要求將該數位內容或數位服務調整至具備符合性之情況，或按比例降低價格或終止契約。
- (63) 根據數位內容或數位服務的技術特徵，企業經營者應被允許選擇特定的方式使數位內容或數位服務之提供具備符合性，例如透過更新的發行，或建立新的數位內容或數位服務檔案讓消費者得以取得等。
- (64) 鑒於數位內容或數位服務的多樣性，並不適合對行使或履行與數位內容或數位服務相關之權利或義務，設定固定的期限。因為該期限可能並未將多樣性納入評估，故按不同的個案，可能過短或過長。因此，要求數位內容或數位服務於一定合理時間內保持符合性，應為更適當的作法。此一要求不

not require, in the majority of situations, any additional time to make the digital content or digital service available to the consumer. Therefore, in such cases, the obligation of the trader to supply the digital content or digital service without undue delay should mean having to supply it immediately. If the trader then fails to supply the digital content or digital service, the consumer should be entitled to terminate the contract. In specific circumstances, such as where it is clear that the trader will not supply the digital content or digital service or where a specific time for the supply is essential for the consumer, the consumer should be entitled to terminate the contract without first calling upon the trader to supply the digital content or digital service.

- (62) In the case of lack of conformity, consumers should be entitled to have the digital content or digital service brought into conformity, to have a proportionate reduction in the price, or to terminate the contract.
- (63) Depending on the technical characteristics of the digital content or digital service, the trader should be allowed to select a specific way of bringing the digital content or digital service into conformity, for example by issuing updates or making a new copy of the digital content or digital service available to the consumer.
- (64) Given the diversity of digital content and digital services, it is not appropriate to set fixed deadlines for the exercise of rights or the fulfilling of obligations related to digital content or digital services. Such deadlines would not take account of such diversity and could be either too short or too long, depending on the case. It

應限制當事人就數位內容或數位服務達成一定符合性之時間達成協議。而該數位內容或數位服務應以免費的方式達成符合性的要求。特別是，消費者不應承擔任何與數位內容或數位服務之發展或更新相關的成本。

- (65) 當讓數位內容或數位服務具備符合性，於法律面或事實面已不可能，或當企業經營者拒絕讓所涉數位內容或數位服務具備符合性，因如此一來將對企業經營者產生不成比例的成本，或當企業經營者未於合理的時間，以免費且不對消費者造成太大之不便之方式，讓數位內容或數位服務具備符合性時，消費者有權主張減少價金或終止契約的救濟措施。於下列情況下，消費者有權立即獲得減少價金或終止契約，例如當企業經營者先前未能成功讓數位內容或數位服務之提供具備符合性，或因為欠缺符合性的嚴重程度，無法期待消費者保持相信企業經營者有能力讓該數位內容或數位服務之提供具備符合性。舉例而言，當消費者所獲得的防毒軟體，本身即已受到病毒感染，即為構成嚴重欠缺符合性之實例，消費者有權直接主張減少價金或終止服務。同樣的情形亦適用於企業經營者明顯未於合理時間內，或未對消費者造成太大不便的情況下促使數位內容或數位服務具備符合性時。

is therefore more appropriate to require that digital content and digital services be brought into conformity within a reasonable time. Such requirement should not prevent the parties from agreeing on a specific time for bringing the digital content or digital service into conformity. The digital content or digital service should be brought into conformity free of any charge. In particular, the consumer should not incur any costs associated with the development of an update for the digital content or digital service.

- (65) Where bringing digital content or a digital service into conformity is legally or factually impossible or where the trader refuses to bring the digital content or digital service into conformity because to do so would impose disproportionate costs on the trader, or where the trader has failed to bring the digital content or digital service into conformity within a reasonable time, free of charge and without causing significant inconvenience to the consumer, the consumer should be entitled to the remedies of price reduction or termination of the contract. In certain situations, it is justified that the consumer should be entitled to have the price reduced or the contract terminated immediately, for instance where the trader previously failed to successfully bring the digital content or digital service into conformity or where the consumer cannot be expected to maintain confidence in the ability of the trader to bring the digital content or digital service into conformity due to the serious nature of the lack of conformity. For example, the consumer should be entitled to directly request a price reduction or the termination of the contract where the consumer is supplied with anti-virus software which is itself infected with viruses and would

- (66) 於消費者有權主張減少就應於一定期間內提供之數位內容或數位服務所付之價金時，價金減少的計算應將基於欠缺符合性，以及消費者於期間內無法享受具備符合性之數位內容或數位服務，導致數位內容或數位服務的價值減損皆納入考量。
- (67) 於提供數位內容或數位服務以換取價金支付時，消費者僅於欠缺符合性情節非屬輕微的情況下，得以主張終止契約。然而，於數位內容或數位服務之提供並非用以換取價金，而是消費者所提供的個人資料時，既然消費者無法主張減少價金，因此即使在欠缺符合性是輕微的情況下，亦得以主張終止契約。若於消費者同時支付價金並提供個人資料的情況下，消費者則有權主張對於欠缺符合性可取得之所有救濟措施。特別在所有其他條件皆滿足的情況下，消費者有權要求讓數位內容或數位服務具備符合性，或請求減少為取得數位內容或數位服務已支付的價金，或讓契約終止。

constitute an instance of lack of conformity of such a serious nature. The same should apply where it is clear that the trader will not bring the digital content or digital service into conformity within a reasonable time or without significant inconvenience for the consumer.

- (66) In a situation where the consumer is entitled to a reduction of the price paid for the digital content or digital service which is supplied over a period of time, the calculation of the price reduction should take into consideration the decrease of value of the digital content or digital service due both to the lack of conformity and to the time during which the consumer was unable to enjoy the digital content or digital service in conformity.
- (67) Where the digital content or digital service is supplied in exchange for a price, the consumer should be able to terminate the contract only if the lack of conformity is not minor. However, where the digital content or digital service is not supplied in exchange for a price but personal data are provided by the consumer, the consumer should be entitled to terminate the contract also in cases where the lack of conformity is minor, since the remedy of price reduction is not available to the consumer. In cases where the consumer pays a price and provides personal data, the consumer should be entitled to all available remedies in the event of a lack of conformity. In particular, provided all other conditions are met, the consumer should be entitled to have the digital content or digital service brought into conformity, to have the price reduced in relation to the money paid for the digital content or digital service or to have the contract terminated.

(68) 於消費者終止契約之情形，企業經營者必須退回消費者已支付的價金。然而，若數位內容或數位服務係於一定期間內提供，而該數位內容或數位服務之欠缺符合性僅發生於部分期間時，應對於消費者與企業經營者間的合法利益加以平衡。因此，於終止時，消費者僅有權取得所支付之價金中，與該數位內容或數位服務欠缺符合性之發生相對應，並與時間長短比例相當之金額。消費者亦有權就契約終止後剩下的任何期間內，所預付的任何款項主張權利。

(69) 於消費者提供個人資料予企業經營者的情形，企業經營者必須遵循(EU) 2016/679 規則規範的責任。上述責任亦應適用於消費者不但支付價金，亦提供個人資料的情形。契約終止後，企業經營者亦應避免使用個人資料以外，由消費者於使用該數位內容或數位服務時所提供或創作的內容。這些內容可能包括數位圖像、影片、音訊檔以及透過行動載具所創作的內容。然而，企業經營者仍然有權持續使用消費者於以下情況下所提供或創作的內容：該內容於使用企業經營者所提供之數位內容或數位服務外無其他用途；或該內容僅與消費者之活動相關，並已由企業經營者將之與其他資料整合，無法分離或分離需要負擔不成比例的努力；或該內容是該消費者與其他人共同產出，而其他消費者可以繼續利用時。

- (68) Where the consumer terminates the contract, the trader should reimburse the price paid by the consumer. However, there is a need to balance the legitimate interests of consumers and traders where the digital content or digital service is supplied over a period of time and the digital content or digital service was in conformity only for part of that period. Therefore, upon termination, the consumer should only be entitled to the part of the price paid that corresponds and is in proportion to the length of time during which the digital content or digital service was not in conformity. The consumer should also be entitled to any part of the price paid in advance for any period that would have remained after the contract was terminated.
- (69) Where personal data are provided by the consumer to the trader, the trader should comply with the obligations under Regulation (EU) 2016/679. Such obligations should also be complied with in cases where the consumer pays a price and provides personal data. Upon termination of the contract, the trader should also refrain from using any content other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader. Such content could include digital images, video and audio files and content created on mobile devices. However, the trader should be entitled to continue to use the content provided or created by the consumer in cases where such content either has no utility outside the context of the digital content or digital service supplied by the trader, only relates to the consumer's activity, has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts, or has been generated jointly by the

- (70) 若消費者可能被剝奪接取除個人資料以外，其他消費者於使用數位內容或數位服務期間所提供或創作之內容時，將阻礙消費者對於數位內容或數位服務之欠缺符合性採取救濟措施。為了確保消費者透過契約終止之相關權利獲得有效的保障，企業經營者應按消費者的要求，於契約終止後讓消費者得以取得該內容。
- (71) 消費者應有權於不受企業經營者阻礙之合理期間內，以通常使用且機器可讀的形式，免費取回內容，消費者仍例外需負擔來自於其自身數位環境的成本，例如網路連線的費用，因為此類費用並非特別鏈結到該數位內容之檢索。然而，企業經營者將前述內容提供給消費者之責任，不應適用於該內容僅於使用該數位內容或數位服務時有其用途，或僅與消費者利用該數位內容或數位服務時之活動相關，或已由企業經營者將其與其他資料整合且不可分離，或需投入不成比例之努力分離。於此類情況下，該內容對於消費者而言並沒有重大實質的用途或利益，同時也將企業經營者的利益納入考量。更有甚者，於契約終止後，企業經營者有責任讓任何非屬個人資料，而由消費者提供或創作之內容，得由消費者取得，但不得影響企業經營者依照所適用之法律，不公開特定內容的權利。

consumer and others, and other consumers can continue to make use of it.

- (70) The consumer could be discouraged from exercising remedies for a lack of conformity of digital content or a digital service if the consumer is deprived of access to content other than personal data, which the consumer provided or created through the use of the digital content or digital service. In order to ensure that the consumer benefits from effective protection in relation to the right to terminate the contract, the trader should therefore, at the request of the consumer, make such content available to the consumer following the termination of the contract.
- (71) The consumer should be entitled to retrieve the content within a reasonable time, without hindrance from the trader, in a commonly used machine-readable format and free of charge, with the exception of costs generated by the consumer's own digital environment, for instance the costs of a network connection as those costs are not specifically linked to the retrieval of the content. However, the obligation of the trader to make available such content should not apply where the content only has utility within the context of using the digital content or digital service, or relates only to the consumer's activity when using the digital content or digital service or has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts. In such cases, the content does not have significant practical use or interest for the consumer while taking into account also the interests of the trader. Moreover, the obligation of the trader to make available to the consumer, upon

(72) 於契約終止時，消費者不應被要求支付於數位內容或數位服務於任何欠缺符合性之期間，關於使用數位內容或數位服務的費用，因為如此一來會剝奪對於消費者的有效保護。然而，消費者亦須避免使用該數位內容或數位服務，或避免向第三方提供，例如透過刪除數位內容或任何可用的副本，或以其他方式讓該數位內容或數位服務無法接取。

(73) 企業經營者負擔損害賠償責任的條款，為數位內容或數位服務提供契約之基本要素。因此，消費者有權要求賠償因欠缺符合性或未為提供數位內容或數位服務導致之損害。該賠償需盡可能使消費者處於數位內容或數位服務被適當提供並具備符合性的狀態。由於所有會員國皆已具備此類損害賠償權利，故本指令不影響因違反各該國家規則導致消費者之損害，所涉損害賠償之國家規則。

(74) 本指令應就企業經營者就其於一段期間內提供或讓消費者可

termination of the contract, any content that is not personal data and has been provided or created by the consumer should be without prejudice to the trader's right not to disclose certain content in accordance with applicable law.

- (72) Where the contract is terminated, the consumer should not be required to pay for the use of the digital content or digital service for any period during which the digital content or a digital service was not in conformity because that would deprive the consumer of effective protection. However, the consumer should also refrain from using the digital content or digital service and from making it available to third parties, for instance by deleting the digital content or any usable copy or rendering the digital content or digital service otherwise inaccessible.
- (73) The principle of the liability of the trader for damages is an essential element of contracts for the supply of digital content or digital services. Therefore, the consumer should be entitled to claim compensation for detriment caused by a lack of conformity or a failure to supply the digital content or digital service. The compensation should put the consumer as much as possible into the position in which the consumer would have been had the digital content or digital service been duly supplied and been in conformity. As such a right to damages already exists in all Member States, this Directive should be without prejudice to national rules on the compensation of consumers for harm resulting from infringement of those rules.
- (74) This Directive should also address modifications, such as updates

以接取之數位內容或數位服務之修改予以規定，例如更新與升級。考量數位內容與數位服務快速發展的特性，此類更新、升級或類似的修改應為必要，且對於消費者而言通常為有利的。有些修改，例如規定於契約當中的修改，可能構成契約承諾的一部分。為了滿足本指令要求數位內容或數位服務須具備的客觀符合性，其他的修改亦可能被要求。然而，其他修改可能導致偏離客觀符合性要件且於契約簽訂當時可預見時，該修改需於契約簽訂時由消費者明示同意。

- (75) 除了以維持符合性為目標的修改外，企業經營者應被允許於特定情況下修改數位內容或數位服務的功能，前提是契約訂定時賦予此類修改正當的理由。該正當理由可能包括為了讓數位內容或數位服務得以適應新的技術環境，或使用數量增加，或為了其他重要的操作理由。此類修改通常對消費者有利，因為其強化了數位內容或數位服務。因此，契約當事人應能夠於契約當中置放允許企業經營者進行修改的條款。為了平衡消費者與商業利益，給予企業經營者之可能性，於該修改對於消費者使用或接取該數位內容或數位服務產生較輕微更甚的負面影響時，應搭配消費者契約終止權之規定。就該修正是否對於消費者使用或接取數位內容或數位服務產生負面影響，應客觀的考量該數位內容或數位服務之性質與目的，以及相同類型之數位內容或數位服務通常應具備的品質、功能與相容性與其他主要的功能。然而，本指令

and upgrades, which are carried out by traders on the digital content or digital service which is supplied or made accessible to the consumer over a period of time. Considering the fast-evolving character of digital content and digital services, such updates, upgrades or similar modifications may be necessary and are often advantageous for the consumer. Some modifications, for instance those stipulated as updates in the contract, may form part of the contractual commitment. Other modifications can be required to fulfil the objective requirements for conformity of the digital content or digital service as set out in this Directive. Yet other modifications, which would deviate from the objective requirements for conformity and which are foreseeable at the time of conclusion of the contract, would have to be expressly agreed to by the consumer when concluding the contract.

- (75) In addition to modifications aimed at maintaining conformity, the trader should be allowed under certain conditions to modify features of the digital content or digital service, provided that the contract gives a valid reason for such a modification. Such valid reasons could encompass cases where the modification is necessary to adapt the digital content or digital service to a new technical environment or to an increased number of users or for other important operational reasons. Such modifications are often to the advantage of the consumer as they improve the digital content or digital service. Consequently, the parties to the contract should be able to include clauses in the contract which allow the trader to undertake modifications. In order to balance consumer and business interests, such a possibility for the trader should be coupled with a right for the consumer to terminate the contract

對於此類更新、升級或類似之修正不應將當事人就提供數位內容或數位服務締結新契約的情況納入考量，例如，係因為發行新版本之數位內容或數位服務的結果。

- (76) 對於消費者必須以清晰易懂的方式通知修改。於該修改可能導致對消費者接取或使用該數位內容或數位服務產生比輕微更甚的影響時，對於消費者的通知必須採取得以讓該資訊儲存於耐用媒介之方式為之。耐用媒介必須能讓消費者足以儲存該資訊，至消費者因與企業經營者間關係所形成之利益受到保護所必須的時間。此類媒介特別包括紙張、DVD、CD、USB 隨身碟、記憶卡或硬碟，以及電子郵件。

- (77) 於修改對於消費者使用數位內容或數位服務將產生較輕微更甚之負面影響時，消費者因為該修正導致的結果，應有權主

where such modifications negatively impact the use of or access to the digital content or digital service in more than only a minor manner. The extent to which modifications negatively impact the use of or access to the digital content or digital service by the consumer should be objectively ascertained having regard to the nature and purpose of the digital content or digital service and to the quality, functionality, compatibility and other main features which are normal for digital content or digital services of the same type. The rules provided for in this Directive concerning such updates, upgrades or similar modifications should however not concern situations where the parties conclude a new contract for the supply of the digital content or digital service, for instance as a consequence of distributing a new version of the digital content or digital service.

- (76) Consumers should be informed of modifications in a clear and comprehensible manner. Where a modification negatively impacts, in more than a minor manner, the access to or use of digital content or a digital service by the consumer, the consumer should be informed in a way that allows the information to be stored on a durable medium. A durable medium should enable the consumer to store the information for as long as is necessary to protect the interests of the consumer arising from the consumer's relationship with the trader. Such media should include, in particular, paper, DVDs, CDs, USB sticks, memory cards or hard disks as well as emails.
- (77) Where a modification negatively impacts, in more than a minor manner, the access or use of the digital content or digital service

張無需負擔費用之終止契約。或者，企業經營者可以選擇讓消費者得以不負擔額外的成本，於不修改並具備符合性的方式，繼續維持對於數位內容或數位服務之接取，於此類情況，消費者則無權終止契約。然而，若企業經營者讓消費者得以維持之數位內容或數位服務已不再具備主觀及客觀符合性時，消費者應得以仰賴本指令所提供關於欠缺符合性之救濟。於本指令修改之規定未被滿足，而該修改造成欠缺符合性之情形時，消費者有權要求使數位內容或數位服務具備符合性，其依據本指令所取得之減少價金或終止契約之權利仍然不受影響。同樣的，若於修改後發生因該修改導致的數位內容或數位服務之欠缺符合性，消費者應繼續有權仰賴本指令關於數位內容或數位服務之欠缺符合性所規定的救濟。

- (78) 提供給消費者之數位內容或數位服務的欠缺符合性，通常肇因於自原始設計者到最後企業經營者之交易鏈的一部分。當最終交易之企業經營者必須對於消費者負擔欠缺符合性之責任時，確保企業經營者對於交易鏈之其他人有適當的權利，以保障對於消費者之責任可以被承擔，有其重要性。此類權利應僅限於商業交易的層面，故不應包括企業經營者對於消

by the consumer, the consumer should enjoy as a result of such a modification the right to terminate the contract free of any charge. Alternatively, the trader can decide to enable the consumer to maintain access to the digital content or digital service at no additional cost, without the modification and in conformity, in which case the consumer should not be entitled to terminate the contract. However, if the digital content or digital service that the trader enabled the consumer to maintain is no longer in conformity with the subjective and the objective requirements for conformity, the consumer should be able to rely on the remedies for a lack of conformity as provided for under this Directive. Where the requirements for such a modification as laid down in this Directive are not satisfied and the modification results in a lack of conformity, the consumer's right to bring the digital content or digital service into conformity, have the price reduced or the contract terminated, as provided for under this Directive, should remain unaffected. Similarly, where, subsequent to a modification, a lack of conformity of the digital content or digital service that has not been caused by the modification arises, the consumer should continue to be entitled to rely on remedies as provided for under this Directive for the lack of conformity in relation to this digital content or digital service.

- (78) The lack of conformity of the digital content or digital service as supplied to the consumer is often due to one of the transactions in a chain that links the original designer to the final trader. While the final trader should be liable towards the consumer in the event of a lack of conformity, it is important to ensure that the trader has appropriate rights vis-à-vis different persons in the chain of

費者就數位內容或數位服務之欠缺符合性責任，係來自於該提供為無需支付價金而為先前交易鏈之人於免費與開放原始碼授權下所進行。然而，應由會員國透過國家法律的適用，以確定最終交易之企業經營者得以識別先前交易鏈中之人，轉而採取此類行動的方式及條件。

(79) 於國家法律規定下具備保障消費者契約及資料保護權利之合法利益的個人或組織，應被賦予向法院或其他有權處理申訴或提起適當法律程序之機關，啟動相關程序之權利，以確保國家法律適當的轉換本指令之規定。

(80) 本指令不影響國際私法相關規則的適用，特別是歐洲議會與理事會(EC) No 593/2008 規則，以及(EU) No 1215/2012 規則。

(81) 歐洲議會與理事會(EU) 2017/2394 規則之附件，應修改為涵蓋本指令之引用，以促進本指令執行之跨境合作。

transactions in order to be able to cover the liability towards the consumer. Such rights should be limited to commercial transactions and they should therefore not cover situations where the trader is liable towards the consumer for the lack of conformity of digital content or a digital service that is composed of or built upon software which was supplied without the payment of a price under a free and open-source licence by a person in previous links of the chain of transactions. However, it should be for the Member States under their applicable national law to identify the persons in the chain of transactions against which the final trader can turn and the modalities and conditions of such actions.

- (79) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual and data protection rights should be afforded the right to initiate proceedings to ensure that the national provisions transposing this Directive are applied, either before a court or before an administrative authority which is competent to decide upon complaints, or to initiate appropriate legal proceedings.
- (80) Nothing in this Directive should prejudice the application of the rules of private international law, in particular Regulations (EC) No 593/2008 and (EU) No 1215/2012 of the European Parliament and of the Council.
- (81) The Annex to Regulation (EU) 2017/2394 of the European Parliament and of the Council should be amended to include a reference to this Directive so as to facilitate cross-border

- (82) 歐洲議會與理事會 2009/22/EC 指令之附件 I，應修改為涵蓋本指令之引用，以確保本指令規範之消費者集體利益受到保障。
- (83) 一旦相對應的國家轉換措施開始適用，消費者應能夠自本指令所賦予之權利獲益。因此這些國家轉換的措施亦應適用於締結於適用日期之前，用以於一段時間內提供數位內容或數位服務，無論是繼續性提供，或透過一系列個別行為提供之不定期或固定期限之契約，但僅限於國家轉換措施生效之日起提供的數位內容或數位服務適用之。然而，為了平衡消費者與企業經營者間之合法利益，涉及本指令關於數位內容或數位服務之修改與求償權的國家轉換措施，應僅適用於本指令適用日期之後簽訂之契約。
- (84) 依據 2011 年 9 月 28 日會員國與執行委員會就解釋性文件的聯合政策宣言，會員國已承諾於合理的情況下，將以一份或多份文件通知其轉換措施，以解釋指令規定的要件與該國家轉換文件之間對應的部分。關於本指令，立法者認為提供此類文件是合理的。

cooperation on enforcement of this Directive.

- (82) Annex I to Directive 2009/22/EC of the European Parliament and of the Council should be amended to include a reference to this Directive so as to ensure that the collective interests of consumers laid down in this Directive are protected.
- (83) Consumers should be able to benefit from their rights under this Directive as soon as the corresponding national transposition measures begin to apply. Those national transposition measures should, therefore, also apply to contracts of an indefinite or fixed duration which were concluded before the application date and provide for the supply of digital content or digital services over a period of time, either continuously or through a series of individual acts of supply, but only as regards digital content or a digital service that is supplied from the date of application of the national transposition measures. However, in order to ensure a balance between the legitimate interests of consumers and traders, the national measures transposing the provisions of this Directive on the modification of the digital content or digital service and the right to redress should only apply to contracts concluded after the application date pursuant to this Directive.
- (84) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of

(85) 依據歐洲議會與理事會(EC) No45/2001 規則，已向歐盟資料保護監督機關提出諮詢，並於 2017 年 3 月 14 日取得意見。

(86) 既然本指令之目的，在於對數位內容或數位服務之提供，透過契約法之一致性的作為處理其面臨的障礙，以襄助內部市場功能的運作，同時防止法律的割裂。該目的無法由會員國充分的達成，但可透過有助於協調執法行動之統一契約法規則，確保國家法律整體的一致性。而此目的於歐盟的層級會更好達成，歐盟可以依據歐洲聯盟條約第 5 條規定之輔助原則採取相關的措施。根據該條文所建構的比例原則，本指令之規定不應超過達成目標所需的範圍。

(87) 本指令尊重基本權與自由，特別是遵守歐盟基本權利憲章所承認之原則，包括第 16、38 及第 47 條所記載之原則。

national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

- (85) The European Data Protection Supervisor was consulted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council and delivered an opinion on 14 March 2017.
- (86) Since the objectives of this Directive, namely to contribute to the functioning of the internal market by tackling in a consistent manner contract law related obstacles for the supply of digital content or digital services while preventing legal fragmentation, cannot be sufficiently achieved by the Member States but can rather, by reasons of ensuring the overall coherence of the national laws through harmonised contract law rules which would also facilitate coordinated enforcement actions, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (87) This Directive respects the fundamental rights and freedoms and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, including those enshrined in Articles 16, 38 and 47 thereof.

已通過本指令：

第1條

主旨與目的

本指令之目的，在透過對企業經營者與消費者間關於數位內容或數位服務提供之契約，就特定的要求建立共通的規則，以提供高層級之消費者保護，為內部市場功能之適當運作作出貢獻。特別是關於以下之規範：

—數位內容或數位服務與契約之符合性

—欠缺符合性或未為給付之救濟方法，以及行使這些救濟方法之方式

—數位內容或數位服務之更改

第2條

定義

為本指令之目的，適用以下用詞定義：

(1) 「數位內容」指以數位形式產製及提供之資料；

(2) 「數位服務」指：

(a) 一種允許消費者得以數位形式創作、處理、儲存或接取資料的服務；或

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and purpose

The purpose of this Directive is to contribute to the proper functioning of the internal market while providing for a high level of consumer protection, by laying down common rules on certain requirements concerning contracts between traders and consumers for the supply of digital content or digital services, in particular, rules on:

- the conformity of digital content or a digital service with the contract,
- remedies in the event of a lack of such conformity or a failure to supply, and the modalities for the exercise of those remedies, and
- the modification of digital content or a digital service.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘digital content’ means data which are produced and supplied in digital form;
- (2) ‘digital service’ means:
 - (a) a service that allows the consumer to create, process, store or access data in digital form; or

- (b) 一種允許消費者或其他使用者以其所上傳或創作之數位形式資料，相互分享或為任何其他互動的服務；
- (3) 「具有數位元素的商品」指任何數位內容或數位服務整合或相互鏈結之有形，且可移動的物件。而其結合或串聯係以缺少該數位內容或數位服務，將阻礙該商品功能之執行之方式為之；
- (4) 「整合」指將數位內容或數位服務透過消費者擁有之數位環境的組成部分予以鏈結或結合，以使數位內容或數位服務得於符合本指令之一致性要求下獲得利用；
- (5) 「企業經營者」指與本指令涵蓋之與契約有關之任何自然人或法人，無論是私人或公有的，包括以該自然人或法人的名義或代表該人行事的其他任何人，其行為是為自身的交易、商業、工藝或專業領域以外之目的；
- (6) 「消費者」指任何與本指令涵蓋之契約有關之自然人，其行為是為自身的交易、商業、工藝或專業領域以外之目的；
- (7) 「價格」指用以換取數位內容或數位服務提供之金錢或以數位方式表示之價值。
- (8) 「個人資料」指(EU)2016/679 指令第 4 條第(1)點定義之個人資料；

- (b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service;
- (3) ‘goods with digital elements’ means any tangible movable items that incorporate, or are inter-connected with, digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions;
- (4) ‘integration’ means the linking and incorporation of digital content or a digital service with the components of the consumer's digital environment in order for the digital content or digital service to be used in accordance with the requirements for conformity provided for by this Directive;
- (5) ‘trader’ means any natural or 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 this Directive;
- (6) ‘consumer’ means any natural person who, in relation to contracts covered by this Directive, is acting for purposes which are outside that person's trade, business, craft, or profession;
- (7) ‘price’ means money or a digital representation of value that is due in exchange for the supply of digital content or a digital service;
- (8) ‘personal data’ means personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679;

- (9) 「數位環境」指消費者用以接取或使用數位內容或數位服務之硬體、軟體及任何網路連結；
- (10) 「相容性」指數位內容或數位服務得以該數位內容或數位服務通常被使用，而無需加以轉換的方式，透過硬體或軟體運作；
- (11) 「功能性」指數位內容或數位服務得以依照其目的執行其功能；
- (12) 「相互操作性」指數位內容或數位服務得以透過不同於相同類型之數位內容或數位服務通常使用之硬體或軟體運作；
- (13) 「耐用媒介」指可供消費者或企業經營者儲存個人資訊，以便未來能夠接取參考的工具。具備與該資料之目的相當的期限，並允許採用未更動的形式重製已儲存之資訊。

第3條

範圍

1. 本指令應適用於任何企業經營者向消費者提供或承諾提供數位內容或數位服務，而消費者支付或承諾支付對價之契約。

- (9) ‘digital environment’ means hardware, software and any network connection used by the consumer to access or make use of digital content or a digital service;
- (10) ‘compatibility’ means the ability of the digital content or digital service to function with hardware or software with which digital content or digital services of the same type are normally used, without the need to convert the digital content or digital service;
- (11) ‘functionality’ means the ability of the digital content or digital service to perform its functions having regard to its purpose;
- (12) ‘interoperability’ means the ability of the digital content or digital service to function with hardware or software different from those with which digital content or digital services of the same type are normally used;
- (13) ‘durable medium’ means any instrument which enables the consumer or the trader to store information addressed personally to that person in a way that is accessible for future reference, for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

Article 3

Scope

1. This Directive shall apply to any contract where the trader supplies or undertakes to supply digital content or a digital service to the consumer and the consumer pays or undertakes to pay a price.

本指令亦應適用於企業經營者向消費者提供或承諾提供數位內容或數位服務，而消費者提供或承諾提供個人資料給企業經營者之情形。除非該消費者提供之個人資料僅由企業經營者根據本指令提供數位內容或數位服務之目的進行處理，或讓企業經營者得以遵循其所應遵循的法律要求，且企業經營者並未將該資料用於其他用途。

2. 本指令亦應適用於數位內容或數位服務係依據消費者之規格開發時。
3. 除了第 5 條與第 13 條之外，本指令亦適用於任何專門作為數位內容載體之有形媒介。
4. 本指令不適用於第 2 條第(3)點所指與商品整合或相互鏈結之數位內容或數位服務，且該商品的提供係依據該商品相關的銷售契約，而與該數位內容或數位服務係由賣方或第三方提供無關時。若對於整合或相互鏈結之數位內容或數位服務的形式，是否為商品銷售契約之一部分存有疑問，各該數位內容或數位服務應被推定已受該商品銷售契約所涵蓋。
5. 本指令不適用於下列契約：

This Directive shall also apply where the trader supplies or undertakes to supply digital content or a digital service to the consumer, and the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer are exclusively processed by the trader for the purpose of supplying the digital content or digital service in accordance with this Directive or for allowing the trader to comply with legal requirements to which the trader is subject, and the trader does not process those data for any other purpose.

2. This Directive shall also apply where the digital content or digital service is developed in accordance with the consumer's specifications.
3. With the exception of Articles 5 and 13, this Directive shall also apply to any tangible medium which serves exclusively as a carrier of digital content.
4. This Directive shall not apply to digital content or digital services which are incorporated in or inter-connected with goods within the meaning of point (3) of Article 2, and which are provided with the goods under a sales contract concerning those goods, irrespective of whether such digital content or digital service is supplied by the seller or by a third party. In the event of doubt as to whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of the sales contract, the digital content or digital service shall be presumed to be covered by the sales contract.
5. This Directive shall not apply to contracts regarding:

- (a) 提供數位服務以外之服務，無論該企業經營者是否採取數位形式或方法進行服務的輸出，或將該輸出交付或傳送給消費者。
- (b) (EU)2018/1972 指令第 2 條第(4)點所定義的電子通訊服務，但該指令第 2 條第(7)點定義之號碼獨立之人際通訊服務不在此限。
- (c) 2011/24/EU 指令第 3 條第(a)點所定義之健康照護。
- (d) 賭博服務，即在機會遊戲中涉及金錢價值下注的服務，包括那些具備技巧之人，如彩票、賭場遊戲、撲克遊戲以及投注交易等。其係透過電子手段或其他便利之通訊科技提供，並按服務接收者之個人要求進行。
- (e) 2002/65/EC 指令第 2 條第(b)款定義之金融服務。
- (f) 企業經營者依據免費且開放原始碼授權提供的軟體，消費者對此不支付任何價格，且所提供的個人資料，僅供企業經營者以提升該特定軟體之安全、相容性或相互操作性之目的進行處理。
- (g) 數位內容提供給公眾，並非透過以訊號傳輸作為表演或活動一部份的方式進行，例如數位電影之放映。

- (a) the provision of services other than digital services, regardless of whether digital forms or means are used by the trader to produce the output of the service or to deliver or transmit it to the consumer;
- (b) electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972, with the exception of number-independent interpersonal communications services as defined in point (7) of Article 2 of that Directive;
- (c) healthcare as defined in point (a) of Article 3 of Directive 2011/24/EU;
- (d) gambling services, namely, services that involve wagering a stake with pecuniary value in games of chance, including those with an element of skill, such as lotteries, casino games, poker games and betting transactions, by electronic means or any other technology for facilitating communication and at the individual request of a recipient of such services;
- (e) financial services as defined in point (b) of Article 2 of Directive 2002/65/EC;
- (f) software offered by the trader under a free and open-source licence, where the consumer does not pay a price and the personal data provided by the consumer are exclusively processed by the trader for the purpose of improving the security, compatibility or interoperability of that specific software;
- (g) the supply of digital content where the digital content is made available to the general public other than by signal transmission

(h) 數位內容係由會員國之公部門機關依據歐洲議會暨歐盟理事會 2003/98/EC 指令所提供。

6. 於不影響本條第 4 款之前提下，若為同一企業經營者與同一消費者間之單一契約，將數位內容或數位服務提供之要素，與其他服務或產品提供之要素網綁，則本指令僅適用於該契約中與數位內容或數位服務提供有關之要素。

本指令第 19 條規定，在與(EU)2018/1972 指令，包括歐洲議會暨歐盟理事會(EU)2015/2120 規則第 2 條第(2)點定義網路接取服務之要素，或與(EU)2018/1972 指令第 2 條第(6)點定義之號碼獨立之人際通訊服務網綁時，不適用之。

於不影響(EU)2018/1972 指令第 107 條第 2 款之前提下，對於網綁契約其中一個要素終止可能對於契約中其他要素產生影響之事宜，應由國家法律進行管制。

7. 若本指令之任何條款與另一管制特定部門或主題之歐盟指令相抵觸，則該另一歐盟法的規定優先於本指令。

as a part of a performance or event, such as digital cinematographic projections;

(h) digital content provided in accordance with Directive 2003/98/EC of the European Parliament and of the Council by public sector bodies of the Member States.

6. Without prejudice to paragraph 4 of this Article, where a single contract between the same trader and the same consumer includes in a bundle elements of supply of digital content or a digital service and elements of the provision of other services or goods, this Directive shall only apply to the elements of the contract concerning the digital content or digital service.

Article 19 of this Directive shall not apply where a bundle within the meaning of Directive (EU) 2018/1972 includes elements of an internet access service as defined in point (2) of Article 2 of Regulation (EU) 2015/2120 of the European Parliament and of the Council or a number-based interpersonal communications service as defined in point (6) of Article 2 of Directive (EU) 2018/1972.

Without prejudice to Article 107(2) of Directive (EU) 2018/1972, the effects that the termination of one element of a bundle contract may have on the other elements of the bundle contract shall be governed by national law.

7. If any provision of this Directive conflicts with a provision of another Union act governing a specific sector or subject matter, the provision of that other Union act shall take precedence over this Directive.

8. 歐盟法於個人資料保護的規定，必須適用於連結至第 1 項指涉契約相關之任何個人資料處理。

尤其，本指令不得減損(EU)2016/679 指令以及 2002/58/EC 指令之效力。若本指令與保護個人資料之歐盟法產生牴觸，後者優先適用。

9. 本指令不得減損歐盟法與國家法當中涉及著作權與相關權利之規範，包括 2001/29/EC 指令。
10. 本指令不得影響會員國針對一般契約法各方面進行規範，例如契約成立、生效、無效或契約效力，包括本指令未為規定之契約終止效果，或損害賠償請求權。

第 4 條

協調層級

除非本指令另有規定外，會員國不得於其國家法律維持或採用與本指令規定相異的條款。包括更加嚴格或較為寬鬆的規定，以確保不同層級之消費者保護。

第 5 條

數位內容或數位服務之提供

8. Union law on the protection of personal data shall apply to any personal data processed in connection with contracts referred to in paragraph 1.

In particular, this Directive shall be without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC. In the event of conflict between the provisions of this Directive and Union law on the protection of personal data, the latter prevails.

9. This Directive shall be without prejudice to Union and national law on copyright and related rights, including Directive 2001/29/EC of the European Parliament and of the Council.
10. This Directive shall not affect the freedom of Member States to regulate aspects of general contract law, such as rules on the formation, validity, nullity or effects of contracts, including the consequences of the termination of a contract in so far as they are not regulated in this Directive, or the right to damages.

Article 4

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.

Article 5

Supply of the digital content or digital service

1. 企業經營者應對消費者提供數位內容或數位服務。除非當事人另有協議，企業經營者應於契約訂定後，立即提供數位內容或數位服務，不得無故拖延。
2. 於以下情況下，企業經營者應遵守提供的義務：
 - (a) 該數位內容或適合接取或下載該數位內容的任何方法，已可由消費者或消費者為此目的而選擇之實體或虛擬設施所獲得或接取；
 - (b) 該數位服務已可由消費者或消費者為此目的選擇相關之實體或虛擬設施接取。

第 6 條

數位內容或數位服務之符合性

企業經營者應於不影響第 10 條規定之情況下，提供符合本指令第 7、8、9 條規定之數位內容或數位服務給消費者。

第 7 條

符合性之主觀要求

為符合契約，數位內容或數位服務應：

1. The trader shall supply the digital content or digital service to the consumer. Unless the parties have agreed otherwise, the trader shall supply the digital content or digital service without undue delay after the conclusion of the contract.
2. The trader shall have complied with the obligation to supply when:
 - (a) the digital content or any means suitable for accessing or downloading the digital content is made available or accessible to the consumer, or to a physical or virtual facility chosen by the consumer for that purpose;
 - (b) the digital service is made accessible to the consumer or to a physical or virtual facility chosen by the consumer for that purpose.

Article 6

Conformity of the digital content or digital service

The trader shall supply to the consumer digital content or a digital service that meets the requirements set out in Articles 7, 8 and 9, where applicable, without prejudice to Article 10.

Article 7

Subjective requirements for conformity

order to conform with the contract, the digital content or digital service shall, in particular, where applicable:

- (a) 符合契約要求之描述、數量及品質，以及應具備之功能性、相容性、相互操作性及其他特性；
- (b) 切合消費者要求、消費者最遲於締約當時已讓企業經營者知悉，且獲企業經營者同意之任何特定目的；
- (c) 提供應包括契約要求之所有配件、說明（包括安裝說明）以及消費者協助事項；且
- (d) 提供按照契約約定之更新。

第8條

符合性之客觀要求

1. 除了遵循任何符合性之主觀要求外，數位內容或數位服務應：
 - (a) 切合通常使用同類型數位內容或數位服務之目的，並於可適用之情況下，將現有歐盟與國家法律、技術標準納入考量，或於欠缺此類技術標準時，參考可適用之特定行業行為準則；
 - (b) 具有一定的數量，且鑒於該數位內容或數位服務的性質，包括與功能、相容性、可近用性、繼續性及安全性等，消

- (a) be of the description, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the contract;
- (b) 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;
- (c) be supplied with all accessories, instructions, including on installation, and customer assistance as required by the contract; and
- (d) be updated as stipulated by the contract.

Article 8

Objective requirements for conformity

1. In addition to complying with any subjective requirement for conformity, the digital content or digital service shall:
 - (a) be fit for the purposes for which digital content or digital services of the same type would normally be used, taking into account, where applicable, any existing Union and national law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;
 - (b) be of the quantity and possess the qualities and performance features, including in relation to functionality, compatibility, accessibility, continuity and security, normal for digital content

費者對於同類型數位內容或數位服務提供可能合理期待之品質與性能特性，以及將任何企業經營者、代表企業經營者之人、或其他與先前交易鏈有連結之人，對外所作之任何公開聲明納入考量，尤其是顯示於廣告或標籤上者，除非企業經營者表明：

(i) 該企業經營者並無且已無法合理知悉系爭公開聲明；

(ii) 締約時，該公開聲明已經以其先前作成之相同或相當的方式更正；或

(iii) 該獲取數位內容或數位服務之決定，不會受到該公開聲明之影響；

(c) 於可適用之情況下，與消費者可能合理期待獲得之任何配件與說明併同提供；且

(d) 與企業經營者於締約前，就該數位內容或數位服務提供之任何試用版本或預覽相符。

2. 企業經營者必須確保消費者被告知與提供，為維持數位內容或數位服務之符合性所需之一定期間的更新，包括安全性更新：

(a) 於契約約定一定期間之持續提供時，按契約約定之數位內容或數位服務提供期間；或

or digital services of the same type and which the consumer may reasonably expect, given the nature of the digital content or digital service and taking into account any public statement made by or on behalf of the trader, or other persons in previous links of the chain of transactions, particularly in advertising or on labelling unless the trader shows that:

- (i) the trader was not, and could not reasonably have been, aware of the public statement in question;
 - (ii) by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or
 - (iii) the decision to acquire the digital content or digital service could not have been influenced by the public statement;
- (c) where applicable, be supplied along with any accessories and instructions which the consumer may reasonably expect to receive; and
- (d) comply with any trial version or preview of the digital content or digital service, made available by the trader before the conclusion of the contract.
2. 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, for the period of time:
- (a) during which the digital content or digital service is to be supplied under the contract, where the contract provides for a

- (b) 於契約約定單次提供行為或一系列之獨立提供行為時，消費者按該數位內容或數位服務之類型或目的，並將該契約之情況與性質納入考量，可能合理期待者。
- 3. 當消費者未於合理的期間內安裝企業經營者依據第 2 項提供之更新，則企業經營者對於僅因欠缺該相關更新所導致之符合性欠缺，無需負責，前提是：
 - (a) 企業經營者已向消費者通知該更新已可取得，以及消費者未為安裝之後果；且
 - (b) 消費者未為安裝或錯誤安裝該項更新，並非由於企業經營者提供之安裝說明有瑕疵所致。
- 4. 當該契約約定於一定期間內持續提供數位內容或數位服務時，該數位內容或數位服務提供應於該期間內皆具備符合性。
- 5. 若於締約當時已明確告知消費者，該數位內容或數位服務之特定特性，偏離第 1 項或第 2 項規定之符合性客觀要求，而消費者於締約時明示並分別接受各項偏離，則應視為並未欠缺第 1 項或第 2 項定義下的符合性客觀要求。

continuous supply over a period of time; or

- (b) that the consumer may reasonably expect, given the type and purpose of the digital content or digital service and taking into account the circumstances and nature of the contract, where the contract provides for a single act of supply or a series of individual acts of supply.
3. Where the consumer fails to install, within a reasonable time, updates supplied by the trader in accordance with paragraph 2, the trader shall not be liable for any lack of conformity resulting solely from the lack of the relevant update, provided that:
- (a) the trader informed the consumer about the availability of the update and the consequences of the failure of the consumer to install it; and
 - (b) the failure of the consumer to install or the incorrect installation by the consumer of the update was not due to shortcomings in the installation instructions provided by the trader.
4. 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.
5. There shall be no lack of conformity within the meaning of paragraph 1 or 2 if, at the time of the conclusion of the contract, the consumer was specifically informed that a particular characteristic of the digital content or digital service was deviating from the objective requirements for conformity laid down in paragraph 1 or 2

6. 除非當事人另有約定，數位內容或數位服務應以締約當時可以取得之最新版本提供。

第 9 條

數位內容或數位服務之錯誤整合

任何肇因於數位內容或數位服務錯誤整合至消費者之數位環境的符合性欠缺，將被認定為該數位內容或數位服務欠缺符合性，若：

- (a) 該數位內容或數位服務係由企業經營者所安裝，或處於企業經營者之責任項下；或
- (b) 該數位內容或數位服務預設係由消費者進行整合，而該錯誤之整合肇因於企業經營者提供之整合說明的缺漏。

第 10 條

第三方權利

若限制是肇因於對第三方任何權利之侵害，尤其是智慧財產權，導致數位內容或數位服務依據第 7 條及第 8 條之使用受到妨礙或限制時，會員國應確保該消費者有權依據第 14 條規定對符合性之

and the consumer expressly and separately accepted that deviation when concluding the contract.

6. 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.

Article 9

Incorrect integration of the digital content or digital service

Any lack of conformity resulting from the incorrect integration of the digital content or digital service into the consumer's digital environment shall be regarded as lack of conformity of the digital content or digital service if:

- (a) the digital content or digital service was integrated by the trader or under the trader's responsibility; or
- (b) the digital content or digital service was intended to be integrated by the consumer and the incorrect integration was due to shortcomings in the integration instructions provided by the trader.

Article 10

Third-party rights

Where a restriction resulting from a violation of any right of a third party, in particular intellectual property rights, prevents or limits the use of the digital content or digital service in accordance with Articles

欠缺行使救濟，除非國家法律規定於此情形該數位內容或數位服務提供的契約無效或得撤銷。

第 11 條

企業經營者之責任

1. 企業經營者應對於任何未依據第 5 條規定提供數位內容或數位服務之情形負擔責任。
2. 於契約約定以單次行為提供或一系列之個別行為提供之情形，企業經營者於不影響第 8 條第 2 項(b)點之前提下，應就任何於提供時存在的第 7、8 及 9 條規定之符合性欠缺負擔責任。

若按照國家法律，企業經營者僅對於提供一定期間內出現之符合性欠缺負責，該期間於不影響第 8 條第 2 項(b)點之前提下，不得低於提供後 2 年。

若按照國家法律，第 14 條之規定亦受到或僅受到期限的限制，會員國應確保該限制期限允許消費者對於第 1 項指涉之時間已存在，並於第 2 款指涉期間內顯現之符合性欠缺，行使第 14 條規定之救濟。

3. 於契約約定一段期間之持續提供時，企業經營者應對於依據契約提供之數位內容或數位服務，於該約定期間內發生欠缺第

7 and 8, Member States shall ensure that the consumer is entitled to the remedies for lack of conformity provided for in Article 14, unless national law provides for the nullity or rescission of the contract for the supply of the digital content or digital service in such cases.

Article 11

Liability of the trader

1. The trader shall be liable for any failure to supply the digital content or digital service in accordance with Article 5.
2. Where a contract provides for a single act of supply or a series of individual acts of supply, the trader shall be liable for any lack of conformity under Articles 7, 8 and 9 which exists at the time of supply, without prejudice to point (b) of Article 8(2).

If, under national law, the trader is only liable for a lack of conformity that becomes apparent within a period of time after supply, that period shall not be less than two years from the time of supply, without prejudice to point (b) of Article 8(2).

If, under national law, the rights laid down in Article 14 are also subject or only subject to a limitation period, Member States shall ensure that such limitation period allows the consumer to exercise the remedies laid down in Article 14 for any lack of conformity that exists at the time indicated in the first subparagraph and becomes apparent within the period of time indicated in the second subparagraph.

3. Where the contract provides for continuous supply over a period of time, the trader shall be liable for a lack of conformity under

7、8 及 9 條規定之符合性負擔責任。

若按照國家法律，第 14 條規定之權利亦受到或僅受到期限的限制，會員國應確保該限制期限允許消費者於第 1 款指涉之時間發生或顯現之符合性欠缺，行使第 14 條規定之救濟。

第 12 條

舉證責任

1. 關於數位內容或數位服務之提供是否符合第 5 條之規定，由企業經營者負擔舉證責任。
2. 於第 11 條第 2 項指涉之情形，針對欠缺符合性之顯現係於數位內容或數位服務提供後一年內發生者，關於數位內容或數位服務是否於提供當時具備符合性，應由企業經營者負擔舉證責任。
3. 於第 11 條第 3 項指涉之情形，關於數位內容或數位服務是否於契約約定該數位內容或數位服務之提供期限內具備符合性，應由企業經營者對於該期限內顯現之符合性欠缺負擔舉證責任。

Articles 7, 8 and 9, 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.

If, under national law, the rights laid down in Article 14 are also subject or only subject to a limitation period, Member States shall ensure that such limitation period allows the consumer to exercise the remedies laid down in Article 14 for any lack of conformity that occurs or becomes apparent during the period of time referred to in the first subparagraph.

Article 12

Burden of proof

1. The burden of proof with regard to whether the digital content or digital service was supplied in accordance with Article 5 shall be on the trader.
2. In cases referred to in Article 11(2), the burden of proof with regard to whether the supplied digital content or digital service was in conformity at the time of supply shall be on the trader for a lack of conformity which becomes apparent within a period of one year from the time when the digital content or digital service was supplied.
3. In cases referred to in Article 11(3), the burden of proof with regard to whether the digital content or digital service was in conformity within the period of time during which the digital content or digital service is to be supplied under the contract shall be on the trader for a lack of conformity which becomes apparent within that period.

4. 第 2 項及第 3 項不適用於當企業經營者證明消費者的數位環境與該數位內容或數位服務之技術要求不相容，且企業經營者已採取清晰易懂之方式於契約訂定前將該要求告知消費者之情形。
5. 消費者應於合理可能且必要的範圍內與企業經營者合作，以查明造成數位內容或數位服務於適用第 11 條第 2 項與第 3 項指涉期間內欠缺符合性之原因，是否在於消費者之數位環境。該合作之義務應限縮於對消費者影響最小，且技術上可行之方法。於消費者不合作，且企業經營者於契約訂定之前已以清晰易懂的方式將該要求告知消費者時，關於適用第 11 條第 2 項或第 3 項指涉期間內之符合性欠缺，其舉證責任由消費者負擔。

第 13 條

未依約履行之救濟

1. 於企業經營者未按第 5 條規定提供數位內容或數位服務時，消費者應要求企業經營者提供該數位內容或數位服務。若企業經營者仍未能即時或於雙方明示同意額外的期間內提供數位內容或數位服務，則消費者有權終止契約。

4. Paragraphs 2 and 3 shall not apply where the trader demonstrates that the digital environment of the consumer is not compatible with the technical requirements of the digital content or digital service and where the trader informed the consumer of such requirements in a clear and comprehensible manner before the conclusion of the contract.
5. The consumer shall cooperate with the trader, to the extent reasonably possible and necessary, to ascertain whether the cause of the lack of conformity of the digital content or digital service at the time specified in Article 11(2) or (3), as applicable, lay in the consumer's digital environment. The obligation to cooperate shall be limited to the technically available means which are least intrusive for the consumer. Where the consumer fails to cooperate, and where the trader informed the consumer of such requirement in a clear and comprehensible manner before the conclusion of the contract, the burden of proof with regard to whether the lack of conformity existed at the time specified in Article 11(2) or (3), as applicable, shall be on the consumer.

Article 13

Remedy for the failure to supply

1. Where the trader has failed to supply the digital content or digital service in accordance with Article 5, the consumer shall call upon the trader to supply the digital content or digital service. If the trader then fails to supply the digital content or digital service without undue delay, or within an additional period of time, as expressly agreed to by the parties, the consumer shall be entitled to terminate the contract.

2. 於下列情況下第 1 項之規定不適用，而消費者有權立即終止契約：
 - (a) 企業經營者已宣告，或從所涉情況同樣清楚的顯示，該企業經營者將不提供該數位內容或數位服務；
 - (b) 消費者與企業經營者已同意，或參照契約訂定之情況可明確看出，對於消費者而言於特定時間內提供有其必要性，而企業經營者未於該時間提供數位內容或數位服務。
3. 於消費者按本條第 1 項或第 2 項終止契約時，第 15 條及第 18 條應適用之。

第 14 條

欠缺符合性之救濟

1. 於欠缺符合性之情況，消費者應有權依據本條規範之條件，要求企業經營者使數位內容或數位服務具備符合性，或接受比例相當之減少價金，或終止契約。
2. 消費者有權要求數位內容或數位服務具備符合性，除非達成符合性不可能，或會對企業經營者施加不合比例的成本。應將個案所有情況納入評估，包括：
 - (a) 若未有欠缺符合性之情況，該數位內容或數位服務應有的價值；以及

2. Paragraph 1 shall not apply, and the consumer shall be entitled to terminate the contract immediately, where:
 - (a) the trader has declared, or it is equally clear from the circumstances, that the trader will not supply the digital content or digital service;
 - (b) the consumer and the trader have agreed, or it is clear from the circumstances attending the conclusion of the contract, that a specific time for the supply is essential for the consumer and the trader fails to supply the digital content or digital service by or at that time.
3. Where the consumer terminates the contract under paragraph 1 or 2 of this Article, Articles 15 to 18 shall apply accordingly.

Article 14

Remedies for lack of conformity

1. 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 set out in this Article.
2. The consumer shall be entitled to have the digital content or digital service brought into conformity, unless this would be impossible or would impose costs on the trader that would be disproportionate, taking into account all the circumstances of the case including:
 - (a) the value the digital content or digital service would have if there were no lack of conformity; and

(b) 該欠缺符合性之重要性。

3. 企業經營者應依據第 2 項之規定於消費者通知該符合性欠缺後之合理期間內，以免費且不會導致消費者重大不便之作為，考量該數位內容或數位服務的性質以及消費者要求該數位內容或數位服務之目的，使數位內容或數位服務具備符合性。
4. 於數位內容或數位服務之提供係以支付價金作為對價時，消費者有權依據第 5 項之規定要求比例相當之減少價金，或於以下任何情況下，依據第 6 項之規定終止契約：
 - (a) 使數位內容或數位服務具備符合性的救濟措施，依據第 2 項之規定，為不可能或不符比例之情形；
 - (b) 企業經營者依據第 3 項之規定，未使數位內容或數位服務具備符合性；
 - (c) 即使企業經營者嘗試使數位內容或數位服務具備符合性，該欠缺符合性之情形仍會發生；
 - (d) 欠缺符合性的嚴重性足以證明立即之減少價金或終止契約之合理性；或
 - (e) 企業經營者已宣告，或於該情況下清楚顯示，企業經營者不會在合理的期間內，或在對消費者無重大不便的情況下，使數位內容或數位服務具備符合性。

- (b) the significance of the lack of conformity.
3. The trader shall bring the digital content or digital service into conformity pursuant to paragraph 2 within a reasonable time from the time the trader has been informed by the consumer about the lack of conformity, free of charge and without any significant inconvenience to the consumer, taking account of the nature of the digital content or digital service and the purpose for which the consumer required the digital content or digital service.
4. The consumer shall be entitled to either a proportionate reduction of the price in accordance with paragraph 5 where the digital content or digital service is supplied in exchange for a payment of a price, or the termination of the contract in accordance with paragraph 6, in any of the following cases:
- (a) the remedy to bring the digital content or digital service into conformity is impossible or disproportionate in accordance with paragraph 2;
 - (b) the trader has not brought the digital content or digital service into conformity in accordance with paragraph 3;
 - (c) a lack of conformity appears despite the trader's attempt to bring the digital content or digital service into conformity;
 - (d) the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the contract; or
 - (e) the trader has declared, or it is clear from the circumstances, that the trader will not bring the digital content or digital service into conformity within a reasonable time, or without significant inconvenience for the consumer.

5. 價金的減少應與提供給消費者之數位內容或數位服務，相較於該數位內容或數位服務具備符合性之價值減損比例相當。

於契約約定該數位內容或數位服務應於一定期限內提供，以換取價金支付作為對價時，該價金之減少應適用於該數位內容或數位服務欠缺符合性的期間。

6. 於數位內容或數位服務係以支付價金作為對價時，消費者僅於該符合性欠缺並非輕微時，有權終止契約。對於符合性欠缺是否輕微，由企業經營者負擔舉證責任。

第15 條

終止契約權之行使

消費者行使契約終止權，應向企業經營者提出聲明，以表達終止契約之決定。

第16 條

終止契約時之企業經營者責任

1. 於終止契約時，企業經營者應補償消費者依據契約支付之價金總和。

5. The reduction in price shall be proportionate to the decrease in the value of the digital content or digital service which was supplied to the consumer compared to the value that the digital content or digital service would have if it were in conformity.

Where the contract stipulates that the digital content or digital service shall be supplied over a period of time in exchange for the payment of a price, the reduction in price shall apply to the period of time during which the digital content or digital service was not in conformity.

6. Where the digital content or digital service is supplied in exchange for the payment of a price, the consumer shall be entitled to terminate the contract only if the lack of conformity is not minor. The burden of proof with regard to whether the lack of conformity is minor shall be on the trader.

Article 15

Exercise of the right of termination

The consumer shall exercise the right to terminate the contract by means of a statement to the trader expressing the decision to terminate the contract.

Article 16

Obligations of the trader in the event of termination

1. In the event of termination of the contract, the trader shall reimburse the consumer for all sums paid under the contract.

然而，於契約約定於一定期間內提供數位內容或數位服務換取價金支付，而該數位內容或數位服務已於契約終止前之一段時間具備符合性時，企業經營者對於消費者價金之補償，僅限於對應該數位內容或數位服務欠缺符合性之期間之價金比例，以及於契約尚未終止前，消費者於契約任何期間內預先支付之價金的任何部分。

2. 關於消費者個人資料，企業經營者必須遵守(EU)2016/679 規則規定之義務。
3. 企業經營者應避免使用個人資料以外，其他由消費者於使用企業經營者所提供之數位內容或數位服務時所提供或創作的內容，除非此類內容：
 - (a) 於企業經營者提供之數位內容或數位服務之外無其他用途；
 - (b) 僅與消費者利用企業經營者所提供之數位內容或數位服務時之活動相關；
 - (c) 企業經營者已將其與其他資料整合而不可分離，或需投入不合比例之努力分離；或
 - (d) 為消費者與其他人共同產製，而其他消費者可以繼續使用該內容。
4. 除了第 3 項第(a)、(b)或(c)點指涉之情況外，企業經營者應基於消費者的要求，向消費者提供個人資料以外，消費者於使用企

However, in cases where the contract provides for the supply of the digital content or digital service in exchange for a payment of a price and over a period of time, and the digital content or digital service had been in conformity for a period of time prior to the termination of the contract, the trader shall reimburse the consumer only for the proportionate part of the price paid corresponding to the period of time during which the digital content or digital service was not in conformity, and any part of the price paid by the consumer in advance for any period of the contract that would have remained had the contract not been terminated.

2. In respect of personal data of the consumer, the trader shall comply with the obligations applicable under Regulation (EU) 2016/679.
3. The trader shall refrain from using any content other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader, except where such content:
 - (a) has no utility outside the context of the digital content or digital service supplied by the trader;
 - (b) only relates to the consumer's activity when using the digital content or digital service supplied by the trader;
 - (c) has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts; or
 - (d) has been generated jointly by the consumer and others, and other consumers are able to continue to make use of the content.
4. Except in the situations referred to in point (a), (b) or (c) of paragraph 3, the trader shall, at the request of the consumer, make

業經營者提供之數位內容或數位服務時，所提供或創作之任何內容。

該消費者有權於不受企業經營者阻礙之合理期間內，以通常使用且機器可讀的格式，免費取回該數位內容。

5. 企業經營者於不影響第 4 項規定適用下，得防止消費者就數位內容或數位服務進一步的使用，尤其透過讓消費者無法接取該數位內容或數位服務，或讓消費者之帳號失效。

第 17 條

終止契約時之消費者責任

1. 契約終止後，消費者應避免使用該數位內容或數位服務，以及避免將之向第三方提供。
2. 於數位內容係以有形媒介提供之情形，消費者於企業經營者要求並負擔費用之情況下，應於無不當延遲的狀況下返還該有形媒介。若企業經營者決定要求返還該有形媒介，此一要求須於企業經營者通知消費者終止契約決定之日的 14 天內提出。
3. 於終止契約前，數位內容或數位服務欠缺符合性之期間，消費者不應負擔支付任何使用該數位內容或數位服務費用的責任。

available to the consumer any content other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader.

The consumer shall be entitled to retrieve that digital content free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format.

5. The trader may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer, without prejudice to paragraph 4.

Article 17

Obligations of the consumer in the event of termination

1. After the termination of the contract, the consumer shall refrain from using the digital content or digital service and from making it available to third parties.
2. Where the digital content was supplied on a tangible medium, the consumer shall, at the request and at the expense of the trader, return the tangible medium to the trader without undue delay. If the trader decides to request the return of the tangible medium, that request shall be made within 14 days of the day on which the trader is informed of the consumer's decision to terminate the contract.
3. The consumer shall not be liable to pay for any use made of the digital content or digital service in the period, prior to the termination of the contract, during which the digital content or the

第 18 條

企業經營者之退款時限與方式

1. 企業經營者依據第 14 條第 4、5 項或第 16 條第 1 項，肇因於減少價金或終止契約產生的任何積欠消費者之退款，應於無不當延遲之情況下被履行，且無論如何，須於企業經營者通知消費者將採用消費者請求減少價金或終止契約權利之 14 天內為之。
2. 除消費者明示同意其他的作法外，企業經營者應採用消費者支付數位內容或數位服務之相同付款方式進行退款，且消費者不會因為此類補償而產生任何費用。
3. 企業經營者不應就消費者的退款附加任何費用。

第 19 條

數位內容或數位服務之修改

1. 於契約約定於一段時間內向消費者提供或使之可以接取數位內容或數位服務時，於滿足以下條件下，企業經營者得超過依據第 7 條與第 8 條規定，維持數位內容或數位服務之符合性所必要之範圍，修改數位內容或數位服務：

digital service was not in conformity.

Article 18

Time limits and means of reimbursement by the trader

1. Any reimbursement that is owed to the consumer by the trader, pursuant to Article 14(4) and (5) or 16(1), due to a price reduction or termination of the contract shall be carried out without undue delay and, in any event, within 14 days of the date on which the trader is informed of the consumer's decision to invoke the consumer's right for a price reduction or to terminate the contract.
2. The trader shall carry out the reimbursement using the same means of payment as the consumer used to pay for the digital content or digital service, unless the consumer expressly agrees otherwise, and provided that the consumer does not incur any fees as a result of such reimbursement.
3. The trader shall not impose any fee on the consumer in respect of the reimbursement.

Article 19

Modification of the digital content or digital service

1. Where the contract provides that the digital content or digital service is to be supplied or made accessible to the consumer over a period of time, the trader may modify the digital content or digital service beyond what is necessary to maintain the digital content or digital service in conformity in accordance with Articles 7 and 8, if the

- (a) 契約允許此類修改，並對該修改提供正當的理由；
 - (b) 此類修改不會導致消費者額外的成本負擔；
 - (c) 消費者對於該修改已獲得清晰易懂的通知；
 - (d) 於第 2 項所述情況下，消費者已受到事前透過耐用媒介合理的通知修改之功能、時間以及依據第 2 項規定終止契約的權利，或依據第 4 項規定，於不具備該修改之情況下，維持數位內容或數位服務之可能性。
2. 若修改對於消費者接取或使用數位內容或數位服務有負面的影響，消費者有權終止契約，除非該負面影響僅為輕微。於此情形，消費者有權於接到通知後 30 天內，或於企業經營者修改數位內容或數位服務時(以發生時間較晚者為準)免費終止契約。
3. 於消費者依據本條第 2 項終止契約時，第 15 條至第 18 條應相應適用。
4. 若企業經營者已讓消費者得於不需要額外成本與修改下維持數位內容或數位服務，且該數位內容或數位服務仍可具備符合性時，本條第 2 項與第 3 項之規定不應適用之。

following conditions are met:

- (a) the contract allows, and provides a valid reason for, such a modification;
 - (b) such a modification is made without additional cost to the consumer;
 - (c) the consumer is informed in a clear and comprehensible manner of the modification; and
 - (d) in the cases referred to in paragraph 2, the consumer is informed reasonably in advance on a durable medium of the features and time of the modification and of the right to terminate the contract in accordance with paragraph 2, or of the possibility to maintain the digital content or digital service without such a modification in accordance with paragraph 4.
2. The consumer shall be entitled to terminate the contract if the modification negatively impacts the consumer's access to or use of the digital content or digital service, unless such negative impact is only minor. In that case, the consumer shall be entitled to terminate the contract free of charge within 30 days of the receipt of the information or of the time when the digital content or digital service has been modified by the trader, whichever is later.
 3. Where the consumer terminates the contract in accordance with paragraph 2 of this Article, Articles 15 to 18 shall apply accordingly.
 4. Paragraphs 2 and 3 of this Article shall not apply if the trader has enabled the consumer to maintain without additional cost the digital content or digital service without the modification, and the digital content or digital service remains in conformity.

第 20 條

求償權

於企業經營者因未為提供數位內容或數位服務而需要對消費者負責，或因先前交易鏈中有連結之人員的作為或不作為導致符合性欠缺時，企業經營者有權對於該於商業交易連結內應負責之人員採取救濟措施。企業經營者可以採取救濟措施之對象以及相關的行動或執行的條件，得由國家法律定之。

第 21 條

指令之執行

1. 會員國應確保有使本指令充分及有效遵循之方法存在。
2. 第 1 項所指涉之方法應包括國家法律所規定之一個或多個下列的機構，可於法院或主管行政機關前採取行動，以確保國家法律轉換本指令規定之適用：
 - (a) 公共機構或其代表；
 - (b) 具備保護消費者合法權益的消費者組織；
 - (c) 具備合法行動利益的專業組織；
 - (d) 非營利主體、組織或協會，活躍於保障(EU)2016/679 規則

Article 20

Right of redress

Where the trader is liable to the consumer because of any failure to supply the digital content or digital service, or because of a lack of conformity resulting from an act or omission by a person in previous links of the chain of transactions, the trader shall be entitled to pursue remedies against the person or persons liable in the chain of commercial transactions. The person against whom the trader may pursue remedies, and the relevant actions and conditions of exercise, shall be determined by national law.

Article 21

Enforcement

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions transposing this Directive are applied:
 - (a) public bodies or their representatives;
 - (b) consumer organisations having a legitimate interest in protecting consumers;
 - (c) professional organisations having a legitimate interest in acting;
 - (d) not-for-profit bodies, organisations or associations, active in the

之第 80 條所定義資料主體之權利與自由。

第 22 條

強制性

1. 除非本指令另有規定，於消費者提醒企業經營者未依約定之履行或欠缺符合性，或於數位內容或數位服務依據第 19 條規定修改，而由企業經營者提醒消費者注意之前，任何對於因轉換本指令所訂立之國家措施，加以排除、限制或改變其效果，而對消費者不利之契約條款，對消費者不生拘束力。
2. 本指令不禁止企業經營者提供消費者超過本指令保障之契約安排。

第 23 條

修正(EU)2017/2394 規則與 2009/22/EC 指令

- (1) 於(EU) 2017/2394 規則附件中，新增以下幾點：
 28. 歐洲議會與理事會於 2019 年 5 月 20 日發布(EU)2019/770 指令，關於數位內容或數位服務提供契約之特定層面 (O)L 136, 22.5.2019, p.1

field of the protection of data subjects' rights and freedoms as defined in Article 80 of Regulation (EU) 2016/679.

Article 22

Mandatory nature

1. Unless otherwise provided for in this Directive, any contractual term which, to the detriment of the consumer, excludes the application of the national measures transposing this Directive, derogates from them or varies their effects before the failure to supply or the lack of conformity is brought to the trader's attention by the consumer, or before the modification of the digital content or digital service in accordance with Article 19 is brought to the consumer's attention by the trader, shall not be binding on the consumer.
2. This Directive shall not prevent the trader from offering the consumer contractual arrangements that go beyond the protection provided for in this Directive.

Article 23

Amendments to Regulation (EU) 2017/2394 and Directive 2009/22/EC

- (1) In the Annex to Regulation (EU) 2017/2394, the following point is added:
‘28. 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 (OJ L 136, 22.5.2019, p. 1)’.

(2) 於歐盟指令 2009/22/EC 附件中，新增以下幾點：

17. 歐洲議會與理事會於 2019 年 5 月 20 日發布(EU)2019/770 指令，關於數位內容或數位服務提供契約之特定層面 (O)L 136, 22.5.2019, p.1

第 24 條

轉換

1. 會員國應於 2021 年 7 月 1 日前通過與公布遵守本指令所必須之相關措施，並立即通知執行委員會。

會員國應自 2022 年 1 月 1 日起施行上述措施。

當會員國採用上述措施時，應包含對於本指令之引用，或併同正式發布時附加該引用。表示該引用之方法應由會員國決定之。

會員國應就其採用，屬於本指令涵蓋範圍之國家法律案條款，與執行委員會溝通。

2. 本指令之規定適用於自 2022 年 1 月 1 日開始提供之數位內容或數位服務，但第 19 條與第 20 條規定除外，僅適用於自該日期起簽訂之契約。

- (2) In Annex I to Directive 2009/22/EC, the following point is added:
- ‘17. 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 (OJ L 136, 22.5.2019, p. 1)’.

Article 24

Transposition

1. By 1 July 2021 Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 1 January 2022.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

2. The provisions of this Directive shall apply to the supply of digital content or digital services which occurs from 1 January 2022 with the exception of Articles 19 and 20 of this Directive which shall only apply to contracts concluded from that date.

第 25 條

審查

執行委員會應於 2024 年 6 月 12 日以前審查本指令之實施情形，並向歐洲議會、理事會、以及歐洲經濟社會委員會提交報告。該報告亦須審查相關案例涉及本指令涵蓋規則之外，適用於數位內容或數位服務提供之其他一致性規則，包括對廣告提供的規定。

第 26 條

生效施行

本指令應於歐盟官方公報發布後第 20 日生效。

第 27 條

發布

本指令已對會員國發布。

於布魯塞爾，2019 年 5 月 20 日。

歐洲議會

議長

A.TAJANI

理事會

主席

G.CIAMBA

Article 25

Review

The Commission shall, not later than 12 June 2024 review the application of this Directive and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee. The report shall examine, inter alia, the case for harmonisation of rules applicable to contracts for the supply of digital content or digital services other than that covered by this Directive, including supplied against advertisements.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 20 May 2019.

For the European Parliament

The President
A. TAJANI

For the Council

The President
G. CIAMBA

歐洲議會暨歐盟理事會 2019/771 指令(EU)

2019 年 5 月 20 日

關於商品銷售之契約特定層面，本指令修正(EU)2017/2394
規則與 2009/22/EC 指令，並廢除 1999/44/EC 指令

歐洲議會暨歐盟理事會

依據「歐盟運作條約」，特別是第 114 條，

參考歐盟執行委員會之提案，

經過提供法制草案予各國議會，

參考歐洲經濟社會委員會之意見，

按照一般之立法程序。

鑒於：

- (1) 為了在全球市場上保有競爭力，歐盟需要改善內部市場的運作，並且成功應對如今日漸由技術驅動的經濟所帶來的多重挑戰。「數位單一市場戰略」制定了一個全面性的架構，以促進整合數位領域至內部市場中。「數位單一市場戰略」的第一支柱在於檢視跨境電子商務發展的主要障礙，來解決歐盟內部貿易的分散問題，這是構成跨境的企業對消費者之商品銷售中最重要部分。

**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

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union,
and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social
Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to remain competitive on global markets, the Union needs to improve the functioning of the internal market and successfully meet the multiple challenges posed today by an increasingly technology-driven economy. The Digital Single Market Strategy lays down a comprehensive framework facilitating the integration of the digital dimension into the internal market. The first pillar of the Digital Single Market Strategy tackles fragmentation in intra-

- (2) 根據「歐盟運作條約」(TFEU)第 26 條第(1)項及第(2)項，歐盟應採取措施，以建立或確保內部市場的運作，內部市場即為一個沒有內部邊界且商品與服務確實能夠自由流通的區域。TFEU 第 169 條第(1)項、以及第 169 條第(2)項第(a)點則指出，歐盟根據 TFEU 第 114 條為健全內部市場所採取的措施，有助於達成高層級之消費者保護。本指令目的是在實現高層級消費者保護與提高企業競爭力之間取得平衡，同時確保對輔助性原則的尊重。
- (3) 有關商品銷售之契約在特定層面上，應以高度保護消費者為基礎，使其具有符合性，以期達到真正的數位單一市場、提升法律的明確性與降低交易成本，特別是對中小型企業(SMEs)而言。
- (4) 電子商務是內部市場成長的主要驅動力。然而，其成長潛能尚未獲得充分開發。為了增強歐盟的競爭力並促進成長，歐盟必須盡速採取行動，並且鼓勵經濟行動者釋放內部市場所提供的全部潛能。只有所有市場參與者皆能順利進入包括電子商務交易在內的跨境商品銷售領

EU trade by looking at all major obstacles to the development of cross-border ecommerce, which constitutes the most significant part of cross-border business-to-consumer sales of goods.

- (2) Article 26(1) and (2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to adopt measures with the aim of establishing or ensuring the functioning of the internal market, which is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. Article 169(1) and point (a) of Article 169(2) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU in the context of the completion of the internal market. This Directive aims to strike the right balance between achieving a high level of consumer protection and promoting the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.
- (3) Certain aspects concerning contracts for the sale of goods should be harmonised, taking as a base a high level of consumer protection, in order to achieve a genuine digital single market, increase legal certainty and reduce transaction costs, in particular for small and medium-sized enterprises ('SMEs').
- (4) E-commerce is a key driver for growth within the internal market. However, its growth potential is far from being fully exploited. In order to strengthen Union competitiveness and to boost growth, the Union needs to act swiftly and encourage economic actors to unleash the full potential offered by the internal market. The full

域，才能釋放內部市場的全部潛能。以市場參與者完成交易為基礎的契約法規，是形成提供跨境商品與否之業務決策的關鍵因素。那些規則同樣會影響消費者接受與信任此類購買的意願。

- (5) 技術的進化促使與數位內容或數位服務整合或相互鏈結的商品市場不斷成長。由於此類設備的數量持續增加，以及消費者對它們快速增長的接受度，因此需要歐盟層級之作為，以確保高層級之消費者保護，並且對於適用於此類商品銷售契約之規則，提高法律的明確性。法律明確性的提高將有助於增強消費者與賣方的信任。

- (6) 儘管針對運送條件以及遠距或營業場所外契約相關之締約前資訊要求與解除權，已經於歐洲議會暨歐盟理事會 2011/83/EU 指令中達到充分的一致性，適用於商品銷售的歐盟規則卻依然零散。其他關鍵契約要素，例如符合性標準，涉及未達到符合性的契約救濟措施及其主要執行方式，於目前歐洲議會暨歐盟理事會 1999/44/EC 指令下，僅具備最低限度的協調性。會員國以超越歐盟標準制定或維持可實現更高層級消費者保護的規則，是被允許的。為此，會員國於要件和範圍上採取了不同的作為。因此，會員國將 1999/44/EC 指令轉換成國內的規

potential of the internal market can only be unleashed if all market participants enjoy smooth access to cross-border sales of goods including in e-commerce transactions. The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business decisions as to whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

- (5) Technological evolution has led to a growing market for goods that incorporate or are inter-connected with digital content or digital services. Due to the increasing number of such devices and their rapidly growing uptake by consumers, action at Union level is needed in order to ensure that there is a high level of consumer protection and to increase legal certainty as regards the rules applicable to contracts for the sale of such products. Increasing legal certainty would help to reinforce the trust of consumers and sellers.
- (6) Union rules applicable to the sales of goods are still fragmented, although rules on delivery conditions and, as regards distance or off-premises contracts, pre-contractual information requirements and the right of withdrawal have already been fully harmonised by Directive 2011/83/EU of the European Parliament and of the Council (3). Other key contractual elements, such as the conformity criteria, the remedies for a lack of conformity with the contract and the main modalities for their exercise, are currently subject to minimum harmonisation under Directive 1999/44/EC of the European Parliament and of the Council (4). Member States

定，至今於許多基本要件存在很大的分歧，例如缺乏或存有救濟措施之層級結構。

- (7) 現有差距會對企業和消費者產生不利影響。根據歐洲議會暨歐盟理事會(EC)第 593/2008 號規則，企業針對其他會員國的消費者之活動必須考慮到消費者慣常居所地國家的強制性消費者契約法律規則。由於會員國之間的規則不同，企業會面臨到額外的費用支出。因此，許多企業可能寧願繼續從事國內貿易，或者僅出口至一個或兩個會員國。為了將跨境貿易所承擔之成本和風險降到最低，反而導致失去商業拓展與規模經濟的機會。中小企業尤其受到影響。
- (8) 儘管當消費者自國外購買時，因(EC)第 593/2008 號規則的實施，而享有高層級的保護。但法律上的分歧，卻對消費者對跨境交易的信任度產生負面影響。即使有多種因素造成如此的不信任，針對關鍵契約權利之不確定性，仍是明顯為消費者關注的焦點。這種不確定性的存在，無關乎消費者在賣方主導的跨境活動中，是否受到其所屬會員國內強制性消費者契約法律規則的保護，或消費者是否與賣方訂立跨境契約，即使個別賣方沒有在

have been allowed to go beyond the Union standards and introduce or maintain rules that ensure that an even higher level of consumer protection is achieved. In doing so, they have acted on different elements and to different extents. Thus, national provisions transposing Directive 1999/44/EC significantly diverge today on essential elements, such as the absence or existence of a hierarchy of remedies.

- (7) Existing disparities can adversely affect businesses and consumers. Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council (5), businesses directing their activities to consumers in other Member States are required to take account of the mandatory consumer contract law rules of the consumer's country of habitual residence. As those rules differ among Member States, businesses can be faced with additional costs. Consequently, many businesses might prefer to continue trading domestically or only export to one or two Member States. That choice of minimising exposure to costs and risks associated with cross-border trade results in lost opportunities for commercial expansion and economies of scale. SMEs in particular, are affected.
- (8) While consumers enjoy a high level of protection when they purchase from abroad as a result of the application of Regulation (EC) No 593/2008, legal fragmentation also negatively affects consumers' levels of confidence in cross-border transactions. While several factors contribute to this mistrust, uncertainty about key contractual rights ranks prominently among consumers' concerns. This uncertainty exists independently of whether or not consumers are protected by the mandatory consumer contract law rules of their

消費者的會員國內從事商業活動。

- (9) 雖然商品的線上銷售構成了歐盟跨境銷售的大宗，但各國契約法之間的差異同樣會影響使用遠距銷售管道的零售商及採取當面銷售的零售商，並且阻礙他們跨境發展。本指令應涵蓋所有銷售管道，以期為所有向消費者銷售商品的企業創造一個平等的競爭環境。透過制定跨銷售管道的統一規則，本指令應避免任何會為歐盟中越來越多的全通路零售商帶來不成比例的負擔之歧異。執行委員會在 2017 年 5 月 29 日發表針對消費者與行銷法規之「適合性檢視」中，亦涵蓋 1999/44/EC 指令，證實了保有一致的銷售規則與給予所有銷售渠道的保障有其必要性。
- (10) 本指令應涵蓋適用於商品銷售的規則，包括具有數位元素的商品，並僅針對其中需克服在內部市場因契約法而導致阻礙的主要契約要件。為此，對於符合性的要求、因商品不符合契約而向消費者提供的救濟措施、以及其主要的執行方式等規則，應充分協調。同時與 1999 / 44 / EC 指令相比，消費者保護的層級應予提高。對於消費者契約法律中某些必要元素的統一規則，將使企業—尤其是中小型企业，更容易在其他會員國提供產品。而在充分協調重點規則後，消費者亦能受益於高層級的消費

own Member State in the event that sellers direct their cross-border activities to them, or of whether or not consumers conclude cross-border contracts with sellers without the respective seller pursuing commercial activities in the consumer's Member State.

- (9) While online sales of goods constitute the vast majority of cross-border sales in the Union, differences in national contract laws equally affect retailers using distance sales channels and retailers selling face-to-face and prevent them from expanding across borders. This Directive should cover all sales channels, in order to create a level playing field for all businesses selling goods to consumers. By laying down uniform rules across sales channels, this Directive should avoid any divergence that would create disproportionate burdens for the growing number of omnichannel retailers in the Union. The need for retaining consistent rules on sales and guarantees for all sales channels was confirmed in the Commission's Fitness Check on consumer and marketing law published on 29 May 2017, which also covered Directive 1999/44/EC.
- (10) This Directive should cover rules applicable to the sales of goods, including goods with digital elements, only in relation to key contract elements needed to overcome contract-law related barriers in the internal market. For this purpose, rules on requirements for conformity, remedies available to consumers for a lack of conformity of the goods with the contract and on the main modalities for their exercise should be fully harmonised, and the level of consumer protection, as compared to Directive 1999/44/EC, should be increased. Fully harmonised rules on some

者保護與福利。

- (11) 本指令是對 2011/83/EU 指令的補充。2011/83/EU 指令主要規定了有關締約前資訊要求、遠距與營業場所外契約的解除權、以及針對運送與風險移轉的規則，而本指令引入了有關商品符合性的規則、未達到符合性時的救濟措施及其執行方式。
- (12) 本指令僅適用於本指令定義內由有形且可移動的物件所組成之商品。因此，會員國應可自行規範不動產之買賣契約，例如住宅，與構成此類不動產絕大部分的主要部份。
- (13) 本指令和歐洲議會暨歐盟理事會(EU)2019/770 指令應相互補充。(EU)2019/770 指令規範了與數位內容或數位服務的提供契約有關之必要條件，而本法規則是針對與商品銷售契約有關的要求訂定規範。因此，為了滿足消費者的期望並且替數位內容或數位服務的企業經營者提供一個明確、簡單的法律框架，(EU)2019/770 指令適用於數位內容或數位服務的提供，包括以有形媒介提供之數位內容例如 DVD 光碟、CD 光碟、USB 隨身碟和記憶

essential elements of consumer contract law would make it easier for businesses, especially SMEs, to offer their products in other Member States. Consumers would benefit from a high level of consumer protection and welfare gains by fully harmonising key rules.

- (11) This Directive complements Directive 2011/83/EU. While Directive 2011/83/EU mainly lays down provisions regarding pre-contractual information requirements, the right of withdrawal from distance and off-premises contracts and rules on delivery and passing of risk, this Directive introduces rules on conformity of the goods, remedies in the event of a lack of conformity and modalities for their exercise.
- (12) This Directive should only apply to tangible movable items that constitute goods within the meaning laid down in this Directive. Member States should therefore be free to regulate contracts for the sale of immovable property, such as residential buildings, and its main components intended to constitute a major part of such immovable property.
- (13) This Directive and Directive (EU) 2019/770 of the European Parliament and of the Council (6) should complement each other. While Directive (EU) 2019/770 lays down rules on certain requirements concerning contracts for the supply of digital content or digital services, this Directive lays down rules on certain requirements concerning contracts for the sale of goods. Accordingly, in order to meet the expectations of consumers and ensure a clear-cut and simple legal framework for traders of

卡等；倘若有形媒介本身專門作為數位內容的載體，則也適用於有形媒介本身。相較之下，本指令應適用於商品銷售契約，包括具有數位元素的商品，在此指的是需以數位內容或數位服務來達成其功能之商品。

- (14) 本指令中「商品」一詞應涵蓋「具有數位元素的商品」，因此也意指與數位內容或數位服務整合或相互鏈結的商品類型，此類商品在缺少數位內容或數位服務時將無法執行其功能。與商品整合或相互鏈結的數位內容可為以數位形式產製及提供的各種資料，例如作業系統、應用程式與任何其他軟體。數位內容能夠在簽訂銷售契約時先行安裝，亦可依照該契約所提出的內容而隨後安裝。與商品相互鏈結的數位服務可包括以數位形式創作、處理或儲存的資料，或者是上述服務的存取，例如在雲端運算環境中提供的軟體即服務，導航系統中交通資訊的持續提供，或是智慧型手錶持續提供個別化的訓練計畫。

digital content or digital services, Directive (EU) 2019/770 applies to the supply of digital content or digital services, including digital content supplied on a tangible medium, such as DVDs, CDs, USB sticks and memory cards, as well as to the tangible medium itself, provided that the tangible medium serves exclusively as a carrier of the digital content. In contrast, this Directive should apply to contracts for the sale of goods, including goods with digital elements which require digital content or a digital service in order to perform their functions.

- (14) The term ‘goods’ as provided for under this Directive should be understood to include ‘goods with digital elements’, and therefore to also refer to any digital content or digital service that is incorporated in or interconnected with such goods, in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions. Digital content that is incorporated in or interconnected with a good can be any data which are produced and supplied in digital form, such as operating systems, applications and any other software. Digital content can be pre-installed at the moment of the conclusion of the sales contract or, where that contract so provides, can be installed subsequently. Digital services inter-connected with a good can include services which allow the creation, processing or storage of data in digital form, or access thereto, such as software-as-a-service offered in the cloud computing environment, the continuous supply of traffic data in a navigation system, or the continuous supply of individually adapted training plans in the case of a smart watch.

- (15) 本指令應適用於商品銷售契約，包括具有數位元素的商品，此類商品若缺少整合或相互鏈結的數位內容或數位服務，將無法執行其功能，且依據與此類商品有關之銷售契約，數位內容或服務為隨同商品提供。整合或相互鏈結的數位內容或數位服務之提供，是否構成與賣方之銷售契約的一部分，應取決於該契約的內容。這應包含在契約中被明確要求提供之整合或相互鏈結的數位內容或數位服務。也應包含被認為應涵蓋特定數位內容或特定數位服務之提供的銷售契約，因為此類提供於相同類型的商品而言是常見的，且鑒於商品的性質，以及賣方、賣方代表或是在交易鏈內先前環節的任一方（包括生產者）所發表的公開聲明，消費者可以合理地期望此一提供。舉例來說，假設某智慧電視之廣告宣稱包含特定的影像應用程式，則該影像應用程式即被認為是銷售契約的一部分。無論數位內容或數位服務是先行安裝在商品本身中，還是必須隨後下載至另一項裝置上且僅與該商品相互鏈結，都應適用。例如，根據銷售契約智慧型手機可能附有標準化預先安裝的應用程式，像是鬧鈴應用程式或照相應用程式。另一個可能的例子是智慧型手錶。在這個例子裡，手錶本身被認定是帶有數位元素的商品，惟有透過依銷售契約所提供之應用程序才能發揮其功能，但消費者必須下載該應用程式到智慧型手機上；該應用程序即為相互鏈結的數位元素。如果整合或相互鏈結的數位內容或數位服務不是由賣方本身提供，而是根據銷售契約由第三方提供，也應適用。為了避免買賣雙方的不確定性，如果針對數位內容或數位服務之提供是否構成銷售契約的一部分存有疑問，則應適用本指令的規則。另外，確立賣方與消費者之間的雙邊契約

- (15) This Directive should apply to contracts for the sale of goods, including goods with digital elements where the absence of the incorporated or inter-connected digital content or digital service would prevent the goods from performing their functions and where that digital content or service is provided with the goods under the sales contract concerning those goods. Whether the supply of the incorporated or inter-connected digital content or digital service forms part of the sales contract with the seller should depend on the content of this contract. This should include incorporated or inter-connected digital content or digital services the supply of which is explicitly required by the contract. It should also include sales contracts which can be understood as covering the supply of specific digital content or a specific digital service because they are normal for goods of the same type and the consumer could reasonably expect them given the nature of the goods and taking into account any public statement made by or on behalf of the seller or other persons in previous links of the chain of transactions, including the producer. If, for example, a smart TV were advertised as including a particular video application, that video application would be considered to be part of the sales contract. This should apply regardless of whether the digital content or digital service is pre-installed in the good itself or has to be downloaded subsequently on another device and is only inter-connected to the good. For example, a smart phone could come with a standardised preinstalled application provided under the sales contract, such as an alarm application or a camera application. Another possible example is that of a smart watch. In such a case, the watch itself would be considered to be the good

關係一整合或相互鏈結的數位內容或數位服務之提供構成了其中的一部分，不應僅從消費者必須同意第三方的授權契約以獲得數位內容或數位服務這一事實就受到影響。

- (16) 反之，倘若缺少整合或相互鏈結的數位內容或數位服務不會阻礙商品執行其功能，或者假設消費者簽訂了數位內容或數位服務的提供契約，但不構成具有數位元素商品銷售契約之一部分，該契約即應與商品銷售契約分開考量，即使與第三方提供商的第二份契約是經由賣方媒介而成立，且在符合指令條件下，屬於(EU) 2019/770 指令的範疇。舉例來說，如果消費者從應用程式商店將下載了遊戲程式到智慧型手機上，則該遊戲程式的提供契約與智慧型手機本身的銷售契約是分開的。因此，本指令應僅適用於與智慧型手機有關之銷售契約，而在符合

with digital elements, which can perform its functions only with an application that is provided under the sales contract but has to be downloaded by the consumer onto a smart phone; the application would then be the interconnected digital element. This should also apply if the incorporated or inter-connected digital content or digital service is not supplied by the seller itself but is supplied, under the sales contract, by a third party. In order to avoid uncertainty for both sellers and consumers, in the event of doubt as to whether the supply of the digital content or the digital service forms part of the sales contract, the rules of this Directive should apply. Furthermore, ascertaining a bilateral contractual relationship, between the seller and the consumer, of which the supply of the incorporated or inter-connected digital content or digital service forms part should not be affected by the mere fact that the consumer has to consent to a licensing agreement with a third party in order to benefit from the digital content or the digital service.

- (16) In contrast, if the absence of the incorporated or interconnected digital content or digital service does not prevent the goods from performing their functions, or if the consumer concludes a contract for the supply of digital content or a digital service which does not form part of the contract concerning the sale of goods with digital elements, that contract should be considered to be separate from the contract for the sale of the goods, even if the seller acts as an intermediary of that second contract with the third-party supplier, and could fall within the scope of Directive (EU) 2019/770 if the conditions of that Directive are met. For

指令條件之下，遊戲程式的提供則屬於(EU) 2019/770 指令的範疇。另一個例子是當明確同意消費者購買無特定作業系統的智慧型手機，而消費者隨後與第三方簽訂了提供作業系統的契約時，單獨購買的作業系統之提供將不構成銷售契約的一部分，因此將不屬於本指令的範疇，然而如果符合指令條件，則可能屬於(EU)2019/770 指令的範疇。

- (17) 為了維持法律的明確性，本指令應規範銷售契約的定義，並明確界定其範疇。本指令的範疇亦應涵蓋尚未生產或製造的商品契約，包括按照買方提出的規格。另外，假設商品的安裝構成銷售契約的一部分，並且必須由賣方或是於賣方的承擔責任之下執行，則該商品安裝可納入本指令的範疇內。若是契約同時包含商品銷售和服務提供，則應由國家法律認定是否整份契約可以被歸類為本指令定義之銷售契約。

instance, if the consumer downloads a game application from an app store onto a smart phone, the contract for the supply of the game application is separate from the contract for the sale of the smart phone itself. This Directive should therefore only apply to the sales contract concerning the smart phone, while the supply of the game application should fall under Directive (EU) 2019/770, if the conditions of that Directive are met. Another example would be where it is expressly agreed that the consumer buys a smart phone without a specific operating system and the consumer subsequently concludes a contract for the supply of an operating system from a third party. In such a case, the supply of the separately bought operating system would not form part of the sales contract and therefore would not fall within the scope of this Directive but could fall within the scope of Directive (EU) 2019/770, if the conditions of that Directive are met.

- (17) For the purpose of legal clarity this Directive should lay down a definition of a sales contract and also clearly define its scope. The scope of this Directive should also cover contracts for goods that are yet to be produced or manufactured, including under the consumer's specifications. Furthermore, an installation of the goods could fall within the scope of this Directive if the installation forms part of the sales contract and has to be carried out by the seller or under the seller's responsibility. Where a contract includes elements of both sales of goods and provision of services, it should be left to national law to determine whether the whole contract can be classified as a sales contract within the meaning of this Directive.

(18) 就不受本指令規範之相關事宜而言，本指令不應影響國內法律，尤其是關於商品合法性、損害賠償和一般契約法方面，例如契約的形成、有效性、無效性或效果。同樣地，有關契約終止的後果、以及在維修與更換的某些方面，皆不在本指令規範內，亦如是。當規範契約中任一方當事人在另一方履行其義務之前，有中止履行義務或部分義務的權利時，會員國應可規範有關消費者拒絕付款的條件及救濟措施。會員國亦應可規範消費者因本指令所指稱之賣方的侵權行為所發生之損害賠償請求權。本指令亦不應影響不特別針對消費者契約、且為在訂立銷售契約時尚不明顯的某種瑕疵提供特定救濟的國家規定，亦即為賣方對商品隱有瑕疵的責任制定了具體規則的國家法律。至於涉及商品欠缺符合性之情形，本指令亦不應影響國家法律所規定，讓消費者得以向交易鏈先前環節的人員，例如製造商，或其他為前者履行其義務的人員，提出之非契約救濟措施。

(19) 本指令不應影響會員國，在商品於交付不久後即明顯欠缺符合性的情況下，可自行允許消費者選擇特定的救濟

- (18) This Directive should not affect national law to the extent that the matters concerned are not regulated by this Directive, in particular with regard to the legality of the goods, damages and general contract law aspects such as the formation, validity, nullity or effects of contracts. The same should apply in relation to the consequences of the termination of the contract and to certain aspects regarding repair and replacement that are not regulated in this Directive. When regulating the rights of parties to withhold the performance of their obligations or part thereof until the other party performs its obligations, Member States should remain free to regulate the conditions and modalities regarding the withholding of payment of the price by the consumer. Member States should also remain free to regulate the consumer's entitlement to compensation for damage suffered as a consequence of an infringement by the seller of this Directive. This Directive should also not affect national rules that do not specifically concern consumer contracts and provide for specific remedies for certain types of defects that were not apparent at the time of conclusion of the sales contract, namely national provisions which may lay down specific rules for the seller's liability for hidden defects. This Directive should also not affect national laws providing for non-contractual remedies for the consumer, in the event of lack of conformity of goods, against persons in previous links of the chain of transactions, for example manufacturers, or other persons that fulfil the obligations of such persons.
- (19) This Directive should not affect the freedom of Member States to allow consumers to choose a specific remedy if the lack of

措施，亦即國家法律規定了消費者有權拒絕有瑕疵的商品，得以主張解除契約或者要求在商品交付後的特定短時間內立即更換，換貨期限應不超過 30 天。

- (20) 會員國得規範與訂立契約相關之賣方資訊義務，或賣方須有提醒消費者的責任，例如就商品的某些特徵、由消費者提供的材料是否合適、或可能因消費者的特殊要求（例如，消費者要求使用特定面料進行裁剪的要求）導致的不利影響等，例如，依消費者要求使用一種特定布料製作一件舞會禮服。
- (21) 會員國亦得將本指令規則的適用範圍擴大到被排除在本指令範圍之外的契約上，或以其他方式規範此類契約。例如，會員國得將本指令為消費者提供的保護，擴展至非本指令消費者定義下之自然人或法人，例如，非政府組織、新創公司或中小型企業。
- (22) 消費者的定義應泛指於其交易、商業、工藝或專業領域以外進行消費行為之自然人。然而，針對具有雙重目的之契約，即締結契約之目的部份屬於，部分不屬於該自然人之交易，且該交易目的受到限制而並未構成整體契

conformity of the goods becomes apparent shortly after delivery, namely national provisions which provide for a right for the consumer to reject goods with a defect and to treat the contract as repudiated or ask for immediate replacement, within a specific short period of time after the delivery of the goods, which should not exceed 30 days.

- (20) Member States should remain free to regulate information obligations of the seller in connection with the conclusion of the contract or the duty of the seller to warn the consumer about, for instance, certain characteristics of the good, the suitability of materials provided by the consumer or possible disadvantages resulting from specific requests of the consumer, for example a request by the consumer to use a specific fabric for the tailoring of a ball gown.
- (21) Member States should also remain free to extend the application of the rules of this Directive to contracts that are excluded from the scope of this Directive, or to otherwise regulate such contracts. For instance, Member States should remain free to extend the protection afforded to consumers by this Directive also to natural or legal persons that are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or SMEs.
- (22) The definition of a consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, Member States should also remain free to determine in the case of dual purpose contracts, where the contract is

約背景之主要部分，會員國亦得決定是否以及在何種條件下，該自然人可被視為消費者。

- (23) 本指令應適用於賣方移轉或承諾移轉商品所有權給消費者的任何契約。倘若平台提供者出於與自身商業相關之目的行事，並為了銷售商品而成為消費者的直接締約對象，則可視為本指令指稱之賣方。會員國得將本指令的適用範圍擴展至平台提供者，即使他們未滿足本指令中被視為賣方的條件。
- (24) 為了藉法律規則的適當地彈性以平衡法律明確性的需求，本指令當中所稱何事可來自或被一個人期待，應被理解為何事可被合理預期。合理性標準應將該契約的性質與目的，以及所涉個案實際情況與當事人之用法與實踐等，客觀的納入評估。
- (25) 為了釐清消費者對商品的期望、以及賣方若未能如預期交付所應承擔的責任，將確認商品是否具有符合性的規定完全統一有其重要性。本指令中所指涉的任何符合性，皆應指商品與銷售契約之符合性。為了維護銷售契約中當事人雙方的合法利益，符合性應基於主觀與客觀

concluded for purposes that are partly within and partly outside the person's trade, and where the trade purpose is so limited as not to be predominant in the overall context of the contract, whether, and under which conditions, that person should also be considered a consumer.

- (23) This Directive should apply to any contract whereby the seller transfers or undertakes to transfer the ownership of goods to the consumer. Platform providers could be considered to be sellers under this Directive if they act for purposes relating to their own business and as the direct contractual partner of the consumer for the sale of goods. Member States should remain free to extend the application of this Directive to platform providers that do not fulfil the requirements for being considered a seller under this Directive.
- (24) In order to balance the need for legal certainty with an appropriate flexibility of the legal rules, any reference in this Directive to what can be expected from or by a person should be understood as a reference to what can reasonably be expected. The standard of reasonableness should be objectively ascertained, having regard to the nature and purpose of the contract, the circumstances of the case and to the usages and practices of the parties involved.
- (25) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in the event of failure to deliver what is expected, it is essential to fully harmonise rules for determining whether goods are in conformity. Any reference to conformity in this Directive should refer to

的要求進行評估。

- (26) 因此，商品應符合賣方與消費者在銷售契約中協議的要求。這些要求可涵蓋包括商品的數量、品質、類型及說明，商品是否適合某特定目的，以及商品交付時附帶配件及使用說明。銷售契約中之要求，應包括依據 2011/83/EU 指令構成銷售契約一部分之締約前資訊。
- (27) 功能性概念應理解為商品按其目的可執行其功能的方式。相互操作性之概念則是涉及商品是否得以於其通常被使用之相同類型的硬體或軟體以外的其他不同之軟體或硬體上執行，及其可執行之程度。成功的功能運作可以包括例如商品與其他軟體或硬體交換資訊、並運用該交換而來的資訊之能力。
- (28) 鑒於與數位內容或數位服務整合或相互鏈結的商品不斷在發展，賣方與消費者皆會同意此類商品應提供更新。根據銷售契約中的協定而進行更新，能夠改進及提升商品的數位內容或數位服務元素、擴展其功能性；使其適

conformity of the goods with the sales contract. In order to safeguard the legitimate interests of both parties to a sales contract, conformity should be assessed based on both subjective and objective requirements for conformity.

- (26) Therefore, the goods should comply with the requirements agreed between the seller and the consumer in the sales contract. Such requirements could cover, inter alia, the quantity, quality, type and description of the goods, their fitness for a specific purpose, as well as the delivery of the goods with the agreed accessories and any instructions. The requirements in the sales contract should include those resulting from pre-contractual information which, in accordance with Directive 2011/83/EU, forms an integral part of the sales contract.
- (27) The notion of functionality should be understood to refer to the ways in which the goods can perform their functions having regard to their purpose. The notion of interoperability relates to whether and to what extent the goods are able to function with hardware or software that is different from those with which goods of the same type are normally used. Successful functioning could include, for instance, the ability of the goods to exchange information with such other software or hardware and to use the information exchanged.
- (28) Given that the digital content or digital services incorporated in or inter-connected with goods are constantly developing, sellers may agree with consumers to provide updates for such goods. Updates, as agreed in the sales contract, can improve and enhance the

應技術發展，保護其免於受到新的安全性威脅、或有助於達成其他目的。因此，與數位內容或數位服務整合或相互鏈結的商品之符合性，亦應就商品之數位內容或數位服務元素是否根據銷售契約而獲得更新來進行評估。若無法提供於銷售契約內已協定之更新，應視為商品欠缺符合性。另外，有瑕疵或不完整的更新也應視為商品欠缺符合性，因為如此意味著這樣的更新未按照銷售契約中協定的方式執行。

- (29) 為了保持符合性，商品不僅要合乎主觀的要求以達到符合性，還需合乎本指令對於符合性所規定之客觀要求。符合性的評估尤其應考量同類商品通常被使用之目的、是否附帶消費者可以合理期待獲得的配件及使用說明、或者商品是否與賣方展示給消費者的樣品或式樣相當。鑒於商品的性質，以及將賣方、賣方代表或是在交易鏈內先前環節的其他人所發表的任何公開聲明納入考量，商品應具備的品質及特性，通常可見於同類型之商品，且為消費者可合理期待的。

digital content or digital service element of goods, extend their functionalities, adapt them to technical developments, protect them against new security threats or serve other purposes. The conformity of goods with digital content or digital services which are incorporated in or inter-connected with the goods should, therefore, also be assessed in relation to whether the digital content or digital service element of such goods is updated in accordance with the sales contract. Failure to supply updates that had been agreed in the sales contract should be considered as a lack of conformity of the goods. Moreover, defective or incomplete updates should also be considered as a lack of conformity of the goods, given that that would mean that such updates are not performed in the manner stipulated in the sales contract.

- (29) In order to be in conformity, the goods should not only comply with the subjective requirements for conformity but should in addition comply with the objective requirements for conformity set out in this Directive. Conformity should be assessed, *inter alia*, by considering the purpose for which goods of the same type would normally be used, whether they are supplied with the accessories and instructions that the consumer can reasonably expect to receive or whether they correspond to the sample or model that the seller made available to the consumer. The goods should also possess the qualities and features which are normal for goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statement made by or on behalf of the seller or other persons in previous links of the chain of transactions.

- (30) 除了契約中協定之更新外，賣方亦應在包括安全性等方面提供更新，以確保具有數位元素的商品維持其符合性。賣方的義務應僅限為此類商品必要之更新，以根據本指令對於符合性所規定之客觀與主觀要求使其保持符合性。除非雙方當事人另有契約協定，賣方無義務提供商品數位內容或數位服務的升級版本，亦無需提升或擴展商品的功能性至超出符合性要求的範圍。若是由賣方或由根據銷售契約提供數位內容或數位服務的第三方提供之更新，導致具有數位元素的商品欠缺符合性，賣方應有責任使該商品再次達到符合性。消費者應可自由選擇是否安裝已提供之更新。當消費者決定不安裝為使具有數位元素的商品維持符合性所必要之更新，消費者則不應期望該商品仍具符合性。賣方應告知消費者，當消費者不安裝為使具有數位元素的商品維持符合性所必要之更新，包含安全性更新，這個決定將影響賣方對於具有數位元素的商品之特性，原本為保持其達到符合性而進行相關更新所盡的責任。本指令不應影響其他歐盟法令或國家法令所規定之提供安全性更新的義務。

- (30) In addition to contractually agreed updates, the seller should also provide updates, including security updates, in order to ensure that goods with digital elements remain in conformity. The seller's obligation should be limited to updates which are necessary for such goods to maintain their conformity with the objective and subjective requirements for conformity laid down in this Directive. Unless the parties have contractually agreed otherwise, the seller should not be obliged to provide upgraded versions of the digital content or digital service of the goods or to improve or extend the functionalities of goods beyond the conformity requirements. If an update provided by the seller, or by a third party supplying the digital content or digital service under the sales contract, causes a lack of conformity of the good with digital elements, the seller should be liable for bringing the good into conformity again. The consumer should remain free to choose whether to install the updates provided. Where the consumer decides not to install the updates which are necessary for the goods with digital elements to maintain their conformity, the consumer should however not expect such goods to remain in conformity. The seller should inform the consumer that the consumer's decision not to install updates which are necessary for keeping the goods with digital elements in conformity, including security updates, will affect the seller's liability for conformity of those features of the goods with digital elements which the relevant updates are supposed to maintain in conformity. This Directive should not affect obligations to provide security updates laid down in other Union law or in national law.

- (31) 原則上，在具有數位元素的商品中，透過單次提供行為即提供之與數位內容或數位服務整合或相互鏈結的商品，賣方僅應就於商品交付時即存在之符合性欠缺承擔責任。然而，提供更新之義務應反映以下事實：任何此類產品的數位環境不斷在變化。因此，為了確保商品能夠以與交付時相同的方式運作，更新是必要的工具。此外，與傳統商品相比，具有數位元素的商品並不完全離開賣家可控制的範圍，因為賣家或根據銷售契約提供數位內容或數位服務的第三方通常能夠透過網路從遠端更新商品。所以，如果數位內容或數位服務是透過單次提供行為提供的，則賣方應有責任提供必要之更新，以使具有數位元素的商品在消費者可以合理預期的一段時間內維持符合性，即便商品交付時已具備符合性。至於消費者可以合理預期獲得更新的期限則應根據商品及數位元素的類型及目的，同時依照銷售契約的情況及性質，予以評估。消費者通常預期至少在賣方可就欠缺符合性承擔責任的期間內獲得更新，而在某些情況下，消費者的合理期待可能會超過該期限，尤其是在安全性更新方面。在其他情況下，例如具有數位元素的商品之目的在時間上為有限的，則賣方提供更新的義務通常會僅限在該期間。

- (31) In principle, in the case of goods with digital elements whereby the digital content or digital service incorporated in or interconnected with the goods is supplied through a single act of supply, the seller should only be liable for a lack of conformity that exists at the time of delivery. However, the obligation to provide updates should reflect the fact that the digital environment of any such good constantly changes. Therefore, updates are a necessary tool in order to ensure that the goods are able to function in the same way that they did at the time of delivery. Furthermore, in contrast to traditional goods, goods with digital elements are not completely separate from the seller's sphere because the seller, or a third person supplying the digital content or digital service under the sales contract, is able to update the goods from a distance, usually over the internet. Therefore, if the digital content or digital service is supplied by a single act of supply, the seller should be liable to provide the updates necessary to keep the goods with digital elements in conformity for a period of time that the consumer can reasonably expect, even if the goods were in conformity at the time of delivery. The period of time during which the consumer can reasonably expect to receive updates should be assessed based on the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the sales contract. A consumer would normally expect to receive updates for at least as long as the period during which the seller is liable for a lack of conformity, while in some cases the consumer's reasonable expectation could extend beyond that period, as might be the case particularly with regard to security updates. In other cases, for instance as regards goods with digital elements the purpose of which is limited in

- (32) 確保商品的耐用性對於實現永續消費模式與循環經濟是很重要的。同樣地，加強市場監督並且向經濟營運者提供適當的激勵措施，以將不符合標準的產品拒於歐盟市場之外，對於增強對內部市場運作的信任至關重要。為此，就產品訂定的歐盟法規，係最適合作為引入針對特定類型或類別的產品有關之耐用性及其他產品相關要求，或為此目的採取適當標準之方法。本指令因而應為此類歐盟產品特定立法中追求的目標予以補充，並應將耐用性納入作為一項評估商品的符合性之客觀標準。本指令中的耐用性應指商品於正常使用情況下，可維持其所被要求之功能及執行的能力。為了使商品符合要求，它們應具有相同類型商品通常應有、且鑒於特定商品的性質消費者可合理預期之耐用性，包括適當維護商品之可能需求（例如定期檢查或更換汽車中的過濾器），以及由構成交易鏈內各環節的任一方或其代表所發表的任何公開聲明。評估還應考慮所有其他相關的情況，例如商品價格以及消費者使用商品之強度或頻率。另外，只要在屬於銷售契約組成之部分的締約前聲明中指出了特定的耐用性資訊，消費者應可以此為符合性之部分主觀要求的依據。

time, the seller's obligation to provide updates would normally be limited to that time.

- (32) Ensuring longer durability of goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential in order to increase trust in the functioning of the internal market. For those purposes, product-specific Union legislation is the most appropriate means of introducing durability and other product-related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives pursued in such Union product-specific legislation, and should include durability as an objective criterion for the assessment of conformity of goods. Durability in this Directive should refer to the ability of the goods to maintain their required functions and performance through normal use. In order for goods to be in conformity, they should possess the durability which is normal for goods of the same type and which the consumer can reasonably expect given the nature of the specific goods, including the possible need for reasonable maintenance of the goods, such as the regular inspection or changing of filters in a car, and any public statement made by or on behalf of any person constituting a link in the chain of transactions. The assessment should also take into account all other relevant circumstances, such as the price of the goods and the intensity or frequency of the use that the consumer makes of the goods. In addition, insofar as specific

- (33) 根據本指令，賣方應有義務於交付當下即提供具備符合性之商品。然而當交付商品時存在符合性欠缺，賣方有可能會使用備品修復商品，以履行他們的義務。雖然本指令不應強制賣方有義務確保備品有一段時間的可用性，以達到符合性的客觀要求，亦不應影響國家法律中，針對賣方、生產者或構成交易鏈內各環節的其他人必須遵守的其他規定，以確保備品可用或告知消費者這樣的可用性。
- (34) 許多商品必須先行安裝方能讓消費者得以有效使用。此外，具有數位元素的商品則通常需要安裝數位內容或數位服務，以使消費者能夠根據其預期目的使用此類商品。因此，由於錯誤安裝所導致之符合性欠缺，包括錯誤安裝整合於商品或與其相互鏈結的數位內容或數位服務（由賣方或在賣方的監督下進行安裝），應被視為欠缺符合性。而當商品原先設定即由消費者自行安裝，因安裝錯誤而導致的欠缺符合性，不論是否為消費者或消費者所指定之第三方進行安裝，若該錯誤安裝係導因於安裝說明之瑕疵（例如不完整或不清楚），造成了一般消費者難以使用安裝說明，則應被視為商品欠缺符合

durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the subjective requirements for conformity.

- (33) Under this Directive, the seller should be obliged to deliver to the consumer goods which are in conformity at the time of delivery. It is possible that sellers would make use of spare parts in order to fulfil their obligation to repair goods in the event of a lack of conformity that existed at the time of delivery. While this Directive should not impose an obligation on sellers to ensure the availability of spare parts throughout a period of time as an objective requirement for conformity, it should not affect other provisions of national law obliging the seller, the producer or other person constituting a link in the chain of transactions, to ensure that spare parts are available or to inform consumers about such availability.
- (34) A large number of goods have to be installed before they can be used effectively by the consumer. In addition, in the case of goods with digital elements, the installation of the digital content or digital service is usually necessary for the consumer to be able to use such goods in line with their intended purpose. Therefore, any lack of conformity resulting from an incorrect installation of the goods, including from the incorrect installation of the digital content or digital service incorporated in or inter-connected with the goods, should be regarded as a lack of conformity, where the installation was performed by the seller or under the seller's control. Where the goods were intended to be installed by the

性。

- (35) 符合性應涵蓋實物上的瑕疵與法律上的瑕疵。因侵犯第三方權利，尤其是智慧財產權而造成的限制可能會阻礙或限制商品依據契約目的之使用。會員國應確保在這種情況下，消費者有權因符合性欠缺而獲得救濟，除非國家法律規定在這種情況下契約無效或撤銷。
- (36) 為確保規則中有足夠的彈性，例如在二手商品銷售方面，可能給予當事人有機會偏離本指令對於符合性所規定之客觀要求。此一符合性之偏離，僅可能發生於消費者已被明確告知，且於其他聲明或協議之外，以積極且明確之作為接受時，該偏離方為可能。
- (37) 為增強消費者與賣方的法律明確性，需要明確指出應該評估商品符合性的時間。評估商品符合性的相關時間應

consumer, a lack of conformity resulting from incorrect installation should be regarded as a lack of conformity of the goods, irrespective of whether the installation was performed by the consumer or by a third party under the consumer's responsibility, if the incorrect installation was due to shortcomings in the installation instructions, such as incompleteness or a lack of clarity making the installation instructions difficult to use for the average consumer.

- (35) Conformity should cover material defects as well as legal defects. Restrictions resulting from a violation of third-party rights, in particular intellectual property rights, could prevent or limit the use of the goods in accordance with the contract. Member States should ensure that in such cases the consumer is entitled to remedies for the lack of conformity as set out in this Directive, unless national law provides for the nullity of the contract or for its rescission in such cases.
- (36) In order to ensure that there is sufficient flexibility in the rules, for instance in relation to the sale of secondhand goods, it should be possible for the parties to deviate from the objective requirements for conformity provided for in this Directive. Such a deviation should only be possible if the consumer was specifically informed about it and if the consumer accepts it separately from other statements or agreements, and by way of active and unequivocal conduct.
- (37) Enhancing legal certainty for both consumers and sellers requires a clear indication of the time when the conformity of the goods

為商品交付的當下。這也適用於透過單次提供行為即提供之與數位內容或數位服務整合或相互鏈結的商品。然而，當整合於商品或與商品相互鏈結之數位內容或數位服務係持續提供一段時間，為建立該數位內容或數位服務之符合性指涉之相關時間，則不應為一個特定的時刻，而是自商品交付時起之一段時間。為了法律明確性，該段時間應等同於賣方必須為符合性欠缺承擔責任的時間。

- (38) 本指令不應規範「交付」的定義，而應由國家法律訂定，尤其針對賣方必須有什麼作為以履行賣方交付商品之義務這個問題。另外，本指令中所指涉之交付時間，不應影響 2011/83/EU 指令中有關風險移轉的規定，並且據此於會員國國家法律中實施。
- (39) 當商品的實體元件已經交付，並且數位內容或數位服務的單次提供行為業已執行，或是會持續提供一段時間的數位內容或數位服務的已經開始時，具有數位元素的商品應視為已交付給消費者。這意味著賣方亦須經由以下的方式使消費者可使用或可接取數位內容或數位服務：數位內容或數位服務，或任何得以下載或接取數位內容

should be assessed. The relevant time for assessing the conformity of the goods should be the time when the goods are delivered. This should also apply to goods which incorporate or are interconnected with digital content or a digital service supplied through a single act of supply. However, where the digital content or digital service incorporated in or interconnected with the goods is to be supplied continuously over a period of time, the relevant time for the purpose of establishing conformity of that digital content or digital service element should not be one specific moment in time but rather a period of time, starting from the time of delivery. For reasons of legal certainty, that period of time should be equal to the period during which the seller is liable for a lack of conformity.

- (38) This Directive should not regulate the meaning of ‘delivery’, which should be left to national law, in particular, as regards the question of what the seller has to do in order to fulfil the seller's obligation to deliver the goods. Furthermore, references to the time of delivery in this Directive should be without prejudice to the rules on the passing of risk provided for in Directive 2011/83/EU and accordingly implemented in the law of the Member States.
- (39) Goods with digital elements should be deemed to have been delivered to the consumer when both the physical component of the goods has been delivered and the single act of supply of the digital content or digital service has been performed or the continuous supply of the digital content or digital service over a period of time has begun. This means that the seller should also

或數位服務的方法，已到達消費者的所在範圍，消費者不需要在賣方要求下採取任何進一步的行動，以依據契約使用數位內容或數位服務，例如透過提供連結或下載選項。因此，若實體元件是較早交付的，確立符合性的相關時刻，應為提供數位內容或數位服務之當下。由此，一方面對於實體元件，另一方面對於數位元素，皆可以確保責任期有一個統一的起始點。況且在許多情況下，數位內容或數位服務提供之前，消費者無法注意到實體元件中的瑕疵。

- (40) 如果商品需要由賣方安裝，則在某些情況下，消費者無法使用商品或注意到安裝完成之前的瑕疵。因此，根據銷售契約，商品若是由賣方安裝或由賣方負責，商品應可視為安裝完成後才交付給消費者。

- (41) 為了確保對於賣方之法律明確性，以及消費者對跨境購買有整體的信心，有必要規定一個期限，在此期間消費者得以從符合性建立之相關期間內即存在的任何符合性欠缺提出救濟。鑒於 1999/44/EC 指令實施時，絕大多數的會員國規定了兩年的期限，且實際上市場參與者認為該期限是合理的，該期限應繼續保持。同樣的期限應

make the digital content or digital service available or accessible to the consumer in such a way that the digital content or digital service, or any means suitable for downloading or accessing it, has reached the sphere of the consumer and no further action is required by the seller in order to enable the consumer to use the digital content or digital service in accordance with the contract, for example by providing a link or a download option. Therefore, the relevant moment for establishing conformity should be the time when the digital content or digital service is supplied, if the physical component was delivered earlier. As a result, it can be ensured that there is a uniform starting point for the liability period for the physical component, on the one hand, and for the digital element on the other hand. Moreover, in many cases the consumer is unable to notice a defect in the physical component before the digital content or digital service is supplied.

- (40) Where goods require installation by the seller, the consumer in certain cases is unable to use the goods or notice a defect before the installation has been completed. Accordingly, where, under the sales contract, the goods are to be installed by the seller or under the seller's responsibility, the goods should be considered to be delivered to the consumer when the installation is complete.
- (41) In order to ensure that there is legal certainty for sellers and overall consumer confidence in cross-border purchases, it is necessary to provide for a period during which the consumer is entitled to remedies for any lack of conformity that exists at the relevant time for establishing conformity. Given that when implementing Directive 1999/44/EC, a large majority of Member States have

適用於具有數位元素的商品。然而，倘若契約訂定的提供期限超過兩年，數位內容或數位服務在應根據契約提供的期間內發生或顯現欠缺符合性的情況，則消費者應有權為此提出救濟。為了確保會員國在其國家法律中提高消費者保護層級時的彈性，會員國應可規定比本指令規定之期限更長的賣方責任期間。

- (42) 為了與現有國家法律制度一致，會員國應可規定賣方必須為發生欠缺符合性的情況於一段特定時間內承擔責任，可能外加時效期限，或者應可規定消費者的救濟措施有其時效期限。在前者的情形下，會員國應確保賣方的責任期限不因消費者救濟措施的時效期限而被規避。因此本指令不應一致化國家時效期限之起始點，反而應確保此類時效期限不會削減消費者就賣方應負責任何欠缺符合性之情況的期間內，行使救濟的權利。在後者的情形下，會員國應保持或採用僅為消費者救濟措施所訂定之時效期限，而無需就欠缺符合性與否使賣方承擔責任而規定具體期限。為了確保在這種情況下消費者亦受到同等的保護，會員國應確保即便採用了時效期限，仍應允許消費者至少在本指令規定的責任期限內，對任何顯現的欠缺符合性之情況提出救濟。

provided for a period of two years, and in practice that period is considered reasonable by market participants, that period should be maintained. The same period should apply in the case of goods with digital elements. However, where the contract provides for continuous supply for more than two years, the consumer should be entitled to remedies for any lack of conformity of the digital content or the digital service that occurs or becomes apparent within the period during which the digital content or digital service is to be supplied under the contract. In order to ensure that there is flexibility for Member States to increase the level of consumer protection in their national law, Member States should be free to provide for longer time limits for the liability of the seller than those laid down in this Directive.

- (42) For reasons of coherence with the existing national legal systems, Member States should be free to provide either that sellers are liable for a lack of conformity that becomes apparent within a specific period of time, possibly coupled with a limitation period, or that consumers' remedies are only subject to a limitation period. In the former case, Member States should ensure that the period for the seller's liability is not circumvented by the limitation period for the consumer's remedies. While this Directive should, therefore, not harmonise the starting point of national limitation periods, it should ensure that such limitation periods do not curtail the consumers' right to exercise their remedies for any lack of conformity which becomes apparent in the period during which the seller is liable for a lack of conformity. In the latter case, Member States should be able to maintain or introduce only a limitation period for the consumer's remedies, without introducing

- (43) 關於某些方面，對二手商品有不同的處理方式可能是合理的。雖然兩年或兩年以上的責任或時效期限通常會調和買賣雙方的利益，但是對於二手商品可能並非如此。因此，會員國應可使當事人雙方同意縮短此類商品的責任或時效期限。將這個問題留給當事人雙方之間的契約約定，可增加契約之自由度，並且確保消費者必須知曉商品作為二手商品的性質，以及縮短的責任或時效期限。然而，這類契約約定的期限不應短於一年。
- (44) 本指令不應規範本指令規定的責任期限或時效期限可以中止或中斷的條件。因此，會員國應能規定責任期限或時效期限之中止或中斷，例如買賣雙方之間維修、更換或談判事宜，並以達成和解為目標。

a specific period within which the lack of conformity has to become apparent in order for the seller to be liable. In order to ensure that consumers are equally protected also in such cases, Member States should ensure that where only a limitation period applies, it should still allow consumers to exercise the remedies for any lack of conformity that becomes apparent at least during the period of time provided for in this Directive as a liability period.

- (43) As regards certain aspects, different treatment of second-hand goods could be justifiable. Although a liability or limitation period of two years or more usually reconciles the interests of both the seller and the consumer, this might not be the case with regard to second-hand goods. Member States should, therefore, be allowed to enable the parties to agree on a shortened liability or limitation period for such goods. Leaving this question to a contractual agreement between the parties increases contractual freedom and ensures that the consumer has to be informed both about the nature of the good as a second-hand good, and the shortened liability or limitation period. However, such a contractually agreed period should not be shorter than one year.
- (44) This Directive should not regulate the conditions under which the liability period, as provided for in this Directive, or a limitation period can be suspended or interrupted. Member States should, therefore, be able to provide for the suspension or interruption of the liability period or limitation period, for example in the event of repair, replacement or negotiations between the seller and the consumer with a view to an amicable settlement.

(45) 在一年或兩年（如果會員國選擇採用兩年期限）期限內，消費者只需要證明商品欠缺符合性，而無需證明商品在符合性建立的相關時間當下，即存在欠缺符合性的事實。為了駁回消費者的主張，賣方必須要證明當時不存在欠缺符合性的問題。另外，在某些情況下，於符合性建立的相關時間當下即存在欠缺符合性的假設，可能與商品的性質或欠缺符合性的特質不相容。前者可能為本質上會變質的商品，像是易腐爛的產品，例如花朵，或僅預設為一次性使用的商品。後者的例子是欠缺符合性，這只可能是因為消費者的行為、或是在商品交付給消費者後發生之明顯的外在因素，所導致的後果。對於具有數位元素的商品，如果契約規定了持續提供數位內容或數位服務，則消費者無需證明數位內容或數位服務在建立符合性的相應時期已不具符合性。為了駁回消費者的主張，賣方需要證明數位內容或數位服務在該時期是具備符合性的。

(46) 會員國應可保持或採用法規條款，明定消費者於發現欠缺符合性之日起至少兩個月以上的期限內，必須通知賣方該符合性欠缺之情形，以便從消費者權利中受益。會員國應被允許得不採用此類義務，而能確保消費者享有更高層級的保護。

- (45) For a period of one year, or for a period of two years if Member States choose to apply a two-year period, the consumer should only need to prove that the good is not in conformity, without also needing to prove that the lack of conformity actually existed at the relevant time for establishing conformity. In order to rebut the consumer's claim, the seller would need to prove that the lack of conformity did not exist at that time. In addition, in some cases the presumption that the lack of conformity existed at the relevant time for establishing conformity could be incompatible with the nature of the goods or the nature of the lack of conformity. The former could be the case with goods that by nature deteriorate, such as perishable products, for example flowers, or goods which are only intended for a single use. An example of the latter would be a lack of conformity, which can only be a result of an action by the consumer or of an evident external cause which occurred after the goods were delivered to the consumer. In the case of goods with digital elements where the contract provides for continuous supply of the digital content or digital service, the consumer should not have to prove that the digital content or digital service was not in conformity during the respective period of time for establishing conformity. In order to rebut the consumer's claim, the seller would need to prove that the digital content or digital service was in conformity during that period.
- (46) Member States should be allowed to maintain or introduce provisions stipulating that, in order to benefit from the consumer's rights, the consumer has to inform the seller of a lack of conformity within a period not shorter than two months from the date on which the consumer detected such lack of conformity.

- (47) 為了增加法律明確性，並且消除壓抑內部市場的主要障礙之一，本指令應充分協調因商品欠缺符合性而向消費者提供之救濟措施，以及可行使該救濟措施的條件。尤其是在欠缺符合性的情況下，消費者應有權使商品具有符合性、或獲得比例相當之減價、或終止契約。
- (48) 關於使商品具有符合性，消費者應可在維修或更換之間選擇。使消費者能夠要求維修可促進永續消費，亦有助於提升產品的耐用性。消費者在維修及更換之間的選擇僅因為以下情況而受限：與另一選項相比，消費者所選擇的，在法律上或實際上是不可可能的，或者會迫使賣方負擔不成比例的成本。例如，由於細微的刮痕而要求更換商品，然而該更換會產生大量成本，並且刮痕能夠容易修復，即可能為比例不相稱的情況。
- (49) 倘若維修及更換皆不可能，或會迫使賣方負擔不成比例的成本，賣方應可拒絕使商品具有符合性。同樣的情形亦適用於維修或更換是不可可能的，而替代的救濟措施會迫使賣方承擔不成比例的成本時。例如，如果商品位於

Member States should be allowed to ensure that consumers have a higher level of protection, by not introducing such an obligation.

- (47) In order to increase legal certainty and to eliminate one of the major obstacles inhibiting the internal market, this Directive should fully harmonise the remedies available to consumers for lack of conformity of goods, and the conditions under which such remedies can be exercised. In particular, in the event of lack of conformity, consumers should be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price or to terminate the contract.
- (48) As regards bringing goods into conformity, consumers should enjoy a choice between repair or replacement. Enabling consumers to require repair should encourage sustainable consumption and could contribute to greater durability of products. The consumer's choice between repair and replacement should only be limited where the option chosen would be legally or factually impossible or would impose costs on the seller that would be disproportionate, compared to the other option available. For instance, it might be disproportionate to request the replacement of goods because of a minor scratch, where such replacement would create significant costs and the scratch could easily be repaired.
- (49) The seller should be allowed to refuse to bring the goods into conformity if both repair and replacement are impossible, or they would impose disproportionate costs on the seller. The same should apply if either repair or replacement is impossible and the

與原交付地點不同之處，則對於賣方來說，可能會造成不成比例的郵資及運輸成本。

(50) 當符合性欠缺變得顯而易見時，消費者應告知賣方，以讓賣方有機會使商品具備符合性。賣方應在一段合理的時間內進行。因此，原則上消費者不應立即享有降價或終止契約的權利，反而應給賣方合理的時間維修或更換未具符合性之商品。假使賣方在這段時間內沒有維修或更換商品，則消費者無需再等待而應有權要求，以獲得降價或使契約終止。

(51) 如果維修或更換未能向消費者為符合性欠缺提供適當的救濟措施，則消費者應有權獲得降價或終止契約。尤其是在賣方尚未完成維修或更換的情況下，或者明顯是賣方無法完成維修或更換的情況下，又或者是賣方因維修及更換是不可能的，或會迫使其負擔不成比例的成本，而拒絕使商品具備符合性。

(52) 在某些情況下，消費者有權立即獲得降價或終止契約。當賣方已採取行動使商品具有符合性，然而隨後即顯現

alternative remedy would impose disproportionate costs on the seller. For instance, if goods are located in a place that is different from where they were originally delivered, the costs of postage and carriage could become disproportionate for the seller.

- (50) When a lack of conformity becomes apparent, the consumer should inform the seller about it in order to give the seller the opportunity to bring the good into conformity. The seller should do that within a reasonable period of time. Accordingly, the consumer should not, in principle, be immediately entitled to a price reduction or termination of the contract but should give the seller reasonable time to repair or replace the non-conforming good. If the seller has not repaired or replaced the good within that time, the consumer should be entitled to claim and obtain a price reduction or termination of the contract without waiting any longer.
- (51) If repair or replacement have not provided the consumer with a proper remedy for the lack of conformity, the consumer should be entitled to a price reduction or to terminate the contract. That should be the case, in particular, where the seller has not completed repair or replacement, or where it is clear from the circumstances that the seller will not complete repair or replacement, or the seller has refused to bring the goods into conformity because repair and replacement are impossible or would impose disproportionate costs on the seller.
- (52) In certain situations, it could be justified that the consumer should be entitled to have the price reduced or the contract terminated

符合性欠缺的情形，則應客觀地判斷消費者是否應接受賣方為使商品具有符合性的進一步嘗試，同時考慮所涉個案之所有情況：例如商品的類型及價值，與符合性欠缺的特性及重要性。特別是對於昂貴或複雜之商品，讓賣方能夠再次嘗試補救符合性欠缺的情形是合理的。另外也應考慮到可否預期消費者保持對賣方是否有能力使商品具備符合性的信心，例如由於同一問題已發生兩次的因素。同樣地，在某些情況下，符合性欠缺本質上相當嚴重，以致消費者無法保持對賣方有能力使商品具備符合性的信任，例如，當符合性欠缺嚴重影響了消費者可正常使用商品的能力，則不能期望消費者相信賣方的維修或更換能補救該問題。

- (53) 為了在締約雙方的權利與義務之間保持平衡，消費者應唯有在符合性欠缺程度不小的情況下，才可享有終止契約的權利。
- (54) 會員國應能規範債務人交付履行能由另一人執行之條件，例如賣方維修商品的義務能由消費者或第三方執行而費用由賣方承擔之條件。

immediately. Where the seller has taken action to bring the goods into conformity but a lack of conformity becomes apparent subsequently, it should be objectively determined whether the consumer should accept further attempts by the seller to bring the goods into conformity, taking into account all the circumstances of the case, such as the type and the value of the goods, and the nature and the significance of the lack of conformity. In particular, for expensive or complex goods it could be justified to allow the seller another attempt to remedy the lack of conformity. It should also be taken into account whether the consumer can be expected to maintain confidence in the ability of the seller to bring the goods into conformity or not, for instance, due to the same problem appearing twice. Similarly, in certain situations, the lack of conformity could be of such a serious nature that the consumer cannot maintain confidence in the ability of the seller to bring the goods into conformity, such as where the lack of conformity severely affects the ability of the consumer to make normal use of the goods and the consumer cannot be expected to trust that repair or replacement by the seller would remedy the problem.

- (53) In order to maintain a balance between the rights and obligations of the contracting parties, the consumer should enjoy the right to terminate the contract only in cases where the lack of conformity is not minor.
- (54) Member States should be able to regulate the conditions under which the performance of the debtor can be fulfilled by another person, for example the conditions under which the seller's

- (55) 為了保護消費者免於延誤的風險，任何維修或更換都應在一段合理的時間內順利完成。可視為完成維修或更換的合理時間應相當於完成維修或更換所需之最短時間。要決定該段時間則應將商品的性質與複雜度、符合性欠缺的特質與嚴重性、以及完成維修或更換所需的工夫，皆客觀地納入考量。當本指令實施時，會員國藉由規定固定的期限，該期限之於維修或更換通常被認為是合理的，尤其是針對特定類別的產品，即能解釋完成維修或更換的合理時間之概念。
- (56) 本指令不應規定債務人必須在何處履行其義務。因此，本指令不應指定交付地點，亦不得規定維修或更換應執行的地點；這些問題應留給國家法律解決。
- (57) 當賣方以更換使商品具備符合性，在更換完成前，消費者無義務就商品的正常使用付款。若商品符合其性質及目的，則商品之使用應被視為正常。

obligation to repair a good can be performed by the consumer or a third party at the seller's expense.

- (55) In order to protect consumers against the risk of extended delays, any repair or replacement should be successfully completed within a reasonable period of time. What is considered to be a reasonable time for completing a repair or replacement should correspond to the shortest possible time necessary for completing the repair or replacement. That time should be objectively determined by considering the nature and complexity of the goods, the nature and severity of the lack of conformity, and the effort needed to complete repair or replacement. When implementing this Directive, Member States should be able to interpret the notion of reasonable time for completing repair or replacement, by providing for fixed periods that could generally be considered reasonable for repair or replacement, in particular with regard to specific categories of products.
- (56) This Directive should not lay down provisions on where the obligations of a debtor have to be performed. This Directive should, therefore, neither specify the place of delivery, nor prescribe where the repair or replacement should take place; such questions should be left to national law.
- (57) Where the seller brings the good into conformity by replacement, the consumer should not be obliged to pay for the normal use of the goods before they were replaced. The use of the goods should be considered normal if it is in accordance with the nature and purpose of the goods.

- (58) 為了使終止權對消費者有效，在消費者購買多樣商品，而依照契約交付之商品僅部分欠缺符合性的情況下，消費者應有權終止涉及與未具符合性之商品一起購買的其他商品的契約，即使其他商品是具備符合性的，若是無法合理地期望消費者接受僅保留具備符合性之商品。
- (59) 倘若消費者由於符合性欠缺而終止契約，本指令應僅針對終止權的主要影響及形式制定規則，特別是當事方將已收取的予以退還之義務。因此，賣方應有義務退還消費者已繳之費用，而消費者應退還商品。
- (60) 本指令不應在超出本指令規定之範圍外，影響會員國針對終止後果進行規範，例如商品價值下降、或損壞、或遺失等後果。會員國亦應可規範退款給消費者的形式，像是有關用於這類退款的方法或關於因退款而可能產生的成本及費用等種種形式。比如會員國應可規定一定的時限以退款或退貨。

- (58) In order to make the right to terminate effective for consumers, in situations where the consumer acquires multiple goods and the lack of conformity only affects some of the goods delivered under the contract, the consumer should have the right to terminate the contract also in relation to the other goods acquired together with the non-conforming goods, even if those other goods are in conformity, if the consumer cannot reasonably be expected to accept to keep only the conforming goods.
- (59) Where the consumer terminates the contract due to the lack of conformity, this Directive should prescribe rules only on the main effects of and modalities for the right of termination, in particular the obligation for the parties to return what they have received. Thus, the seller should be obliged to refund the price received from the consumer and the consumer should return the goods.
- (60) This Directive should not affect the freedom of Member States to regulate the consequences of termination other than those provided for in this Directive, such as the consequences of the decrease of the value of the goods or of their destruction or loss. Member States should also be allowed to regulate the modalities for reimbursement of the price to the consumer, for example the modalities concerning the means to be used for such reimbursement or concerning possible costs and fees incurred as a result of the reimbursement. Member States should, for instance, also have the freedom to provide for certain time limits for the reimbursement of the price or for the return of the goods.

(61) 賣方承擔損害賠償責任的原則是銷售契約的基本要素。因此，消費者應對因本指令所指稱之賣方之侵權行為而造成之任何損害，有權要求賠償，包括由於符合性欠缺而遭受之損害。這種賠償應盡可能使消費者處於原本商品即具備符合性之狀態。由於所有會員國皆已具備此類損害賠償權利，是故本指令應不影響關於因違反規則導致損害而賠償消費者之國家規則。會員國亦應仍能規範消費者針對維修或更換造成重大不便或延誤的情況之賠償權利。

(62) 為了確保透明度，除了 2011/83/EU 指令中所規定有關商業保證之存在及條件之締約前資訊要求外，還應就商業保證提出某些要求。此外，為了提高法律明確性且避免誤導消費者，本指令應規定，當相關廣告中含有的商業保證條件，比保證聲明中包含的，對消費者更有利，則應以更有利的條件為準。最後，本指令應規定有關保證聲明之內容及應將其提供給消費者之方式的規則。例如，保證聲明應包括商業保證的條款，並指出符合性的法律保證不受商業保證的影響，闡明商業保證條款構成了一項承諾，為符合性法律保證之補充。會員國應可制定未涵蓋在本指令範圍內有關商業保證之其他方面的規則，例如使保證人以外的債務人與商業保證相連結，前提是那些規則不會剝奪於本指令針對商業保證協調一致

- (61) The principle of the seller's liability for damages is an essential element of sales contracts. Consumers should, therefore, be entitled to claim compensation for any detriment caused by an infringement by the seller of this Directive, including for damage suffered as a consequence of a lack of conformity. Such compensation should put the consumer as much as possible into the position in which the consumer would have been had the goods been in conformity. As the existence of such a right to damages is already ensured in all Member States, this Directive should be without prejudice to national rules on the compensation of consumers for harm resulting from infringement of those rules. Member States should also remain free to regulate consumers' entitlement to compensation for situations in which the repair or replacement caused significant inconvenience or was delayed.
- (62) In order to ensure that there is transparency, certain requirements as regards commercial guarantees should be provided, alongside the pre-contractual information requirements on the existence and conditions of commercial guarantees set out in Directive 2011/83/EU. Moreover, in order to improve legal certainty and to avoid consumers being misled, this Directive should provide that, where commercial guarantee conditions contained in associated advertisements are more favourable to the consumer than those included in the guarantee statement, the more advantageous conditions should prevail. Finally, this Directive should provide rules on the content of the guarantee statement and on the way it should be made available to consumers. For instance, the guarantee statement should include the terms of the

的規定中，為消費者提供之保護。儘管會員國應仍能要求免費提供商業保證，會員國應確保賣方或生產者之任何承諾若是屬於本指令中定義之商業保證，是依從本指令之統一規則的。

- (63) 考慮到賣方因賣方本身或第三方之作為或不作為所導致商品之任何符合性欠缺，而對消費者承擔責任，賣方應向交易鏈內先前環節中應當負責之當事人尋求救濟。此類救濟應包括欠缺符合性之救濟，肇因於更新疏漏（包括安全性更新），而該更新對於使具有數位元素之商品維持符合性是必要。但是，本指令不應影響交易鏈內賣方與其他當事方之間的契約自由原則。行使該權利的細節，特別是針對何者、如何尋求此類救濟、以及救濟措施是否具有強制性，則應由會員國規定。關於消費者是否也可直接向交易鏈內先前環節中的當事人提出賠償要求，除非是在生產者向消費者提供商業保證的情況下，否則本指令不應予以規定。

commercial guarantee and state that the legal guarantee of conformity is unaffected by the commercial guarantee, making it clear that the commercial guarantee terms constitute an undertaking that is additional to the legal guarantee of conformity. Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, for example on associating debtors other than the guarantor with the commercial guarantee, provided that those rules do not deprive consumers of the protection afforded to them by the fully harmonised provisions of this Directive on commercial guarantees. While Member States should remain free to require that commercial guarantees be provided free of charge, they should ensure that any undertaking by the seller or the producer which falls under the definition of commercial guarantees as set out in this Directive complies with the harmonised rules of this Directive.

- (63) Considering that the seller is liable towards the consumer for any lack of conformity of the goods resulting from an act or omission of the seller or a third party, the seller should be able to pursue remedies against the person responsible in previous links of the chain of transactions. Such remedies should include those for a lack of conformity which results from the omission of an update, including a security update, which would have been necessary to keep the good with digital elements in conformity. However, this Directive should not affect the principle of freedom of contract between the seller and other parties in the chain of transactions. The details for exercising that right, in particular against whom and how such remedies are to be pursued and whether the

- (64) 於國家法律規定下具備保障消費者契約權利之合法利益的個人或組織，應被賦予向法院或其他有權處理申訴或提起適當法律程序之機關，啟動相關程序之權利。
- (65) 本指令不應影響國際私法相關規則的適用，尤其是歐洲議會暨歐盟理事會(EC)第 593/2008 號規則，以及(EU)第 1215/2012 號規則。
- (66) 1999/44 /EC 指令應被廢除。廢除日期應與本指令之轉換日期一致。為了確保會員國所需之法律、規範及行政規定，為依從本指令而以統一之形式適用於自轉換日起訂立之契約，本指令不應適用於在轉換日前訂立之契約。
- (67) 歐洲議會暨歐盟理事會(EU)2017/2394 規則之附件，應

remedies are of a mandatory nature, should be provided by the Member States. The question as to whether the consumer can also raise a claim directly against a person in previous links of the chain of transactions should not be regulated by this Directive, except in cases where a producer offers the consumer a commercial guarantee for the goods.

- (64) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded the right to initiate proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.
- (65) Nothing in this Directive should prejudice the application of rules of private international law, in particular Regulation (EC) No 593/2008 and Regulation (EU) No 1215/2012 of the European Parliament and of the Council
- (66) Directive 1999/44/EC should be repealed. The date of repeal should be aligned with the transposition date of this Directive. In order to ensure that the laws, regulations and administrative provisions necessary for Member States to comply with this Directive are applied in a uniform manner to contracts concluded from the transposition date onwards, this Directive should not apply to contracts concluded before its transposition date.
- (67) The Annex to Regulation (EU) 2017/2394 of the European

修改為涵蓋本指令之引用，以促進本指令執行之跨境合作。

- (68) 歐洲議會暨歐盟理事會 2009/22/EC 指令之附件 I，應修改為涵蓋本指令之引用，以確保本指令規範之消費者集體利益受到保障。
- (69) 依據 2011 年 9 月 28 日會員國與執行委員會就解釋性文件的聯合政策宣言，會員國已承諾於合理的情況下，將以一份或多份文件通知其轉換措施，以解釋指令規定的要件與該國家轉換文件之間對應的部分。關於本指令，立法者認為提供此類文件是合理的。
- (70) 既然本指令之目的，即透過一致性作為以解決歐盟內跨境商品銷售所面臨與契約法相關之障礙，以助於內部市場的運作，然而因為個別會員國無法透過確保其法律與其他會員國法律之一致性來處理現有分散之法律框架，使得會員國無法完全實現此目的，但可藉由充分協調來排除與契約法相關之主要障礙，而讓此目標於歐盟的層級有更好的達成。歐盟可以依據「歐洲聯盟條約」第 5 條規定之輔助性原則採取措施。按照該條文所載之比例原則，本指令之規定不應超過達成目標所需的範圍。

Parliament and of the Council (8) should be amended to include a reference to this Directive so as to facilitate cross-border cooperation on enforcement of this Directive.

- (68) Annex I to Directive 2009/22/EC of the European Parliament and of the Council (9) should be amended to include a reference to this Directive so as to ensure that the collective interests of consumers laid down in this Directive are protected.
- (69) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents (10), Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (70) Since the objective of this Directive, namely to contribute to the functioning of the internal market by tackling in a consistent manner contract law-related obstacles for the cross-border sales of goods in the Union, cannot be sufficiently achieved by the Member States, due to the fact that each Member State individually is not in a position to tackle the existing fragmented legal framework by ensuring the coherence of its law with the laws of other Member States, but can rather, by removing the principal contract law-related obstacles through full harmonisation, be better achieved at Union level, the Union may

- (71) 執行委員會應在本指令生效五年後對其施用情形進行審查，尤其包括有關救濟措施的規定、舉證責任（亦關於二手商品及在公開拍賣中售出的商品），以及生產者商業保證之持續性。執行委員會亦應評估施行本指令與(EU)2019/770 指令是否確保了與數位內容或數位服務之提供與具有數位元素之商品相關之法律框架是一致且連貫的。
- (72) 本指令尊重基本權與自由，特別是遵守歐盟基本權利憲章所承認之原則，包括第 16、38 及第 47 條所記載之原則。

adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

- (71) It is appropriate for the Commission to review the application of this Directive five years after its entry into force, including in particular the provisions regarding remedies, the burden of proof – also with respect to second-hand goods as well as goods sold at public auctions – and the producer's commercial guarantee of durability. The Commission should also assess whether the application of this Directive and of Directive (EU) 2019/770 ensures a consistent and coherent legal framework with regard to the supply of digital content or digital services and goods with digital elements.
- (72) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including those enshrined in Articles 16, 38 and 47 thereof.

已通過本指令：

第1條

主旨與目的

本指令之目的，在透過對關於賣方與消費者間訂立之銷售契約，就特定的要求建立共通的規則，以提供高層級之消費者保護，為內部市場之適當運作作出貢獻。特別是關於商品與契約之符合性、欠缺符合性之救濟措施、那些救濟措施之執行方式、以及商業保證相關等的規範。

第2條

定義

為本指令之目的，適用以下用詞定義：

- (1) 「銷售契約」指賣方移轉或承諾將商品所有權移轉給消費者，而消費者支付或承諾支付其價格，所依據之任何契約；
- (2) 「消費者」指任何與本指令涵蓋之與契約有關之任何自然人，其行為是為自身的交易、商業、工藝或專業領域以外之目的；
- (3) 「賣方」指與本指令涵蓋之與契約有關之任何自然人或法人，無論是私人或公有的，包括以該自然人或法人的名義或代表該人行事的其他任何人，其行為是為自身的交易、商業、工藝或

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and purpose

The purpose of this Directive is to contribute to the proper functioning of the internal market while providing for a high level of consumer protection, by laying down common rules on certain requirements concerning sales contracts concluded between sellers and consumers, in particular rules on the conformity of goods with the contract, remedies in the event of a lack of such conformity, the modalities for the exercise of those remedies, and on commercial guarantees.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘sales contract’ means 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;
- (2) ‘consumer’ means any natural person who, in relation to contracts covered by this Directive, is acting for purposes which are outside that person's trade, business, craft or profession;
- (3) ‘seller’ means 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

專業領域以外之目的；

- (4) 「生產者」指商品的製造商、輸入歐盟之商品進口商、或透過在商品上置入其名稱、商標或其他獨特標誌以宣稱為生產者之任何人；
- (5) 「商品」指：
 - (a) 任何有形且可移動的物件；水、煤氣與電可被視為本指令所指之商品，以有限的容量或固定的數量出售；
 - (b) 與數位內容或數位服務整合或相互鏈結之任何有形且可移動的物件，使得缺少該數位內容或數位服務足以阻礙商品執行其功能（「具有數位元素的商品」）；
- (6) 「數位內容」指以數位形式產製及提供之資料；
- (7) 「數位服務」指：
 - (a) 一種允許消費者得以數位形式創作、處理、儲存或接取資料的服務；或
 - (b) 一種允許消費者或其他使用者以其所上傳或創作之數位形式資料，相互分享或為任何其他互動的服務；

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 this Directive;

- (4) 'producer' means a manufacturer of goods, an importer of goods into the Union or any person purporting to be a producer by placing its name, trade mark or other distinctive sign on the goods;
- (5) 'goods' means:
 - (a) any tangible movable items; water, gas and electricity are to be considered as goods within the meaning of this Directive where they are put up for sale in a limited volume or a set quantity;
 - (b) any tangible movable items that incorporate or are interconnected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions ('goods with digital elements');
- (6) 'digital content' means data which are produced and supplied in digital form;
- (7) 'digital service' means:
 - (a) a service that allows the consumer to create, process, store or access data in digital form; or
 - (b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service;

- (8) 「相容性」指商品得以透過相同類型商品通常使用的硬體或軟體運作，而無需轉換商品、硬體或軟體；
- (9) 「功能性」指商品得以依照其目的執行其功能；
- (10) 「相互操作性」指商品得以透過不同於相同類型商品通常使用的硬體或軟體運作。
- (11) 「耐用媒介」指可供消費者或賣方儲存個人資訊，以便未來能夠接取參考的任何工具。具備與該資料之目的相當的期限，並允許採用未更動的形式重製已儲存之資訊；
- (12) 「商業保證」指賣方或生產者（保證人）對消費者的任何承諾，除了賣方有與符合性承諾有關的法律義務外，當商品不符合規格、或未達成於契約訂立之時或之前即在保證聲明或相關廣告中所列出與符合性無關的任何其他要求，而將已支付的金額退款，或以任何方式更換、維修、或服務商品；
- (13) 「耐用性」指商品於正常使用情況下，得以維持其所被要求之功能及執行的能力；

- (8) ‘compatibility’ means the ability of the goods to function with hardware or software with which goods of the same type are normally used, without the need to convert the goods, hardware or software;
- (9) ‘functionality’ means the ability of the goods to perform their functions having regard to their purpose;
- (10) ‘interoperability’ means the ability of the goods to function with hardware or software different from those with which goods of the same type are normally used;
- (11) ‘durable medium’ means any instrument which enables the consumer or the seller to store information addressed personally to that person in a way that is accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;
- (12) ‘commercial guarantee’ means any undertaking by the seller or a producer (the guarantor) to the consumer, in addition to the seller's legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;
- (13) ‘durability’ means the ability of the goods to maintain their required functions and performance through normal use;

- (14) 「免費」指免除為使商品具備符合性而產生的必要費用，特別是郵資、運輸、人工或材料的費用；
- (15) 「公開拍賣」指賣方透過一種由拍賣人執行的透明且競爭之招標程序，將商品或服務提供給親自參加或獲得親自參加機會的消費者，得標者必須購買該商品或服務。

第3條

範圍

1. 本指令應適用於消費者與賣方之間的銷售契約。
2. 消費者與賣方間為製造或生產商品之供應契約，亦應視為本指令目的下的銷售契約。
3. 本指令不應適用於數位內容或數位服務之提供，而應適用於第2條第(5)(b)點所定義與商品整合或相互鏈結之數位內容或數位服務，並且依照銷售契約同商品提供，無論該數位內容或服務是否由賣方或由第三方提供。若是對於整合或相互鏈結的數位內容、或整合或相互鏈結的數位服務之提供，是否構成銷售契約之一部分存有疑慮，則該數位內容或數位服務應被推定已受該銷售契約所涵蓋。

- (14) ‘free of charge’ means free of the necessary costs incurred in order to bring the goods into conformity, particularly the cost of postage, carriage, labour or materials;
- (15) ‘public auction’ means a method of sale where goods or services are offered by the seller to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services.

Article 3

Scope

1. This Directive shall apply to sales contracts between a consumer and a seller.
2. Contracts between a consumer and a seller for the supply of goods to be manufactured or produced shall also be deemed sales contracts for the purpose of this Directive.
3. This Directive shall not apply to contracts for the supply of digital content or digital services. It shall, however, apply to digital content or digital services which are incorporated in or inter-connected with goods in the meaning of point (5)(b) of Article 2, 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 the event of doubt as to whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of the sales contract, the

4. 本指令不應適用於：

- (a) 任何專門作為數位內容載體之有形媒介；或
- (b) 任何經由執行或其他法律授權方式售出之商品。

5. 會員國可將以下銷售契約排除於本指令所涵蓋之範圍外：

- (a) 於公開拍賣中售出之二手商品；以及
- (b) 活體動物。

在第(a)點所指的情況下，應使消費者容易獲得清晰且全面的資訊，說明源自於本指令之權利不適用。

6. 本指令不應影響會員國針對一般契約法各方面進行規範，例如契約的成立、生效、無效或契約效力，包括本指令未為規定之契約終止效果，或損害賠償請求權。

7. 本指令不應影響會員國規定，允許消費者於商品交付後一段時間內(不超過 30 天)即出現欠缺符合性之情形時，選擇特定的救濟措施。此外，本指令不應影響非特別針對消費者契約之國家規則中，對於締結銷售契約當時尚不明顯之特定瑕疵，提供特定的救濟程序。

digital content or digital service shall be presumed to be covered by the sales contract.

4. This Directive shall not apply to:

- (a) any tangible medium which serves exclusively as a carrier for digital content; or
- (b) any goods sold by way of execution or otherwise by authority of law.

5. Member States may exclude from the scope of this Directive contracts for the sale of:

- (a) second-hand goods sold at public auction; and
- (b) living animals.

In the case referred to in point (a), clear and comprehensive information that the rights deriving from this Directive do not apply shall be made easily available to consumers.

6. This Directive shall not affect the freedom of Member States to regulate aspects of general contract law, such as rules on the formation, validity, nullity or effects of contracts, including the consequences of the termination of a contract, in so far as they are not regulated in this Directive, or the right to damages.

7. This Directive shall not affect the freedom of Member States to allow consumers to choose a specific remedy, if the lack of conformity of the goods becomes apparent within a period after delivery, not exceeding 30 days. In addition, this Directive shall not affect national rules not specific to consumer contracts providing for

第 4 條

協調層級

除非本指令另有規定外，會員國不得於其國家法律維持或採用與本指令規定相異的條款。包括更加嚴格或較為寬鬆的規定，以確保不同層級之消費者保護。

第 5 條

商品之符合性

賣方應於不影響第 9 條的情況下，交付符合第 6、7、8 條規定之商品給消費者。

第 6 條

符合性之主觀要求

為符合銷售契約，商品應：

- (a) 符合銷售契約要求之描述、類型、數量及品質，以及應具備之功能性、相容性、相互操作性及其他特性；

specific remedies for certain types of defects that were not apparent at the time of conclusion of the sales contract.

Article 4

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.

Article 5

Conformity of goods

The seller shall deliver goods to the consumer that meet the requirements set out in Articles 6, 7 and 8, where applicable, without prejudice to Article 9.

Article 6

Subjective requirements for conformity

In order to conform with the sales contract, the goods shall, in particular, where applicable:

- (a) be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the sales contract;

- (b) 切合消費者要求、最遲在締結銷售契約時已讓賣方知悉，且獲賣方同意之任何特定目的；
- (c) 交付應附上按銷售契約約定之所有配件與說明，包括安裝說明；且
- (d) 提供按銷售契約約定之更新。

第7條

符合性之客觀要求

1. 除了遵循任何符合性之主觀要求外，商品應：
 - (a) 切合通常使用同類型商品之目的，並於可適用之情況下，將現有歐盟與國家法律、技術標準納入考量，或於欠缺此類技術標準時，參考可適用之特定行業行為準則；
 - (b) 於可適用之情況下，具有一定的品質，並且與賣方在締約前展示給消費者的樣品或型號之描述相當；
 - (c) 於可適用之情況下，與消費者可能合理期待獲得之配件，包括包裝、安裝說明或其他說明，併同交付；以及
 - (d) 具有一定的數量，且鑒於商品的性質與其他特徵，包括耐

- (b) be 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;
- (c) be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and
- (d) be supplied with updates as stipulated by the sales contract.

Article 7

Objective requirements for conformity

1. In addition to complying with any subjective requirement for conformity, the goods shall:
 - (a) be fit for the purposes for which goods of the same type would normally be used, taking into account, where applicable, any existing Union and national law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;
 - (b) where applicable, be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract;
 - (c) where applicable, be delivered along with such accessories, including packaging, installation instructions or other instructions, as the consumer may reasonably expect to receive; and
 - (d) be of the quantity and possess the qualities and other features,

用性、功能性、相容性、及安全性等，消費者對於同類型商品通常可以合理期待之特性，以及將賣方、賣方代表、或是在交易鏈內先前環節的其他人，包括生產者，所發表之任何公開聲明納入考量，尤其是於廣告或標籤上者。

2. 賣方不受第 1 項(d)款所指公開聲明之約束，假設賣方證明：

(a) 賣方並無且無法合理地意識到系爭公開聲明；

(b) 締約時，該公開聲明已經以其先前作成之相同或相當的方式更正；或

(c) 購買商品的決定不會受到公開聲明的影響。

3. 對於具有數位元素的商品，賣方應確保在一段時間內告知消費者並向其提供更新，包括安全性更新，該更新對維持商品的符合性是必要的，而這段時間：

(a) 於銷售契約係以單次提供行為提供數位內容或數位服務時，按該商品與數位元素的類型及目的，並考慮到銷售契約的情況及性質，為消費者可以合理預期；或

including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, particularly in advertising or on labelling.

2. The seller shall not be bound by public statements, as referred to in point (d) of paragraph 1 if the seller shows that:
 - (a) the seller was not, and could not reasonably have been, aware of the public statement in question;
 - (b) by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or
 - (c) the decision to buy the goods could not have been influenced by the public statement.
3. In the case of goods with digital elements, the seller shall ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep those goods in conformity, for the period of time:
 - (a) that the consumer may reasonably expect given the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the contract, where the sales contract provides for a single act of supply of the digital content or digital service; or

- (b) 於銷售契約規定數位內容或數位服務為持續一段時間提供時，第 10 條第 2 項或第 5 項規定適用之。
4. 如果消費者未能在合理的時間內安裝根據第 3 項提供之更新，則賣方無需對僅因欠缺該相關更新所導致之任何符合性欠缺承擔任何責任，前提是：
- (a) 賣方已向消費者通知該更新已可取得，以及消費者未為安裝該更新之後果；且
- (b) 消費者未能安裝或錯誤安裝該項更新，並非由於提供給消費者的安裝說明有瑕疵所致。
5. 若於銷售契約訂立時已明確告知消費者，該商品的特定特性已偏離第 1 項或第 3 項所規定的符合性客觀要求，且消費者已在訂立銷售契約時明示並分別接受各項偏離，則應視為並未欠缺第 1 項或第 3 項定義下的符合性客觀要求。

第 8 條

商品之錯誤安裝

由商品安裝錯誤所導致的任何符合性欠缺，應被視為商品欠缺符合性，若：

- (b) indicated in Article 10(2) or (5), as applicable, where the sales contract provides for a continuous supply of the digital content or digital service over a period of time.
4. Where the consumer fails to install within a reasonable time updates supplied in accordance with paragraph 3, the seller shall not be liable for any lack of conformity resulting solely from the lack of the relevant update, provided that:
- (a) the seller informed the consumer about the availability of the update and the consequences of the failure of the consumer to install it; and
 - (b) the failure of the consumer to install or the incorrect installation by the consumer of the update was not due to shortcomings in the installation instructions provided to the consumer.
5. There shall be no lack of conformity within the meaning of paragraph 1 or 3 if, at the time of the conclusion of the sales contract, the consumer was specifically informed that a particular characteristic of the goods was deviating from the objective requirements for conformity laid down in paragraph 1 or 3 and the consumer expressly and separately accepted that deviation when concluding the sales contract.

Article 8

Incorrect installation of the goods

Any lack of conformity resulting from the incorrect installation of the goods shall be regarded as lack of conformity of the goods, if:

- (a) 安裝構成銷售契約的一部份，且係由賣方或在賣方之責任項下執行；或
- (b) 消費者已完成預設即由消費者執行的安裝，然而該錯誤安裝肇因於賣方提供之安裝說明的缺漏，或者，於具有數位元素的商品之情形，係由賣方或數位內容或數位服務提供者所提供。

第 9 條

第三方權利

若限制是肇因於對第三方任何權利之侵害，尤其是智慧財產權，導致商品依據第 6 條及第 7 條之使用受到妨礙或限制時，會員國應確保該消費者有權依據第 13 條規定，就符合性之欠缺行使救濟，除非國家法律規定於此情形該銷售契約無效或得撤銷。

第 10 條

賣方之責任

1. 賣方應為在商品交付時即存在及交付後兩年內即顯現之任何符合性欠缺，向消費者承擔責任。在不影響第 7 條第 3 項的情況下，本項亦應適用於具有數位元素的商品。
2. 針對具有數位元素的商品，當銷售契約規定數位內容或數位服

- (a) the installation forms part of the sales contract and was carried out by the seller or under the seller's responsibility; or
- (b) the installation, intended to be carried out by the consumer, was done by the consumer and the incorrect installation was due to shortcomings in the installation instructions provided by the seller or, in the case of goods with digital elements, provided by the seller or by the supplier of the digital content or digital service.

Article 9

Third-party rights

Where a restriction resulting from a violation of any right of a third party, in particular intellectual property rights, prevents or limits the use of the goods in accordance with Articles 6 and 7, Member States shall ensure that the consumer is entitled to the remedies for lack of conformity provided for in Article 13, unless national law provides for the nullity or rescission of the sales contract in such cases.

Article 10

Liability of the seller

1. The seller shall be liable to the consumer for any lack of conformity which exists at the time when the goods were delivered and which becomes apparent within two years of that time. Without prejudice to Article 7(3), this paragraph shall also apply to goods with digital elements.
2. In the case of goods with digital elements, where the sales contract

務會持續提供一段時間時，賣方應為數位內容或數位服務在該具有數位元素的商品交付後兩年內即發生或顯現之符合性欠缺承擔責任。當銷售契約規定數位內容或數位服務會持續提供超過兩年，賣方應為數位內容或數位服務在依據銷售契約須提供數位內容或數位服務的時期內即發生或顯現之符合性欠缺承擔責任。

3. 會員國應可保持或採用比第 1 項或第 2 項規定更長的期限。
4. 倘若按照國家法律，第 13 條規定之救濟亦受時效期限約束，則會員國應確保於該時效期限內，消費者得對於賣方依據本條第 1 項及第 2 項應承擔，且於該項規定指涉期間內顯現之任何符合性欠缺，行使第 13 條規定之救濟。
5. 儘管有本條第 1 項及第 2 項的規定，會員國僅可對於第 13 條規定之救濟程序設定時效限制。會員國應確保於該時效期限內，消費者得對於賣方依據本條第 1 項及第 2 項應承擔，且於該項規定指涉期間內顯現之任何符合性欠缺，行使第 13 條規定之救濟。

provides for a continuous supply of the digital content or digital service over a period of time, the seller shall also be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within two years of the time when the goods with digital elements were delivered. Where the contract provides for a continuous supply for more than two years, the seller shall be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within the period of time during which the digital content or digital service is to be supplied under the sales contract.

3. Member States may maintain or introduce longer time limits than those referred to in paragraphs 1 and 2.
4. If, under national law, the remedies provided for in Article 13 are also subject to a limitation period, Member States shall ensure that such limitation period allows the consumer to exercise the remedies laid down in Article 13 for any lack of conformity for which the seller is liable pursuant to paragraphs 1 and 2 of this Article, and which becomes apparent within the period of time referred to in those paragraphs.
5. Notwithstanding paragraphs 1 and 2 of this Article, Member States may maintain or introduce only a limitation period for the remedies provided for in Article 13. Member States shall ensure that such limitation period allows the consumer to exercise the remedies laid down in Article 13 for any lack of conformity for which the seller is liable pursuant to paragraphs 1 and 2 of this Article, and which becomes apparent during the period of time referred to in those paragraphs.

6. 會員國得規定，對於二手商品，賣方與消費者可以契約條款或協議約定，較第 1 項、第 2 項及第 5 項所涉期限為短之責任或時效期限。前提是縮短的期限不得少於一年。

第 11 條

舉證責任

1. 在商品交付後一年內顯現之任何符合性欠缺，應假定為在商品交付的當下即已存在，除非提出反證，或除非該假設與商品的性質或欠缺符合性的特質不相容。本款亦應適用於具有數位元素的商品。
2. 會員國可保持或採用商品交付後兩年的期限，而非第 1 款規定之一年期限。
3. 對於具有數位元素的商品，當銷售契約規定數位內容或數位服務會持續提供一段時間，則欠缺符合性在第 10 條所涉期限內顯現時，關於數位內容或數位服務在該條第 2 項所指涉的期限內是否具有符合性之舉證責任，應由賣方承擔。

6. Member States may provide that, in the case of second-hand goods, the seller and the consumer can agree to contractual terms or agreements with a shorter liability or limitation period than those referred to in paragraphs 1, 2 and 5, provided that such shorter periods shall not be less than one year.

Article 11

Burden of proof

1. Any lack of conformity which becomes apparent within one year of the time when the goods were delivered shall be presumed to have existed at the time when the goods were delivered, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or with the nature of the lack of conformity. This paragraph shall also apply to goods with digital elements.
2. Instead of the one-year period laid down in paragraph 1, Member States may maintain or introduce a period of two years from the time when the goods were delivered.
3. In the case of goods with digital elements where the sales contract provides for the continuous supply of the digital content or digital service over a period of time, the burden of proof with regard to whether the digital content or digital service was in conformity within the period of time referred to in Article 10(2) shall be on the seller for a lack of conformity which becomes apparent within the period of time referred to in that Article.

第12條

告知義務

會員國應可保持或採用法規條款，明定消費者自發現欠缺符合性之日起至少兩個月的期限內，必須通知賣方該符合性欠缺之情形，以便從消費者權利中受益。

第13條

欠缺符合性之救濟

1. 於欠缺符合性之情況，消費者應有權依據本條規範之條件，使商品具有符合性、或獲得比例相當之減少價金，或終止契約。
2. 為使商品具有符合性，消費者應可在維修或更換之間選擇，除非所選擇之救濟是不可能的，或與另一選項相比，會迫使賣方負擔不成比例的成本。在考慮到所有情況之下，包括：
 - (a) 若未有欠缺符合性之情況，該商品應有的價值；
 - (b) 該欠缺符合性的重要性；
 - (c) 是否可以在不造成消費者極大不便的情況下，提供替代性救濟。

Article 12

Obligation to notify

Member States may maintain or introduce provisions stipulating that, in order to benefit from the consumer's rights, the consumer has to inform the seller of a lack of conformity within a period of at least 2 months of the date on which the consumer detected such lack of conformity.

Article 13

Remedies for lack of conformity

1. In the event of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price, or to terminate the contract, under the conditions set out in this Article.
2. In order to have the goods brought into conformity, the consumer may choose between repair and replacement, unless the remedy chosen would be impossible or, compared to the other remedy, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:
 - (a) the value the goods would have if there were no lack of conformity;
 - (b) the significance of the lack of conformity; and
 - (c) whether the alternative remedy could be provided without significant inconvenience to the consumer.

3. 倘若維修及更換是不可能的，或者會迫使賣方負擔不成比例的成本，賣方可能會拒絕使商品具備符合性。在考慮到所有情況之下，包括第 2 項(a)及(b)兩點所述。
4. 消費者應有權根據第 15 條的規定要求比例相當之減價，或於以下的任何情況下，根據第 16 條的規定要求終止銷售契約：
 - (a) 賣方尚未完成維修或更換，或在適用的情況下，尚未完成根據第 14 條第(2)及(3)點所涉之維修或更換，又或者，賣方已根據本條第 3 款而拒絕使商品具備符合性；
 - (b) 儘管賣方已嘗試使商品具備符合性，該欠缺符合性之情形仍發生；
 - (c) 該欠缺符合性之情況本質上相當嚴重，足以要求即刻減價或終止銷售契約；或
 - (d) 賣方已聲明或所有情況已顯示，賣方無法在合理時間內或不造成消費者極大不便的情況下，使商品具備符合性。
5. 倘若欠缺符合性之情況輕微，消費者應無權要求終止契約。關於欠缺符合性之情況是否輕微，舉證責任應由賣方承擔。

3. The seller may refuse to bring the goods into conformity if repair and replacement are impossible or would impose costs on the seller that would be disproportionate, taking into account all circumstances including those mentioned in points (a) and (b) of paragraph 2.
4. The consumer shall be entitled to either a proportionate reduction of the price in accordance with Article 15 or the termination of the sales contract in accordance with Article 16 in any of the following cases:
 - (a) the seller has not completed repair or replacement or, where applicable, has not completed repair or replacement in accordance with Article 14(2) and (3), or the seller has refused to bring the goods into conformity in accordance with paragraph 3 of this Article;
 - (b) a lack of conformity appears despite the seller having attempted to bring the goods into conformity;
 - (c) the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the sales contract; or
 - (d) the seller has declared, or it is clear from the circumstances, that the seller will not bring the goods into conformity within a reasonable time, or without significant inconvenience for the consumer.
5. The consumer shall not be entitled to terminate the contract if the lack of conformity is only minor. The burden of proof with regard to whether the lack of conformity is minor shall be on the seller.

6. 在賣方履行本指令規定之賣方義務前，消費者有權扣留價金中任何未付清的部分或一部分。會員國可決定消費者行使扣留款項的權利之條件與方式。
7. 會員國可規範消費者對造成符合性欠缺與否及何種程度，會影響消費者行使救濟的權利。

第14條

商品之維修或更換

1. 執行維修或更換應：
 - (a) 免費；
 - (b) 在消費者告知賣方有關符合性欠缺後一段合理期間內；以及
 - (c) 在不造成消費者極大不便的情況下，且將商品的性質及消費者要求商品的目的納入考量。
2. 當符合性欠缺係以維修或更換為救濟時，消費者應將商品提供給賣方。賣方應取回需更換之商品並承擔其費用。
3. 當維修係需要移除於符合性欠缺顯現之前，即已按照符合其性

6. The consumer shall have the right to withhold payment of any outstanding part of the price or a part thereof until the seller has fulfilled the seller's obligations under this Directive. Member States may determine the conditions and modalities for the consumer to exercise the right to withhold the payment.
7. Member States may regulate whether and to what extent a contribution of the consumer to the lack of conformity affects the consumer's right to remedies.

Article 14

Repair or replacement of the goods

1. Repairs or replacements shall be carried out:
 - (a) free of charge;
 - (b) within a reasonable period of time from the moment the seller has been informed by the consumer about the lack of conformity; and
 - (c) 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.
2. Where the lack of conformity is to be remedied by repair or replacement of the goods, the consumer shall make the goods available to the seller. The seller shall take back the replaced goods at the seller's expense.
3. Where a repair requires the removal of goods that had been installed

質及目的之方式安裝的商品，或當這類商品需要更換時，維修或更換商品的義務應包括移除未具符合性之商品，以及更換或維修之商品的安裝，或承擔該移除及安裝之費用。

4. 消費者於商品更換之前的期間內，無須承擔該更換商品的正常使用費用。

第15條

價金減少

價金的減少應與消費者收到的商品相較於該商品具備符合性的情形下，其價值減損之比例相當。

第16條

銷售契約之終止

1. 消費者行使銷售契約終止權，應向賣方提出聲明，以表達終止銷售契約之決定。
2. 在欠缺符合性的情況僅與部分按照銷售契約交付的商品有關時，並且根據第13條規定終止銷售契約有其依據，消費者能終止的銷售契約，僅可與該部分商品相關，若是無法合理地期望消費者接受僅保留具備符合性的商品，亦可終止與消費者連同

in a manner consistent with their nature and purpose before the lack of conformity became apparent, or where such goods are to be replaced, the obligation to repair or replace the goods shall include the removal of the non-conforming goods, and the installation of replacement goods or repaired goods, or bearing the costs of that removal and installation.

4. The consumer shall not be liable to pay for normal use made of the replaced goods during the period prior to their replacement.

Article 15

Price reduction

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.

Article 16

Termination of the sales contract

1. 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.
2. Where the lack of conformity relates to only some of the goods delivered under the sales contract and there is a ground for termination of the sales contract pursuant to Article 13, the consumer may terminate the sales contract only in relation to those

未具符合性之商品一起取得之任何其他商品相關的契約。

3. 當消費者終止整個銷售契約，或根據第 2 項，終止與部分按照銷售契約交付的商品相關之銷售契約時：

(a) 由賣方承擔費用，消費者應返還商品；以及

(b) 賣方應在收到商品或在消費者提供返還商品的證明後，將已為商品支付之價金退還消費者。

就本款之目的而言，會員國可決定返還及退款的方式。

第 17 條

商業保證

1. 任何商業保證，應按照契約訂立之時或之前的商業保證聲明及相關廣告中訂立的條件，對保證人具有約束力。在本條規定的條件下，且在不影響任何其他歐盟或國家法律適用條款的情況下，若生產者向消費者提出某些商品在一定時期內之耐用性的商業保證，則根據第 14 條，於耐用性之商業保證的整個期間內，針對商品的維修或更換，生產者應直接對消費者承擔責任。在耐用性聲明的商業保證中，生產者可能向消費者提出更有利條件。

goods, and in relation to any other goods which the consumer acquired together with the non-conforming goods if the consumer cannot reasonably be expected to accept to keep only the conforming goods.

3. Where the consumer terminates a sales contract as a whole or, in accordance with paragraph 2, in relation to some of the goods delivered under the sales contract:

- (a) the consumer shall return to the seller, at the seller's expense, the goods; and
- (b) the seller shall reimburse to the consumer the price paid for the goods upon receipt of the goods or of evidence provided by the consumer of having sent back the goods.

For the purposes of this paragraph, Member States may determine the modalities for return and reimbursement.

Article 17

Commercial guarantees

1. Any commercial guarantee shall be binding on the guarantor under the conditions laid down in the commercial guarantee statement and associated advertising available at the time, or before the conclusion, of the contract. Under the conditions laid down in this Article and without prejudice to any other applicable provisions of Union or national law, where a producer offers to the consumer a commercial guarantee of durability for certain goods for a certain period of time, the producer shall be liable directly to the consumer,

若商業保證聲明中訂立的條件，對消費者而言，不如相關廣告中訂立的條件有利，則商業保證應在有關商業保證的廣告中訂立的條件下具有約束力，除非在契約締結之前，相關廣告已透過相同或相近的方式予以更正。

2. 商業保證聲明最遲應在商品交付時經由耐用媒介提供給消費者。商業保證聲明應以簡單易懂的語言表達，內容應包括：
 - (a) 明確聲明，表示在商品欠缺符合性的情況下，消費者有法律上的權利免費向賣方提出救濟，且救濟措施不受商業保證的影響；
 - (b) 保證人之名稱與地址；
 - (c) 消費者為獲得商業保證履行而應遵循的程序；
 - (d) 商業保證所適用之商品定名；以及
 - (e) 商業保證條款。

during the entire period of the commercial guarantee of durability for repair or replacement of the goods in accordance with Article 14. The producer may offer to the consumer more favourable conditions in the commercial guarantee of durability statement. If the conditions laid out in the commercial guarantee statement are less advantageous to the consumer than those laid down in the associated advertising, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee, unless, before the conclusion of the contract, the associated advertising was corrected in the same way or in a comparable way to that in which it was made.

2. The commercial guarantee statement shall be provided to the consumer on a durable medium at the latest at the time of the delivery of the goods. The commercial guarantee statement shall be expressed in plain, intelligible language. It shall include the following:
 - (a) a clear statement that the consumer is entitled by law to remedies from the seller free of charge in the event of a lack of conformity of the goods and that those remedies are not affected by the commercial guarantee;
 - (b) the name and address of the guarantor;
 - (c) the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee;
 - (d) the designation of the goods to which the commercial guarantee applies; and
 - (e) the terms of the commercial guarantee.

3. 未符合第 2 款規定，不應影響商業保證對保證人具有約束力之本質。
4. 會員國可就本條未予以規範、其他與商業保證有關的方面訂定規則，包括提供給消費者的商業保證聲明中，所使用的一種或多種語言之規則。

第 18 條

求償權

當賣方因先前交易鏈中有連結之人員的作為或不作為而導致符合性欠缺時，包括根據第 7 條第 3 項，疏於提供更新給具有數位元素之商品，而須向消費者承擔責任時，賣方有權向該交易鏈內應負責之人員採取救濟措施。賣方可採取之救濟措施，以及其相關行動與執行的條件，得由國家法律定之。

第 19 條

執行

1. 會員國應確保有使本指令充分及有效遵循之方法存在。
2. 第 1 項所指涉之方法應包括國家法律所規定之一個或多個下列的機構，可於法院或主管行政機關前採取行動，以確保國家法律轉換本指令規定之適用：

3. Non-compliance with paragraph 2 shall not affect the binding nature of the commercial guarantee for the guarantor.
4. Member States may lay down rules on other aspects concerning commercial guarantees which are not regulated in this Article, including rules on the language or languages in which the commercial guarantee statement is to be made available to the consumer.

Article 18

Right of redress

Where the seller is liable to the consumer because of a lack of conformity resulting from an act or omission, including omitting to provide updates to goods with digital elements in accordance with Article 7(3), by a person in previous links of the chain of transactions, the seller shall be entitled to pursue remedies against the person or persons liable in the chain of transactions. The person against whom the seller may pursue remedies and the relevant actions and conditions of exercise, shall be determined by national law.

Article 19

Enforcement

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts

- (a) 公共機構或其代表；
- (b) 於保護消費者方面具有合法權益的消費者組織；
- (c) 於行動方面具有合法權益的專業組織；

第 20 條

消費者資訊

會員國應採取適當措施，以確保向消費者提供有關本指令中消費者權利與行使該權利之方式的資訊。

第 21 條

強制性

1. 除非本指令另有規定，於消費者引起賣方關注商品欠缺符合性之前，任何對於因轉換本指令所訂立之國家措施，加以排除、限制或改變其效果，而對消費者不利之契約條款，對消費者不生拘束力。
2. 本指令不妨礙賣方提供消費者超過本指令保障之契約安排。

or before the competent administrative bodies to ensure that the national provisions transposing this Directive are applied:

- (a) public bodies or their representatives;
- (b) consumer organisations having a legitimate interest in protecting consumers;
- (c) professional organisations having a legitimate interest in acting.

Article 20

Consumer information

Member States shall take appropriate measures to ensure that information on the rights of consumers under this Directive, and on the means to enforce those rights, are available to consumers.

Article 21

Mandatory nature

1. Unless otherwise provided for in this Directive, any contractual agreement which, to the detriment of the consumer, excludes the application of national measures transposing this Directive, derogates from them, or varies their effect, before the lack of conformity of the goods is brought to the seller's attention by the consumer, shall not be binding on the consumer.
2. This Directive shall not prevent the seller from offering to the consumer contractual arrangements that go beyond the protection provided for in this Directive.

第 22 條

修正(EU)2017/2394 規則與 2009/22/EC 指令

(1) 於(EU)2017/2394 規則附件第 3 點以下列規定取代：

‘3. 歐洲議會暨歐盟理事會於 2019 年 5 月 20 日發布之 (EU)2019/771 指令，有關商品銷售契約之特定層面，修正 (EU)2017/2394 規則與 2009/22/EC 指令，並廢除 1999/44/EC 指令(OJ L 136, 22.5.2019,p.28) 。’；

(2) 於 2009/22/EC 指令附件 I 第 7 點以下列規定取代：

‘7. 歐洲議會暨歐盟理事會於 2019 年 5 月 20 日發布之(EU) 2019/771 指令，有關商品銷售契約之特定層面，修正(EU) 2017/2394 規則與 2009/22/EC 指令，並廢除 1999/44/EC 指令(OJ L 136, 22.5.2019,p.28) 。’。

第 23 條

廢除 1999/44/EC 指令

自 2022 年 1 月 1 日起廢除 1999/44/EC 指令。

對已廢除指令的引用應解釋為對本指令的引用，並應按附件之相關性列表參閱。

Article 22

Amendments to Regulation (EU) 2017/2394 and Directive 2009/22/EC

- (1) In the Annex to Regulation (EU) 2017/2394, point 3 is replaced by the following:

‘3. 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 (OJ L 136, 22.5.2019, p. 28).’;

- (2) In Annex I to Directive 2009/22/EC, point 7 is replaced by the following:

7. 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 (OJ L 136, 22.5.2019, p. 28).’.

Article 23

Repeal of Directive 1999/44/EC

Directive 1999/44/EC is repealed with effect from 1 January 2022.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex.

第 24 條

轉換

1. 會員國應於 2021 年 7 月 1 日前通過與公布遵守本指令所必須之相關措施，並立即通知執行委員會。

會員國應自 2022 年 1 月 1 日起施行上述措施。

當會員國採取上述措施時，應包含對於本指令之引用，或於正式發布時附加該引用。表示該引用之方法應由會員國決定之。

會員國應就其採取，屬於本指令涵蓋範圍之國家法律之措施草案，與執行委員會溝通。

2. 本指令之規定不適用於 2022 年 1 月 1 日之前簽訂之契約。

第 25 條

審查

執行委員會應於 2024 年 6 月 12 日以前審查本指令之施用情形，包括其有關救濟措施與舉證責任之規定（亦關於二手商品以及在公開拍賣中售出的商品），以及生產者商業保證之持續性，並向歐洲議會、理事會、以及歐洲經濟社會委員會提交報告。該報告應特別評估本指令與(EU)2019/770 指令之施用是否確保了一致且連貫的法律框架，使數位內容、數位服務及具有數位元素的商品

Article 24

Transposition

1. By 1 July 2021 Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 1 January 2022.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

2. The provisions of this Directive shall not apply to contracts concluded before 1 January 2022.

Article 25

Review

The Commission shall, not later than 12 June 2024, review the application of this Directive, including its provisions on remedies and burden of proof - also with respect to second-hand goods as well as goods sold at public auctions- and the producer's commercial guarantee of durability, and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee. The

之提供方面，內部市場可正常運作，並符合治理歐盟政策之原則。該報告應酌情附有立法建議。

第 26 條

生效施行

本指令應於歐盟官方公報發布後第 20 日生效。

然而，第 22 條應自 2022 年 1 月 1 日起施行。

第 27 條

發布

本指令已對會員國發布。

於布魯塞爾，2019 年 5 月 20 日。

歐洲議會

議長

A.TAJANI

理事會

主席

G.CIAMBA

report shall assess in particular whether the application of this Directive and Directive (EU) 2019/770 ensures a consistent and coherent framework for the proper functioning of the internal market with regard to the supply of digital content, digital services and goods with digital elements in line with principles governing Union policies. The report shall be accompanied, where appropriate, by legislative proposals.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

However, Article 22 shall apply from 1 January 2022.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 20 May 2019.

For the European Parliament

The President
A. TAJANI

For the Council

The President
G. CIAMBA

附件

相關性列表

1999/44/EC 指令	本指令
第 1 條 (1)	第 1 條
第 1 條 (2)(a)	第 2 條, (2) 點
第 1 條 (2)(b), 第 1 縮排	第 3 條 (4)(b)
第 1 條 (2)(b), 第 2 及第 3 縮排	第 2 條, (5)點(a)
第 1 條 (2)(c)	第 2 條, (3) 點
第 1 條 (2)(d)	第 2 條, (4) 點
第 1 條 (2)(e)	第 2 條, (12) 點
第 1 條 (3)	第 2 條, (15) 點及第 3 條 (5)(a)
第 1 條 (4)	第 3 條 (2)
第 2 條 (1)	第 5 條
第 2 條 (2)(a)	第 6 條, (a)點及第 7 條(1)(b)
第 2 條 (2)(b)	第 6 條, (b) 點
第 2 條 (2)(c)	第 7 條 (1)(a)
第 2 條 (2)(d)	第 7 條 (1)(d)
第 2 條 (3)	第 7 條 (5)
第 2 條 (4)	第 7 條 (2)
第 2 條 (5)	第 8 條
第 3 條 (1)	第 10 條 (1)
第 3 條 (2)	第 13 條 (1)
第 3 條 (3), 第 1 款	第 13 條 (2) 及第 14 條 (1)(a)
第 3 條 (3), 第 2 款	第 13 條 (2)
第 3 條 (3), 第 3 款	第 14 條 (1)(b) 及(c)
第 3 條 (4)	第 2 條, (14) 點
第 3 條 (5)	第 13 條 (4)
第 3 條 (6)	第 13 條 (5)
第 4 條	第 18 條
第 5 條 (1)	第 10 條 (1)、(2)、(3)、(4)及(5)
第 5 條 (2)	第 12 條
第 5 條 (3)	第 11 條
第 6 條 (1)	第 17 條 (1)

ANNEX

CORRELATION TABLE

Directive 1999/44/EC	This Directive
Article 1(1)	Article 1
Article 1(2)(a)	Article 2, point (2)
Article 1(2)(b), first indent	Article 3(4)(b)
Article 1(2)(b), second and third indents	Article 2, point (5)(a)
Article 1(2)(c)	Article 2, point (3)
Article 1(2)(d)	Article 2, point (4)
Article 1(2)(e)	Article 2, point (12)
Article 1(3)	Article 2, point (15) and Article 3(5)(a)
Article 1(4)	Article 3(2)
Article 2(1)	Article 5
Article 2(2)(a)	Article 6, point (a) and Article 7(1)(b)
Article 2(2)(b)	Article 6, point (b)
Article 2(2)(c)	Article 7(1)(a)
Article 2(2)(d)	Article 7(1)(d)
Article 2(3)	Article 7(5)
Article 2(4)	Article 7(2)
Article 2(5)	Article 8
Article 3(1)	Article 10(1)
Article 3(2)	Article 13(1)
Article 3(3), first subparagraph	Article 13(2) and Article 14(1)(a)
Article 3(3), second subparagraph	Article 13(2)
Article 3(3), third subparagraph	Article 14(1)(b) and (c)
Article 3(4)	Article 2, point (14)
Article 3(5)	Article 13(4)
Article 3(6)	Article 13(5)
Article 4	Article 18
Article 5(1)	Article 10(1), (2), (3), (4) and (5)
Article 5(2)	Article 12
Article 5(3)	Article 11
Article 6(1)	Article 17(1)

1999/44/EC 指令	本指令
第 6 條 (2)	第 17 條 (2)
第 6 條 (3)	第 17 條 (2)
第 6 條 (4)	第 17 條 (4)
第 6 條 (5)	第 17 條 (3)
第 7 條 (1)，第 1 款	第 21 條 (1)
第 7 條 (1)，第 2 款	第 10 條 (6)
第 7 條 (2)	—
第 8 條 (1)	第 3 條 (6)及(7)
第 8 條 (2)	第 4 條
第 9 條	第 19 及 20 條
第 10 條	第 22 條
第 11 條 (1)，第 1 款	第 24 條 (1)，第 1 款
第 11 條 (1)，第 2 款	第 24 條 (1)，第 3 款
第 11 條 (2)	第 24 條 (1)，第 4 款
第 12 條	第 25 條
第 13 條	第 26 條
第 14 條	第 27 條

Directive 1999/44/EC	This Directive
Article 6(2)	Article 17(2)
Article 6(3)	Article 17(2)
Article 6(4)	Article 17(4)
Article 6(5)	Article 17(3)
Article 7(1), first subparagraph	Article 21(1)
Article 7(1), second subparagraph	Article 10(6)
Article 7(2)	—
Article 8(1)	Article 3(6) and (7)
Article 8(2)	Article 4
Article 9	Articles 19 and 20
Article 10	Article 22
Article 11(1), first subparagraph	Article 24(1), first subparagraph
Article 11(1), second subparagraph	Article 24(1), third subparagraph
Article 11(2)	Article 24(1), fourth subparagraph
Article 12	Article 25
Article 13	Article 26
Article 14	Article 27

歐洲議會暨歐盟理事會 2019/2161 指令(EU)

2019 年 11 月 27 日

修正理事會 93/13/EEC 指令與 98/6/EC 指令、歐洲議會暨歐盟理事會 2005/29/EC 指令與 2011/83/EU 指令，關於歐盟消費者保護規則之優化執法與現代化

歐洲議會暨歐盟理事會

依據「歐盟運作條約」，特別是第 114 條，

依據歐盟執行委員會之提案

經過提供法制草案予各國議會

依據歐洲經濟社會執行委員會之意見

按照一般之立法程序

鑒於：

- (1) 歐盟運作條約(TFEU)第 169 條第(1)項，以及第(2)項第(a)款規定，歐盟應依據歐盟運作條約第114條之規定，採取相關措施，為實現提供高層級之消費者保護作出貢獻。歐盟基本權利憲章(憲章)第38條亦規定，歐盟政策應確保高標準之消費者保護。

**DIRECTIVE (EU) 2019/2161 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
of 27 November 2019**

amending Council Directive 93/13/EEC and Directives 98/6/EC,
2005/29/EC and 2011/83/EU of the European Parliament and of
the Council as regards the better enforcement and modernisation
of Union consumer protection rules

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union,
and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national
parliaments,

Having regard to the opinion of the European Economic and Social
Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 169(1), and point (a) of Article 169(2), of the Treaty on the
Functioning of the European Union (TFEU) provide that the Union
is to contribute to the attainment of a high level of consumer
protection through measures adopted pursuant to Article 114

- (2) 消費者保護法應於整個歐盟有效實施。然而，執行委員會於 2016 年至 2017 年基於歐盟「法規適合性及成效計畫」(REFIT)，就消費者與行銷法所為全面性的適合性評估，認為歐盟消費者保護法之有效性，因企業經營者與消費者的缺乏認知而受到減損，現有的補償措施應可更加利用。
- (3) 歐盟已經採取多種措施以提高消費者、企業經營者以及法律從業人員對於消費者權利的認知，並改善消費者權利與消費者補償之落實。然而，國家法律規範當中，關於真正得以實施有效並符合比例之處罰，以遏止或制裁歐盟內部侵權行為之相關規定，仍存在差距；與國家法律關於轉換歐洲議會與歐盟理事會 2005/29/EC 指令對消費者產生損害之救濟程序仍有不足；以及就歐洲議會與歐盟理事會 2009/22/EC 指令關於禁制程序規範上的缺失等皆存在。故對於禁制程序的修訂，應採取獨立的文件以修改並取代 2009/22/EC 指令。
- (4) 歐洲議會與歐盟理事會 98/6/EC 指令、2005/29/EC 指令以及 2011/83/EU 指令當中要求會員國提供有效、符合比例並有嚇

TFEU. Article 38 of the Charter of Fundamental Rights of the European Union ('the Charter') provides that Union policies are to ensure a high level of consumer protection.

- (2) Consumer protection law should be applied effectively throughout the Union. Yet, the comprehensive Fitness Check of consumer and marketing law carried out by the Commission in 2016 and 2017 in the framework of the Regulatory Fitness and Performance (REFIT) programme concluded that the effectiveness of Union consumer protection law is compromised by a lack of awareness among both traders and consumers and that existing means of redress could be taken advantage of more often.
- (3) The Union has already taken a number of measures to improve awareness among consumers, traders and legal practitioners about consumer rights and to improve enforcement of consumer rights and consumer redress. However, there are remaining gaps in national law regarding truly effective and proportionate penalties to deter and sanction intra-Union infringements, insufficient individual remedies for consumers harmed by breaches of national legislation transposing Directive 2005/29/EC of the European Parliament and of the Council and shortcomings with regard to the injunction procedure under Directive 2009/22/EC of the European Parliament and of the Council. Revision of the injunction procedure should be addressed by a separate instrument amending and replacing Directive 2009/22/EC.
- (4) Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council include requirements for Member

阻力之處罰，以處理侵害國家法律轉換歐盟指令相關規定之行為。此外，歐洲議會與歐盟理事會(EU)2017/2394 規則第 21 條更要求會員國必須採取有效、高效率與協調性之執法措施，包括施以相當處罰規定，以制止或禁止廣泛的侵權行為，或以歐盟為範圍之大規模侵權。

- (5) 目前歐盟各國之國家法律對於處罰規定存在極大的差異。尤其，並非所有會員國可以確保針對企業經營者應負責之廣泛侵權行為，或以歐盟為範圍的大規模侵權，能夠被課以有效、符合比例原則與具備嚇阻性的罰款。因此，98/6/EC, 2005/29/EC 與 2011/83/EU 已存在的處罰規則，必須加以改善。同時，應另行納入理事會 93/13/EEC 指令中關於處罰之新規則。
- (6) 會員國仍然需要選擇施加何種類型之處罰，並於其國家法律當中規範違反 93/13/EEC、96/6/EC 與 2011/83/EU 指令依循本指令之相關修訂的行為，如何落實處罰之相關程序。
- (7) 為促進處罰更加具有一致性，尤其是涉及歐盟(EU)2017/2394 規則定義之歐盟內部侵權、廣泛侵權以及以歐盟為範圍之大規模侵權行為時，關於施加處罰之一般性、非窮盡的規則，與指示性標準，亦應包含於 93/13/EEC、96/6/EC、2005/29/EC

States to provide for effective, proportionate and dissuasive penalties to address infringements of national provisions transposing those Directives. Furthermore, Article 21 of Regulation (EU) 2017/2394 of the European Parliament and of the Council requires Member States to take enforcement measures, including imposition of penalties, in an effective, efficient and coordinated manner to bring about the cessation or prohibition of widespread infringements or widespread infringements with a Union dimension.

- (5) Current national rules on penalties differ significantly across the Union. In particular, not all Member States ensure that effective, proportionate and dissuasive fines can be imposed on traders responsible for widespread infringements or widespread infringements with a Union dimension. Therefore, the existing rules on penalties of Directives 98/6/EC, 2005/29/EC and 2011/83/EU should be improved and, at the same time, new rules on penalties in Council Directive 93/13/EEC (8) should be introduced.
- (6) It should remain a matter for the Member States to choose the types of penalty to be imposed and to lay down in their national law the relevant procedures for the imposition of penalties in the event of infringements of Directives 93/13/EEC, 98/6/EC, 2005/29/EC and 2011/83/EU as amended by this Directive.
- (7) To facilitate more consistent application of penalties, in particular in the case of intra-Union infringements, widespread infringements and widespread infringements with a Union dimension as defined in Regulation (EU) 2017/2394, common non-exhaustive and

以及 2011/83/EU 指令之內。舉例而言，這些標準應該包括侵權行為的性質、嚴重性、規模及持續的時間，以及企業經營者對於消費者因而產生的損害所提供的任何補救措施。同一侵權行為人重複的侵權行為，顯示其有實施該侵權行為之傾向，也因此可以作為行為具備嚴重性的重大指標。因此，有必要提高處罰的程度，以達到有效威嚇的效果。若於資料可取得之狀態下，基於侵權行為所獲得的財產上利益，或所避免的損害，應該納入考量。於所涉情況下其他可以加重或減輕之因素，亦可納入評估。

- (8) 這些對於施行處罰之一般性、非窮盡與指示性標準，在面對有關非嚴重之侵權行為時，可能與決定每項侵權行為的處罰無關。會員國亦得將其他適用處罰之一般性法律原則納入考量，例如，一事不再理原則(principle of non bis in idem)。
- (9) 依據歐盟(EU)2017/2394 規則第 21 條，需採取協調一致作為之會員國主管機關，應於其管轄權範圍內，對於施行廣泛侵權或以歐盟為範圍之大規模侵權行為的企業經營者，採取任何必要的執法手段，以終止或禁止該侵權行為。於適當的情況下，其需對於應就各該廣泛侵權，或以歐盟為範圍之大規模侵權行為負責的企業經營者，課以處罰，例如罰金或分期繳納的罰款。該執法措施必須是有效果、具效率與協調性的方式，以實現終止或禁止各該泛侵權或以歐盟為範圍之大規模

indicative criteria for the application of penalties should be included in Directives 93/13/EEC, 98/6/EC, 2005/29/EC and 2011/83/EU. These criteria should include, for example, the nature, gravity, scale and duration of the infringement, and any redress provided by the trader to consumers for the harm caused. Repeated infringement by the same perpetrator shows a propensity to commit such infringements and is therefore a significant indication of the gravity of the conduct and, accordingly, of the need to increase the level of the penalty to achieve effective deterrence. The financial benefits gained, or losses avoided, due to the infringement should be taken into account, if the relevant data are available. Other aggravating or mitigating factors applicable to the circumstances of the case can also be taken into account.

- (8) Those common non-exhaustive and indicative criteria for the application of penalties might not be relevant in deciding on penalties regarding every infringement, in particular regarding non-serious infringements. Member States should also take account of other general principles of law applicable to the imposition of penalties, such as the principle of non bis in idem.
- (9) In accordance with Article 21 of Regulation (EU) 2017/2394, Member States' competent authorities concerned by the coordinated action are to take within their jurisdiction all necessary enforcement measures against the trader responsible for the widespread infringement or the widespread infringement with a Union dimension to bring about the cessation or prohibition of that infringement. Where appropriate, they are to impose penalties, such as fines or periodic penalty payments, on the trader

侵權行為。需採取協調一致作為之會員國主管機關將尋求得以在與該侵權行為相關之會員國當中，同時採取相關執法措施。

- (10) 為確保會員國主管機關能依據歐盟(EU)2017/2394 規則，對於應該對之採取協調之調查與執法程序的廣泛侵權，以及以歐盟為範圍之大規模侵權行為，施以有效、符合比例且具備嚇阻性的處罰，應將罰款列入此類侵權行為之處罰。而為了讓該罰款可以產生威嚇的作用，會員國應於其國家法律當中將此類侵權行為的最高罰款設定為至少達到該企業經營者於該會員國或相關之會員國年度營業額的 4%。於此類案例，企業經營者也可以是一個公司集團。
- (11) 於歐盟(EU)2017/2394 規則第 9 條及第 10 條當中亦規定，課予處罰時必須適度對於系爭侵權行為的性質、嚴重性及持續時間施以應有的關注。對於處罰的課予，必須符合比例，且應遵守歐盟與國家法律，包括應適用的程序保障措施，以及「憲章」規範的原則。最後，對於該違反保障消費者利益之歐盟法的行為，所課予的處罰必須適合該違法行為之性質以

responsible for the widespread infringement or the widespread infringement with a Union dimension. Enforcement measures are to be taken in an effective, efficient and coordinated manner to bring about the cessation or prohibition of the widespread infringement or the widespread infringement with a Union dimension. The competent authorities concerned by the coordinated action are to seek to take enforcement measures simultaneously in the Member States concerned by that infringement.

- (10) To ensure that Member States' authorities can impose effective, proportionate and dissuasive penalties in relation to widespread infringements and to widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement measures in accordance with Regulation (EU) 2017/2394, fines should be introduced as an element of penalties for such infringements. In order to ensure that the fines have a deterrent effect, Member States should set in their national law the maximum fine for such infringements at a level that is at least 4 % of the trader's annual turnover in the Member State or Member States concerned. In certain cases, a trader can also be a group of companies.
- (11) As laid down in Articles 9 and 10 of Regulation (EU) 2017/2394, when imposing penalties due regard should be given, as appropriate, to the nature, gravity and duration of the infringement in question. The imposition of penalties should be proportionate and should comply with Union and national law, including with applicable procedural safeguards and with the

及整體實際或潛在損害。處罰的權力應來自於主管機關直接權力的行使，或於適當情況下，由其他主管機關、其他公權力機構、受指示的指定機構(若有適用時)為之，或向有權作出必要決定的法院提出聲請，包括於適當的時候，如聲請未通過時，透過上訴的方式提出。

- (12) 若依據歐盟(EU)2017/2394 規則採取協調行動的結果，該規則所指涉之單一主管機關對於必須對廣泛侵權或或以歐盟為範圍之大規模侵權行為負責的企業經營者課以罰款，其必須能夠透過協調的執法行動，對該企業經營者課以至少達到該企業經營者於所有會員國年度營業額 4%的罰款。
- (13) 不應阻止會員國於其國家法律當中，針對廣泛侵權與以歐盟為範圍之大規模侵權行為，維持或採用更高之營業額罰款基準。會員國亦可能以該企業經營者全球的營業額作為罰款的基準，或延伸罰款規定至本指令中與歐盟(EU)2017/2394 規則第 21 條有關侵權行為規定以外之侵權行為。關於罰款之設定不得低於企業經營者年營業額之 4%之要求，不適用於會員國關於分期繳納罰款之其他額外規定，例如對於不遵守任何決定、命令、暫時性措施、企業經營者的承諾或其他以終止侵權為目的之措施。

principles of the Charter. Finally, the penalties imposed should be appropriate to the nature and the overall actual or potential harm of the infringement of Union laws that protect consumers' interests. The power to impose penalties is to be exercised either directly by competent authorities under their own authority, or, where appropriate, by recourse to other competent authorities or other public authorities, or by instructing designated bodies, if applicable, or by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.

- (12) Where, as a result of the coordinated action under Regulation (EU) 2017/2394, a single competent authority within the meaning of that Regulation imposes a fine on the trader responsible for the widespread infringement or the widespread infringement with a Union dimension, it should be able to impose a fine of at least 4 % of the trader's annual turnover in all Member States concerned by the coordinated enforcement action.
- (13) Member States should not be prevented from maintaining or introducing in their national law higher maximum turnover-based fines for widespread infringements and widespread infringements with a Union dimension. It should also be possible for Member States to base such fines on the trader's worldwide turnover, or to extend the rules on fines to other infringements not covered by provisions of this Directive related to Article 21 of Regulation (EU) 2017/2394. The requirement to set the fine at a level of not less than 4 % of the trader's annual turnover should not apply to any additional Member State rules on periodic penalty payments,

(14) 處罰的規則應被包含於歐盟 93/13/EEC 指令當中，以強化其威嚇的效用。會員國可以自由對於違反該指令之侵權行為課予處罰的行政或司法程序。尤其，行政機關或國家法院於確定契約條款具有不公平的特徵時，得課予處罰，其中包括行政機關所提起的法律訴訟。當賣方或供應商採用於國家法律之所有情況下明顯被定義為不公平之條款，以及當賣方或供應商採用之條款，受到最終具備拘束力之決定認定為不公平之條款時，行政機關或國家法院亦得課予處罰。會員國可以決定行政機關也有權認定契約條款是否不公平。行政機關或國家法院亦可依據不公平契約條款認定之同一決定，課予處罰。會員國可以制定適當的協調機制，以在國家層級針對個人的救濟與處罰採取行動。

(15) 當會員國分配罰款收入時，應將強化對於消費者的一般利益，以及其他公共利益的保障納入考量。

such as daily fines, for non- compliance with any decision, order, interim measure, trader's commitment or other measure with the aim of bringing to an end the infringement.

- (14) Rules on penalties should be included in Directive 93/13/EEC with a view to strengthening its deterrent effect. Member States are free to decide on the administrative or judicial procedure for the application of penalties for infringements of that Directive. In particular, administrative authorities or national courts could impose penalties when establishing the unfair character of contractual terms, including on the basis of legal proceedings initiated by an administrative authority. The penalties could also be imposed by administrative authorities or national courts when the seller or supplier uses contractual terms which are expressly defined as unfair in all circumstances in national law as well as when the seller or supplier uses contractual terms which have been found to be unfair by a final binding decision. Member States could decide that administrative authorities also have the right to establish the unfair character of contractual terms. Administrative authorities or national courts could also impose a penalty through the same decision by which unfairness of contractual terms is established. Member States could lay down the appropriate coordination mechanisms for actions at national level regarding individual redress and penalties.
- (15) When allocating revenues from fines, Member States should consider enhancing the protection of the general interest of consumers as well as other protected public interests.

- (16) 會員國應確保受到不公平商業行為傷害的消費者，可以獲得相當之救濟，以消除此類不公平商業行為帶來的影響。一個清楚的個人救濟架構將有助於促進私人執法 (private enforcement)。消費者應有權按比例與採取有效的方法獲得損害賠償，及在相關的情況下得以要求減少價金或終止契約。會員國不應被禁止維持或採用其他救濟措施，例如為受到不公平商業行為侵害之消費者提供維修或更換的服務，以確保充分排除此類商業行為產生的影響。會員國亦不應被禁止就消費者救濟程序之適用條件與效果進行決定。適用救濟程序時，應適時考量該不公平商業行為之嚴重性與性質、消費者因而遭受的損害及其他相關情形，例如企業經營者之不當行為或對契約之違反等。
- (17) 該消費者與市場行銷法律之適合性檢視，以及就歐盟 2011/83/EU 指令之平行評估，亦識別出目前歐盟消費者保護相關規則應修訂之諸多領域。鑒於數位工具的持續發展，有必要對於歐盟消費者保護法制進行調整。
- (18) 網路搜尋功能服務提供者，就其網路搜尋結果中顯現的較高排名，或就任何商業要約提供顯著的位置，對於消費者而言皆有重要的影響。

- (16) Member States should ensure that remedies are available for consumers harmed by unfair commercial practices in order to eliminate all the effects of those unfair practices. A clear framework for individual remedies would facilitate private enforcement. The consumer should have access to compensation for damage and, where relevant, a price reduction or termination of the contract, in a proportionate and effective manner. Member States should not be prevented from maintaining or introducing rights to other remedies such as repair or replacement for consumers harmed by unfair commercial practices in order to ensure full removal of the effects of such practices. Member States should not be prevented from determining conditions for the application and effects of remedies for consumers. When applying the remedies, the gravity and nature of the unfair commercial practice, damage suffered by the consumer and other relevant circumstances, such as the trader's misconduct or the infringement of the contract, could be taken into account, where appropriate.
- (17) The Fitness Check of consumer and marketing law and the parallel evaluation of Directive 2011/83/EU also identified a number of areas where the existing Union consumer protection rules should be modernised. In view of the continuous development of digital tools, adjustment of Union consumer protection law is necessary.
- (18) Higher ranking or any prominent placement of commercial offers within online search results by the providers of online search functionality has an important impact on consumers.

- (19) 所謂排名係指網路搜尋服務提供者給與企業經營者的商業要約相對顯著的呈現，或透過搜尋結果顯示、組織或傳達其相關性，包括運用演算法排序、評價或評論的機制、視覺上的強調、或其他可使呈現具顯著性的工具或其組合等。
- (20) 於此部分，歐盟 2005/29/EC 指令附件 1 應加以修正，以明確說明若企業經營者係透過搜尋結果回應消費者的線上搜尋以對消費者提供資訊，於缺乏清楚揭露任何付費廣告，或為了取得產品於搜尋結果之更高排序而特別支付之費用，該行為應被禁止。當企業經營者直接或間接支付網路搜尋功能服務提供者，以取得其產品於搜尋結果之更高排序時，該網路搜尋功能服務提供者應以簡潔、易於取得與瞭解的形式告知消費者。間接付款的形式，可以包括企業經營者接受網路搜尋功能服務提供者所提供的任何得以產生較高排序之特定效果的附加義務。間接支付可能包括每筆交易所增加的佣金，以及特別為了達到更高排序的不同對價方案。對於一般服務的費用，例如上架費或會員訂閱費用等，用以處理網路搜尋功能服務提供者對於企業經營者所提供之廣泛功能的費用，不應被認為是特別為了達成產品較高的排序所為的支付。前提是這類支付並非專門用以達到更高的排名。網路搜尋功能可以由不同類型的網路企業經營者所提供，包括相關中介服務，例如網路市集、搜尋引擎與比較網站等。

- (19) Ranking refers to the relative prominence of the offers of traders or the relevance given to search results as presented, organised or communicated by providers of online search functionality, including resulting from the use of algorithmic sequencing, rating or review mechanisms, visual highlights, or other saliency tools, or combinations thereof.
- (20) In this regard, Annex I to Directive 2005/29/EC should be amended in order to make it clear that practices where a trader provides information to a consumer in the form of search results in response to the consumer's online search query without clearly disclosing any paid advertising or payment specifically for achieving higher ranking of products within the search results should be prohibited. When a trader has directly or indirectly paid the provider of the online search functionality for a higher ranking of a product within the search results, the provider of the online search functionality should inform consumers of that fact in a concise, easily accessible and intelligible form. Indirect payment could be in the form of the acceptance by a trader of additional obligations towards the provider of the online search functionality of any kind which have higher ranking as its specific effect. The indirect payment could consist of increased commission per transaction as well as different compensation schemes that specifically lead to higher ranking. Payments for general services, such as listing fees or membership subscriptions, which address a broad range of functionalities offered by the provider of the online search functionality to the trader, should not be considered to be a payment for specifically achieving higher ranking of products, provided that such payments are not

- (21) 針對決定排名之主要參數的透明度要求，亦規範於歐洲議會與理事會(EU)2019/1150 規則。該規則所規範之透明度要求涵蓋廣泛的網路中介服務，包括網路市集，但僅適用於企業經營者與網路中介服務提供者之間。相似的透明度要求因此亦有必要引入歐盟 2005/29/EC 指令當中，以確保對於消費者具備適當的透明度。除了網路搜尋引擎提供者之外，前述規則已要求對於排名或相對重要性之決定具有最重大影響的個別或統合的參數，應提供簡單且公開可得之描述，並由服務提供者於搜尋引擎上以通俗易懂的語言撰擬。
- (22) 企業經營者提供消費者得以搜尋不同企業經營者或消費者提供的商品或服務，例如旅遊、住宿與休閒活動者，應告知消費者可能影響消費者搜尋結果決定之報價排序的預設主要參數，以及其與其他參數間之相對重要性。該資訊必須簡明扼要，並應以簡單、明顯且可直接取得的方式提供。決定排序的參數，係指任何與排序相連結之一般標準、程序、特定與演算法整合之訊號、或其他調整或降級的機制。

dedicated to achieving higher ranking. Online search functionality can be provided by different types of online trader, including intermediaries, such as online marketplaces, search engines and comparison websites.

- (21) Transparency requirements with regard to the main parameters determining ranking are also regulated by Regulation (EU) 2019/1150 of the European Parliament and of the Council. The transparency requirements under that Regulation cover a broad range of online intermediaries, including online marketplaces, but they only apply between traders and online intermediaries. Similar transparency requirements should therefore be introduced in Directive 2005/29/EC to ensure adequate transparency towards the consumers, except in the case of providers of online search engines, which are already required by that Regulation to set out the main parameters which individually or collectively are most significant in determining ranking and the relative importance of those main parameters, by providing an easily and publicly available description, drafted in plain and intelligible language on the online search engines of those providers.
- (22) Traders enabling consumers to search for goods and services, such as travel, accommodation and leisure activities, offered by different traders or by consumers should inform consumers about the default main parameters determining the ranking of offers presented to the consumer as a result of the search query and their relative importance as opposed to other parameters. That information should be succinct and made easily, prominently and directly available. Parameters determining the ranking mean any

- (23) 關於決定排序之主要參數的資訊要求，不影響歐洲議會與理事會(EU)2016/943 指令之適用。企業經營者不應被要求揭露他們排名機制(包括演算法)的詳細功能。企業經營者應提供對於決定排序之主要參數的一般性描述，解釋企業經營者使用的主要預設參數，以及其與其他參數之相對重要性。但無須針對每個個別的搜尋，皆顯示制式化的描述。
- (24) 當產品係透過網路市集的方式提供給消費者時，包括網路市集的服務提供者與第三方供應商，皆會涉及歐盟 2011/83/EU 指令所規定之交易前資訊提供的要求。如此一來，使用網路市集的消費者可能無法清楚的認知，誰才是他們締約的相對人，以及他們的權利與義務將如何受到影響。
- (25) 網路交易市集應按歐盟 2005/29/EC 指令與 2011/83/EU 指令之目的加以定義，並與歐洲議會與理事會(EU)No 524/2013 規則，以及(EU)2016/1148 指令採取相同的定義方式。然而，「網路交易市集」的定義應予以更新，並以更加技術中立的方式呈現，以涵蓋新興科技。因此，相對於單純指涉「網站」，更適合依循歐洲議會與理事會(EU)2017/2394 規則，與(EU)

general criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking.

- (23) The information requirement regarding the main parameters determining the ranking is without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council. Traders should not be required to disclose the detailed functioning of their ranking mechanisms, including algorithms. Traders should provide a general description of the main parameters determining the ranking that explains the default main parameters used by the trader and their relative importance as opposed to other parameters, but that description does not have to be presented in a customised manner for each individual search query.
- (24) When products are offered to consumers in online marketplaces, both the provider of the online marketplace and the third-party supplier are involved in the provision of the pre-contractual information required by Directive 2011/83/EU. As a result, consumers using the online marketplace may not clearly understand who their contractual partners are and how their rights and obligations are affected.
- (25) Online marketplaces should be defined for the purposes of Directives 2005/29/EC and 2011/83/EU in a similar manner as in Regulation (EU) No 524/2013 of the European Parliament and of the Council and Directive (EU) 2016/1148 of the European Parliament and of the Council. However, the definition of ‘online marketplace’ should be updated and rendered more technologically

2018/302 規則所提供的「網路介面」概念，指涉企業經營者或代表企業經營者之人所操作之軟體，包含網站、網站的一部分或應用程式。

- (26) 對於網路交易市集具體的資訊要求，因此應於歐盟 2005/29/EC 指令與 2011/83/EU 指令規範中，告知使用網路交易市集的消費者關於決定排序的主要參數，以及與他們簽訂契約的對象為企業經營者或是非企業經營者(例如為其他消費者)。
- (27) 網路交易市集之提供者，必須以第三方供應者對其聲明的資訊為基礎，告知消費者提供商品、服務或數位內容的第三方供應者，係企業經營者或非企業經營者。當提供商品、服務或數位內容的第三方供應者聲明其為非企業經營者時，網路交易市集之提供者必須提供一個簡短的聲明，告知消費者其源自於歐盟消費者保護法規定之消費者權利，並不適用於其所訂定的契約。此外，必須告知消費者，關於該契約的相關責任，於提供商品、服務或數位內容之第三方供應商，以及網路市集提供者間，是如何分擔。該資訊必須係以清楚且可以理解的方式提供，並不能僅採用標準的條款或條件，或類似的契約文件的用語。對於網路市集提供者的資訊提供要求，應符合比例原則。這些要求必須於提供高標準的消費者保障，以及網路市集提供者之競爭間，取得平衡。當網路交易市集提供者告知消費者關於其不適用之情形時，不應要求

neutral in order to cover new technologies. It is therefore appropriate to refer, instead of to a ‘website’, to software, including a website, part of a website or an application, operated by or on behalf of the trader, in accordance with the notion of an ‘online interface’ as provided by Regulation (EU) 2017/2394 and Regulation (EU) 2018/302 of the European Parliament and of the Council.

- (26) Specific information requirements for online marketplaces should therefore be provided in Directives 2005/29/EC and 2011/83/EU to inform consumers using online marketplaces about the main parameters determining the ranking of offers, and whether they enter into a contract with a trader or a non-trader, such as another consumer.
- (27) Providers of online marketplaces should inform consumers whether the third party offering goods, services or digital content is a trader or nontrader, based on the declaration made to them by the third party. When the third party offering the goods, services or digital content declares its status to be that of a non-trader, providers of online marketplaces should provide a short statement to the effect that the consumer rights stemming from Union consumer protection law do not apply to the contract concluded. Furthermore, consumers should be informed of how obligations related to the contract are shared between third parties offering the goods, services or digital content and providers of online marketplaces. The information should be provided in a clear and comprehensible manner and not merely in the standard terms and conditions or similar contractual documents. The information

網路交易市集提供者列出具體的消費者權利。此規定並不影響歐盟 2011/83/EU 指令關於消費者資訊提供的要求，尤其是該指令第 6 條(1)項之規定。提供確保消費者權利之資訊的責任，取決於網路市集提供者以及相關第三方企業經營者間的契約安排。網路交易市集提供者可能指出第三方企業經營者對於確保消費者權利事宜全權負責。或闡述其僅對契約某些部分承擔的責任，例如交付或行使解除權等。

(28) 依據歐洲議會與理事會 2000/31/EC 指令第 15 條(1)項規定，網路市集提供者不應被要求驗證第三方供應者之法律地位。相反的，網路市集提供者得以要求網路市集之第三方供應者，為消費者保護法之規範目的，表明其為企業經營者或非企業經營者，並將此一資訊提供給網路市集提供者。

(29) 考量與網路市集相關科學技術之快速發展，並確保高水準消費者保護之需要，會員國應能夠採用或維持具體的附加措施。

requirements for providers of online marketplaces should be proportionate. Those requirements need to strike a balance between a high level of consumer protection and the competitiveness of providers of online marketplaces. Providers of online marketplaces should not be required to list specific consumer rights when informing consumers about their non-applicability. This is without prejudice to the consumer information requirements provided for in Directive 2011/83/EU, and in particular in Article 6(1) thereof. The information to be provided about the responsibility for ensuring consumer rights depends on the contractual arrangements between the providers of online marketplaces and the relevant third-party traders. The provider of the online marketplace could indicate that a third-party trader is solely responsible for ensuring consumer rights, or describe its own specific responsibilities where that provider assumes responsibility for certain aspects of the contract, for example, delivery or the exercise of the right of withdrawal.

- (28) In accordance with Article 15(1) of Directive 2000/31/EC of the European Parliament and of the Council, providers of online marketplaces should not be required to verify the legal status of third-party suppliers. Instead, providers of online marketplaces should require third-party suppliers on the online marketplace to indicate their status as traders or non-traders for the purposes of consumer protection law and to provide this information to the provider of online marketplace.
- (29) Taking into account the rapid technological developments concerning online marketplaces and the need to ensure a high

此類規定必須符合比例，不具歧視性且不影響 2000/31/EC 指令之執行。

- (30) 於歐盟 2011/83/EU 指令當中定義之數位內容或數位服務應與歐洲議會與理事會(EU)2019/770 指令之規定一致。(EU) 2019/770 指令涵蓋之數位內容包括一次性提供、一系列之個別提供行為或於一段期間內持續提供之情形。而持續性提供不以長期供應為要件。視聽剪輯的網路串流，無論該視聽檔案實際的長短，皆應被認定為一段時間內持續性的提供。因此區隔特定類型的數位內容或數位服務可能產生困難，因兩者皆可能為企業經營者於契約期間內連續的提供。數位服務的事例，包括影片與音訊分享服務，以及其他透過雲端提供的文件託管、文字處理或遊戲、雲端儲存、網路郵件、社群媒體以及雲端應用程式。服務提供者的持續介入，亦證明了歐盟 2011/83/EU 指令關於解除權規則之適用，該規則有效的允許消費者得以於契約訂定後 14 天之期限內試用服務並決定是否保留該服務。許多非以有形媒介提供數位內容的契約，其特徵在於透過單一行為向消費者提供特定單個或數個數位內容，例如特定的音樂或影片檔案。非以有形媒介提供數位內容的契約，依據 2011/83/EU 指令第 16 條第 1 段(m)點之規定，仍為契約解除權行使之例外。該條款規定，當契約條款已開始履行，例如該內容已下載或串流，基於消費者於契約解除權期限內已明確同意開始履行契約，且已認知他自此喪失解除權時，消費者即喪失解除權。當對於該契約屬於服務契約，或非以有形媒介提供數位內容之契約，認定上有疑慮時，則服務之解除權規定應予以適用。

level of consumer protection, Member States should be able to adopt or maintain specific additional measures for that purpose. Such provisions should be proportionate, non-discriminatory and without prejudice to Directive 2000/31/EC.

- (30) The definitions of digital content and digital services in Directive 2011/83/EU should be aligned to those in Directive (EU) 2019/770 of the European Parliament and of the Council. Digital content covered by Directive (EU) 2019/770 covers a single act of supply, a series of individual acts of supply, or continuous supply over a period of time. The element of continuous supply should not necessarily require a long-term supply. Cases such as web-streaming of video clips should be considered continuous supply over a period of time, regardless of the actual duration of the audiovisual file. It may therefore be difficult to distinguish between certain types of digital content and digital services, since both can involve continuous supply by the trader over the duration of the contract. Examples of digital services are video and audio sharing services and other file hosting, word processing or games offered in the cloud, cloud storage, webmail, social media and cloud applications. The continuous involvement of the service provider justifies the application of the rules on the right of withdrawal provided for in Directive 2011/83/EU that effectively allow the consumer to test the service and decide, during the 14-day period from the conclusion of the contract, whether to keep it or not. Many contracts for the supply of digital content which is not supplied on a tangible medium are characterised by a single act of supply to the consumer of a specific piece or pieces of digital content, such as specific music

- (31) 數位內容與數位服務通常透過契約，以消費者無需支付價格而以提供企業經營者個人資料的方式，於網路上提供。2011/83/EU 指令已適用於非以有形媒介提供數位內容的契約（例如提供線上數位內容），無論消費者係以金錢支付，或提供個人資料。然而，該指令僅適用於消費者支付價金或承擔費用的服務契約，包括數位服務的契約。故該指令並不適用消費者係以提供個人資料給企業經營者，而未支付價金的數位服務契約。鑒於以價金支付之數位服務，與以個人資料交換的數位服務，有其相似性與替代性，應適用指令規定的相同規則。

or video files. Contracts for the supply of digital content which is not supplied on a tangible medium remain subject to the exception from the right of withdrawal set out in point (m) of the first paragraph of Article 16 of Directive 2011/83/EU, which provides that the consumer loses the right of withdrawal when the performance of the contract is started, such as download or streaming of the content, subject to the consumer's prior express consent to begin the performance during the right of withdrawal period and acknowledgement that he has thereby lost his right of withdrawal. Where there is doubt as to whether the contract is a service contract or a contract for the supply of digital content which is not supplied on a tangible medium, the rules on right of withdrawal for services should apply.

- (31) Digital content and digital services are often supplied online under contracts under which the consumer does not pay a price but provides personal data to the trader. Directive 2011/83/EU already applies to contracts for the supply of digital content which is not supplied on a tangible medium (i.e. supply of online digital content) regardless of whether the consumer pays a price in money or provides personal data. However, that Directive only applies to service contracts, including contracts for digital services, under which the consumer pays or undertakes to pay a price. Consequently, that Directive does not apply to contracts for digital services under which the consumer provides personal data to the trader without paying a price. Given their similarities and the interchangeability of paid digital services and digital services provided in exchange for personal data, they should be subject to the same rules under that Directive.

- (32) 2011/83/EU 指令與(EU)2019/770 指令適用範圍的一致性應被確定，即適用於消費者提供或允諾提供個人資料予企業經營者之數位內容或數位服務提供契約。
- (33) 因此，2011/83/EU 指令的範圍，應被延伸至企業經營者提供或承諾提供數位服務給消費者，而消費者提供或承諾提供個人資料之契約。對於不以有形媒介提供之數位內容契約亦然，只要消費者提供或承諾提供個人資料予企業經營者，該指令即有適用，除非消費者提供之個人資料僅供企業經營者為提供數位內容或數位服務之目的進行處理，而企業經營者並未將那些資料以其他目的處理之。任何關於個人資料之處理，皆須符合歐洲議會與理事會(EU)2016/679 規則之規定。
- (34) 為確保完全符合(EU)2019/770 之規範(數位內容或數位服務的提供，非以用來換取對價之情形)，2011/83/EU 指令亦不應適用於當企業經營者蒐集個人資料僅係為了符合以該企業經營者為主體的法律義務。此類情形可以包括，例如基於所適用法律規範之安全性與身分識別目的，而要求消費者必須註冊之情形。

- (32) Consistency should be ensured between the scope of application of Directive 2011/83/EU and Directive (EU) 2019/770, which applies to contracts for the supply of digital content or digital services under which the consumer provides or undertakes to provide personal data to the trader.
- (33) Therefore, the scope of Directive 2011/83/EU should be extended to cover also contracts under which the trader supplies or undertakes to supply a digital service to the consumer, and the consumer provides or undertakes to provide personal data. Similar to contracts for the supply of digital content which is not supplied on a tangible medium, that Directive should apply whenever the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer are exclusively processed by the trader for the purpose of supplying the digital content or digital service, and the trader does not process those data for any other purpose. Any processing of personal data should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council.
- (34) In order to ensure full alignment with Directive (EU) 2019/770, where digital content and digital services are not supplied in exchange for a price, Directive 2011/83/EU should also not apply to situations where the trader collects personal data for the sole purpose of meeting legal requirements to which the trader is subject. Such situations can include, for instance, cases where the registration of the consumer is required by applicable laws for security and identification purposes.

(35) 2011/83/EU 指令不應適用於企業經營者僅蒐集後設資料 (metadata) 之情形，例如與消費者之設備或瀏覽歷史相關的資料，除非此類情形於國家法律下被認定為契約。亦不適用於消費者尚未與企業經營者成立契約，卻暴露於廣告當中，僅為獲得接取數位內容或數位服務之機會時。然而，會員國仍得自由延伸該指令之適用到此類情形，或於該指令涵蓋範圍之外，以其他方式規範。

(36) 功能性的概念，可以被理解為數位內容或數位服務可以被利用的方式。例如，缺少或存在任何技術上的限制，像是以數位權利管理機制或區域編碼進行保護，可能影響該數位內容或數位服務完整執行與其目的相關之所有功能的能力。相互操作性概念，則涉及數位內容或數位服務是否得以，以及到何種程度，可在不同於同類數位內容或數位服務通常使用之硬體或軟體上運作其功能。成功的運作包括該數位內容或數位服務得與該軟體或硬體交換資訊，並且使用所交換的資訊。相容性的概念則定義於(EU)2019/770 指令。

(37) 2011/83/EU 指令第 7 條(3)項與第 8 條(8)項要求企業經營者對

- (35) Directive 2011/83/EU should also not apply to situations where the trader only collects metadata, such as information concerning the consumer's device or browsing history, except where this situation is considered to be a contract under national law. It should also not apply to situations where the consumer, without having concluded a contract with the trader, is exposed to advertisements exclusively in order to gain access to digital content or a digital service. However, Member States should remain free to extend the application of that Directive to such situations, or to otherwise regulate such situations, which are excluded from the scope of that Directive.
- (36) The notion of functionality should be understood to refer to the ways in which digital content or a digital service can be used. For instance, the absence or presence of any technical restrictions such as protection via Digital Rights Management or region coding could have an impact on the ability of the digital content or digital service to perform all its functions having regard to its purpose. The notion of interoperability relates to whether and to what extent digital content or a digital service is able to function with hardware or software that is different from those with which digital content or digital services of the same type are normally used. Successful functioning could include, for instance, the ability of the digital content or digital service to exchange information with such other software or hardware and to use the information exchanged. The notion of compatibility is defined in Directive (EU) 2019/770.
- (37) Article 7(3) and Article 8(8) of Directive 2011/83/EU require

於營業場所外的契約(off-premises contracts)，與遠距契約，必須於解除契約權期間屆至前，取得消費者事前之明示同意，方得履行其義務。該指令第 14 條(4)項(a)點規範了企業經營者未滿足此一條件時之契約制裁，指出於此則消費者無需對於提供之服務付費。取得消費者事前同意的要求，僅因支付價格而提供之服務相關(包括數位服務)。因此，有必要修正第 7 條(3)項與第 8 條(8)項，使企業經營者須獲得消費者事前同意之要求，僅適用於消費者必須承擔付款義務之服務提供契約。

- (38) 2011/83/EU 指令第 16 條第 1 段第(m)點規範了非以有形媒介提供之數位內容，若消費者已於解除權行使期間屆至前，事先明確同意契約履行，並已認知其將喪失契約解除權，屬契約解除權行使之例外。第 14 條(4)項(b)點針對企業經營者未滿足此要求時之契約制裁，亦即消費者不需要對於其所消費的數位內容支付費用。關於必須取得消費者事前之同意並認知的要求，僅適用於消費者必須支付價金的數位內容。因此有必要修訂第 16 條第 1 段第(m)點，使企業經營者需事先取得消費者之同意並認知的要求，僅適用於消費者必須承擔付款義務之契約。

traders, for off-premises and distance contracts respectively, to obtain the consumer's prior express consent to begin performance before the expiry of the right of withdrawal period. Point (a) of Article 14(4) of that Directive provides for a contractual sanction when this requirement is not fulfilled by the trader, namely that the consumer does not have to pay for the services provided. The requirement to obtain the consumer's prior express consent is accordingly only relevant for services, including digital services, which are provided against the payment of the price. It is therefore necessary to amend Article 7(3) and Article 8(8) to the effect that the requirement for traders to obtain the consumer's prior express consent only applies to service contracts that place the consumer under an obligation to pay.

- (38) Point (m) of the first paragraph of Article 16 of Directive 2011/83/EU provides for an exception to the right of withdrawal in respect of digital content which is not supplied on a tangible medium if the consumer has given prior express consent to begin the performance before the expiry of the right of withdrawal period and acknowledged that he thereby loses his right of withdrawal. Point (b) of Article 14(4) of that Directive provides for a contractual sanction when this requirement is not fulfilled by the trader, namely, the consumer does not have to pay for the digital content consumed. The requirement to obtain the consumer's prior express consent and acknowledgment is accordingly only relevant for digital content which is provided against the payment of the price. It is therefore necessary to amend point (m) of the first paragraph of Article 16 to the effect

- (39) 2005/29/EC 指令第 7 條(4)項，針對以特定價格購買產品之要約，建立了資訊揭露的要求。這些資訊要求於廣告階段已適用，2011/83/EU 指令亦於其後契約簽訂前階段(消費者締約之前)，施以相同、其他與更詳細的資訊揭露要求。因此，企業經營者可能被要求於廣告階段(例如，於媒體網站上的線上廣告)，以及締約前階段(例如，於線上商店之頁面)提供相同的資訊。
- (40) 2005/29/EC 指令第 7 條(4)項規定之資訊揭露要求，包括告知消費者企業經營者提供之爭議處理政策。消費者與市場行銷法律之適合性檢視呈現，該資訊與 2011/83/EU 指令所規定之締約前階段最具關連性。故，應將 2005/29/EC 指令中關於廣告階段邀請購買之資訊揭露規定刪除。
- (41) 2011/83/EU 指令第 6 條(1)項第(h)點規定，要求契約解除權應納入提供給消費者之締約前資訊，包括該指令附件 I (B)提供的解除契約示範格式。該指令第 8 條(4)項對於透過遠距通訊方式，尤其是僅允許於有限的空間或時間內顯示資訊之方式建立的契約，提供更簡化的締約前資訊揭露要求。例如透過

that the requirement for traders to obtain the consumer's prior express consent and acknowledgment only applies to contracts that place the consumer under an obligation to pay.

- (39) Article 7(4) of Directive 2005/29/EC sets out information requirements for the invitation to purchase a product at a specific price. Those information requirements apply already at the advertising stage, whilst Directive 2011/83/EU imposes the same and other, more detailed information requirements at the later pre-contractual stage (i.e. just before the consumer enters into a contract). Consequently, traders may be required to provide the same information at the advertising stage (e.g. an online advertisement on a media website) and at the pre-contractual stage (e.g. on the pages of their online web-shops).
- (40) The information requirements under Article 7(4) of Directive 2005/29/EC include informing the consumer about the trader's complaint handling policy. The Fitness Check of consumer and marketing law findings show that that information is most relevant at the pre-contractual stage, which is regulated by Directive 2011/83/EU. The requirement to provide that information in invitations to purchase at the advertising stage under Directive 2005/29/EC should therefore be deleted.
- (41) Point (h) of Article 6(1) of Directive 2011/83/EU requires traders to provide consumers with pre-contractual information about the right of withdrawal, including the model withdrawal form set out in Annex I(B) to that Directive. Article 8(4) of that Directive provides for simpler precontractual information requirements if

電話、語音操作之購物助理或透過短訊者。強制採取或透過特定遠距通訊方法提供的締約前資訊，與第 6 條(1)項(h)款相關的解除權。因此亦包括附件 I (B)提供的解除契約示範格式。然而，當契約係以電話或語音操作購物助理訂定時，不可能採用解除契約示範格式，且於第 8 條(4) 項所涵蓋的其他遠距通訊方法，於技術上亦不可能提供使用者友善的形式。因此，較為合適的作法係將任何採用或透過第 8 條(4)項規範之特定遠距通訊方法締結的契約，於企業經營者需揭露之資訊中，排除提供解除契約示範格式的要求。

- (42) 2011/83/EU 指令第 16 條第 1 段第(a)點針對服務契約已完全履約，訂定了解除權之例外規定，即若該契約履行之開始係經過消費者事前的明示同意，並認知一旦契約由企業經營者完全履約時將喪失契約解除權，則屬解除權行使之例外。相反的該指令第 7 條(3)項與第 8 條(8)項，規範解除權期間屆至前已開始履行契約之情況下的企業經營者責任，於此僅要求企業經營者獲得消費者事前之明示同意，但無須認知當契約履行完畢解除契約權將喪失。為確保規範間的一致性，有必要於第 7 條(3)項與第 8 條(8)項增加責任規範，若該契約使得消費者具備付款義務時，要求企業經營者亦需取得消費者對

the contract is concluded through a means of distance communication which allows limited space or time to display the information, such as over the telephone, via voice operated shopping assistants or by SMS. The mandatory pre contractual information to be provided on or through that particular means of distance communication includes information regarding the right of withdrawal as referred to in point (h) of Article 6(1). Accordingly, it also includes the provision of the model withdrawal form set out in Annex I(B). However, the provision of the withdrawal form is impossible when the contract is concluded by means such as telephone or voice operated shopping assistant and it may not be technically feasible in a user-friendly way on other means of distance communication covered by Article 8(4). It is therefore appropriate to exclude the provision of the model withdrawal form from the information that traders have to provide in any case on or through the particular means of distance communication used for the conclusion of the contract under Article 8(4).

- (42) Point (a) of the first paragraph of Article 16 of Directive 2011/83/EU provides for an exception from the right of withdrawal regarding service contracts that have been fully performed if the performance has begun with the consumer's prior express consent and acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader. In contrast, Article 7(3) and Article 8(8) of that Directive, which deal with the trader's obligations in situations where the performance of the contract has begun before the expiry of the right of withdrawal period, only require traders to

於解除權將會於履約後完畢喪失事宜之認知。此外，第 16 條第 1 段第(a)點之措辭應考量第 7 條(3)項與第 8 條(8)項之修訂與以修改。從而要求企業經營者必須取得消費者之事前明示同意與認知規定，僅適用於消費者有支付義務之服務契約。然而，會員國應被賦予選擇權，於消費者特別要求企業經營者為維修之目的前來拜訪之情況，得不採用要求企業經營者應取得消費者認知其契約解除權將於服務契約完成履行後喪失之規定。指令第 16 條第 1 段第(c)點對於依據消費者規格製作或明確個人化的商品提供契約，規定為契約解除權之例外。此一例外涵蓋，舉例而言，依據單一銷售契約於消費者家中製造或安裝客製化的傢俱。

- (43) 2011/83/EU 指令第 16 條第 1 段第(b)點規定解除權之例外，亦應考量適用於個別交付之非網路能源契約。因為其價格取決於消費市場或能源市場的波動，而無法由企業經營者所掌

obtain the consumer's prior express consent but not acknowledgment that the right of withdrawal will be lost when the performance is completed. To ensure consistency between those provisions, it is necessary to add an obligation in Article 7(3) and Article 8(8) for the trader also to obtain the acknowledgement from the consumer that the right of withdrawal will be lost when the performance is completed, if the contract places the consumer under an obligation to pay. In addition, the wording of point (a) of the first paragraph of Article 16 should be amended to take into account the changes to Article 7(3) and Article 8(8) whereby the requirement for traders to obtain the consumer's prior express consent and acknowledgment only applies to service contracts that place the consumer under an obligation to pay. However, Member States should be given the option not to apply the requirement to obtain the consumer's acknowledgment that the right of withdrawal will be lost when the performance is completed to service contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out repairs. Point (c) of the first paragraph of Article 16 of that Directive provides for an exception to the right of withdrawal in respect of contracts regarding the supply of goods made to the consumer's specifications or clearly personalised. That exception covers, for example, the manufacturing and installation of customised furniture at the consumer's home when provided under a single sales contract.

- (43) The exception from the right of withdrawal provided in point (b) of the first paragraph of Article 16 of Directive 2011/83/EU, should also be considered to apply to contracts for individual

控，且可能發生於解約期間。

- (44) 2011/83/EU 指令第 14 條(4)項針對契約解除權之行使，規定於那些條件下，消費者無須承擔服務提供、公共設施提供或非以有形媒介提供數位內容等事項之成本。當滿足那些條件時，消費者於行使契約解除權之前，無須對於該服務、公共設施或接收之數位內容支付價金。就數位內容而言，根據第 14 條(4)項(b)點(iii)之規定，其中一個非累積性的條件，為未能提供契約的確認，包括確認消費者事前明示同意於解除權行使期間屆至前開始履行契約，並認知將因此喪失解除權。然而，該條件並不包含於指令第 16 條第 1 段第(m)點規定之解除權喪失條件，因此產生了一個不確定性，關於消費者有可能於第 14 條(4)項第(b)點之其他兩個條件成就時，援引第 14 條(4)項(b)點(iii)之規定，導致依據指令第 16 條第 1 段第(m)點規定，喪失契約解除權。因此，第 14 條(4)項(b)點(iii)所規定的條件應被增訂至第 16 條第 1 段第(m)點，以使消費者得以於未滿足前述條件下行使契約解除權，並主張第 14 條(4)項規定之權利。

deliveries of non-network energy, because its price is dependent on fluctuations in the commodity markets or energy markets which cannot be controlled by the trader and which may occur within the withdrawal period.

- (44) Article 14(4) of Directive 2011/83/EU stipulates the conditions under which, in the event of exercising the right of withdrawal, the consumer does not bear the cost for the performance of services, supply of public utilities and supply of digital content which is not supplied on a tangible medium. When any of those conditions is met, the consumer does not have to pay the price of the service, public utilities or digital content received before the exercise of the right of withdrawal. As regards digital content, one of those non-cumulative conditions, namely under point (b)(iii) of Article 14(4), is a failure to provide the confirmation of the contract, which includes confirmation of the consumer's prior express consent to begin the performance of the contract before the expiry of the right of withdrawal period and acknowledgement that the right of withdrawal is lost as a result. However, that condition is not included among the conditions for the loss of the right of withdrawal in point (m) of the first paragraph of Article 16 of that Directive, creating uncertainty as regards the possibility for consumers to invoke point (b)(iii) of Article 14(4) when the other two conditions provided for in point (b) of Article 14(4) are met and, as a result, the right of withdrawal is lost in accordance with point (m) of the first paragraph of Article 16. The condition provided for in point (b)(iii) of Article 14(4) should therefore be added to point (m) of the first paragraph of Article 16 to enable the consumer to

- (45) 企業經營者可能基於自動決策機制以及消費者行為分析，使其得以評估消費者之購買力，而對於特定消費者或特定類型的消費者提出個人化的價格要約。當呈現給消費者的價格是基於自動化決策所產生的個人化價格時，消費者應被清楚告知，以讓他們得以就購買決定的潛在風險納入評估。因此，當價格是個人化且以自動決策機制為基礎時，應將對於消費者特定的通知要求，增訂於 2011/83/EU 指令。此一資訊要求不應適用於動態或實時定價等對於市場需求以高度彈性與快速方式反應的型態，尤其當這些技術並不涉及基於自動化決策而導致個人化情形。此類資訊要求並不影響(EU)2016/679 指令規定，個人有權不成為自動化決策的對象，包括剖析。
- (46) 考量科技的發展，既然傳真已經極少使用，且基本上已過時，有必要將 2011/83/EU 指令第 6 條(1)項(c)點通訊方式列表當中的傳真號碼移除。
- (47) 消費者作成購買決定，已逐漸仰賴消費者評論或背書。因此，

exercise the right of withdrawal when that condition is not met and accordingly claim the rights provided for in Article 14(4).

- (45) Traders may personalise the price of their offers for specific consumers or specific categories of consumer based on automated decision-making and profiling of consumer behaviour allowing traders to assess the consumer's purchasing power. Consumers should therefore be clearly informed when the price presented to them is personalised on the basis of automated decision-making, so that they can take into account the potential risks in their purchasing decision. Consequently, a specific information requirement should be added to Directive 2011/83/EU to inform the consumer when the price is personalised, on the basis of automated decision-making. This information requirement should not apply to techniques such as 'dynamic' or 'real-time' pricing that involve changing the price in a highly flexible and quick manner in response to market demands when those techniques do not involve personalisation based on automated decision-making. This information requirement is without prejudice to Regulation (EU) 2016/679, which provides, *inter alia*, for the right of the individual not to be subjected to automated individual decision-making, including profiling.
- (46) Considering technological developments, it is necessary to remove the reference to fax number from the list of the means of communication in point (c) of Article 6(1) of Directive 2011/83/EU since fax is rarely used now and largely obsolete.
- (47) Consumers increasingly rely on consumer reviews and

當企業經營者提供消費者取得使用者對產品之評論的權限時，應告知消費者是否具備適當的流程或程序，確保該發布的評論係來自於實際使用或購買該產品的消費者。若具備此類流程或程序，企業經營者應提供如何查驗的資訊，並向消費者就評論如何被處理提供清楚的資訊。例如，是否無論正面或負面的評論皆被發布，或是否這些評論受到與企業經營者間之契約關係所贊助或影響。此外，若未採取合理且適當的步驟確保評論來自於實際使用或購買該產品之使用者，卻宣稱該產品之評論來自於該使用者，則應被認定為誤導消費者之不公平商業行為。這類步驟可以包括技術方法，以查對發布評論者之真實性，例如透過要求提供資訊以驗證該消費者是否實際使用或購買了該產品。

- (48) 本指令中關於消費者評論與背書的規定，不影響採取誇大陳述或非按字面意義陳述之通常且合法的廣告行為。
- (49) 企業經營者應被禁止提交虛假的消費者評論與背書，例如於社群網站點選「喜歡」(likes)，或委託他人作前述行為以促銷其產品，以及操縱消費者之評論與背書，例如僅發布正面

endorsements when they make purchasing decisions. Therefore, when traders provide access to consumer reviews of products, they should inform consumers whether processes or procedures are in place to ensure that the published reviews originate from consumers who have actually used or purchased the products. If such processes or procedures are in place, traders should provide information on how the checks are made and provide clear information to consumers on how reviews are processed, for example, if all reviews, either positive or negative, are posted or whether those reviews have been sponsored or influenced by a contractual relationship with a trader. Moreover, it should therefore be considered to be an unfair commercial practice to mislead consumers by stating that reviews of a product were submitted by consumers who actually used or purchased that product when no reasonable and proportionate steps were taken to ensure that they originate from such consumers. Such steps could include technical means to verify the reliability of the person posting a review, for example by requesting information to verify that the consumer has actually used or purchased the product.

- (48) The provisions of this Directive addressing consumer reviews and endorsements are without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.
- (49) Traders should also be prohibited from submitting fake consumer reviews and endorsements, such as ‘likes’ on social media, or commissioning others to do so in order to promote their products, as well as from manipulating consumer reviews and endorsements,

評論而刪除負面評論等。此一作法亦可能從社會背書之推論產生，亦即將用戶對特定網路內容的互動，連結或轉移到不同但相關的其他內容，造成外觀上該用戶似乎對於該相關內容也抱持正面的立場。

- (50) 企業經營者應被禁止向消費者轉售他們透過利用「機器人」等相關軟體，使之得以超過主要門票銷售者所設置的技術限制，或略過任何主要銷售者所設置，目的在確保所有個人皆有機會取得門票的技術方法，而獲得的文化或體育活動門票。此一限制不影響任何會員國所採取，用以保障消費者合法權益，及保障文化政策與所有人皆可參與文化與體育活動的相關國家措施，例如規定門票之轉售價格。

- (51) 憲章第 16 條保障了依據歐盟法、國家法律與慣例從事商業的自由。然而，當以跨會員國方式行銷的同類商品，若實際上具有明顯不同的組成或特徵，可能誤導消費者，並導致他們作出本來不會採取之交易決定。

- (52) 此類作法，以逐案評估相關要素為基礎，可能因此被認為違反 2005/29/EC 指令之規定。為協助會員國之消費者與食品主

such as publishing only positive reviews and deleting the negative ones. Such practice could also occur through the extrapolation of social endorsements, where a user's positive interaction with certain online content is linked or transferred to different but related content, creating the appearance that that user also takes a positive stance towards the related content.

- (50) Traders should be prohibited from reselling to consumers tickets to cultural and sports events that they have acquired by using software such as 'bots' enabling them to buy tickets in excess of the technical limits imposed by the primary ticket seller or to bypass any other technical means put in place by the primary seller to ensure accessibility of tickets for all individuals. That prohibition is without prejudice to any other national measures that Member States can take to protect the legitimate interests of consumers and to secure cultural policy and broad access of all individuals to cultural and sports events, such as regulating the resale price of the tickets.
- (51) Article 16 of the Charter guarantees the freedom to conduct a business in accordance with Union law and national laws and practices. However, marketing across Member States of goods as being identical when, in reality, they have a significantly different composition or characteristics may mislead consumers and cause them to take a transactional decision that they would not have taken otherwise.
- (52) Such a practice can therefore be regarded as contrary to Directive 2005/29/EC based on a case-by-case assessment of relevant

管機關適用現行歐盟法，針對現行歐盟規範中食品雙重品質情況如何適用之指引，已於 2017 年 9 月 29 日執行委員會針對產品雙重品質—特定食品案例，適用 EU 食品與消費者保護法議題之公告中提出。於此背景下，執行委員會聯合研究中心遂於 2018 年 4 月 25 日提出「選擇與試驗食品產品評估品質相關特徵框架：歐盟統一測試方法」。

- (53) 然而，於欠缺明確規定下，執行之經驗顯示對於消費者、企業經營者與國家主管機關而言對於那些商業行為違反 2005/29/EC 指令尚不明確。因此，該指令必須修改，透過明確指出於其他國家行銷之同類商品，實際上具備顯著之不同組成或特徵，以確保對企業經營者與執法機關的法律明確性。主管機關應依據本指令對於 2005/29/EC 指令之修訂，以逐案方式評估與處理此類作法。主管機關於進行評估時必須將消費者是否得以輕易識別其差異納入考慮。企業經營者因為合法性或客觀因素(例如國家法律、原材料的取得可能性或季節性)，或自願改善取得健康或營養之食品等因素，有權於不同的地理市場對於同樣品牌之商品予以修改。企業經營者亦有權對於相同品牌之商品，於不同的地理市場當中採用不同重量或數量的包裝。主管機關可透過查看資訊之可取得性與充足性，判斷消費者是否得以輕易的識別其差異。因為合法性與客觀性因素，告知消費者商品之差異，有其重要性。企業經營者得以自由採取不同的方法提供此資訊，以使消費者得以取得必要的資訊。企業經營者通常較喜歡採用替代的方法，將資訊放置於商品標籤。關於歐盟有關部門的規則以及商品

elements. In order to facilitate the application of existing Union law by Member States' consumer and food authorities, guidance on the application of current Union rules to situations of dual quality of food was provided in the Commission Notice of 29 September 2017 'on the application of EU food and consumer protection law to issues of Dual Quality of products – The specific case of food'. In this context, the Commission's Joint Research Centre presented, on 25 April 2018, a 'Framework for selecting and testing of food products to assess quality related characteristics: EU harmonised testing methodology'.

- (53) However, in the absence of an explicit provision, the enforcement experience has shown that it might be unclear to consumers, traders and national competent authorities which commercial practices could be contrary to Directive 2005/29/EC. Therefore, that Directive should be amended to ensure legal certainty for both traders and enforcement authorities by addressing explicitly the marketing of a good as being identical to a good marketed in other Member States, where that good has significantly different composition or characteristics. Competent authorities should assess and address on a case-by-case basis such practices in accordance with Directive 2005/29/EC, as amended by this Directive. In undertaking its assessment the competent authority should take into account whether such differentiation is easily identifiable by consumers, a trader's right to adapt goods of the same brand for different geographical markets due to legitimate and objective factors, such as national law, availability or seasonality of raw materials or voluntary strategies to improve access to healthy and nutritious food as well as the traders' right

自由流通之規定，應被遵守。

- (54) 當異地銷售構成一個合法且完善的銷售管道時，例如於企業經營者之營業處所及遠距的銷售，某些於 2011/83/EU 指令指涉透過拜訪消費者的住所或於短程的旅行中，某些特別激進或誤導的行銷或銷售手段，可能導致消費者承受購買他們於其他情況下不會購買或以過高的價格購買，且通常涉及立即付款之商品或服務的壓力。此種作法通常會針對較為年長或其他弱勢的消費者。部分會員國考量此類行為不應該且認為必須限制 2011/83/EU 指令所定義之異地銷售中的特定形式或面向，例如以激進或誤導的方式，透過不請自來拜訪消費者之住所或於短程旅行途中，進行產品之行銷或販售者是。若此類限制之採用是以消費者保護以外之其他目的為基礎，例如為了公共利益或依據憲章第 7 條之規定，尊重消費者的私人生活等，此類限制則不在 2005/29/EC 指令規範範圍內。

to offer goods of the same brand in packages of different weight or volume in different geographical markets. The competent authorities should assess whether such differentiation is easily identifiable by consumers by looking at the availability and adequacy of information. It is important that consumers are informed about the differentiation of goods due to legitimate and objective factors. Traders should be free to provide such information in different ways that allow consumers to access the necessary information. Alternatives to providing information on the label of goods should generally be preferred by traders. The relevant Union sectorial rules and rules on free movement of goods should be respected.

- (54) While off-premises sales constitute a legitimate and well-established sales channel, like sales at a trader's business premises and distance-selling, some particularly aggressive or misleading marketing or selling practices in the context of visits to a consumer's home or excursions as referred to in point (8) of Article 2 of Directive 2011/83/EU can put consumers under pressure to make purchases of goods or services that they would not otherwise buy or purchases at excessive prices, often involving immediate payment. Such practices often target elderly or other vulnerable consumers. Some Member States consider those practices undesirable and deem it necessary to restrict certain forms and aspects of off-premises sales within the meaning of Directive 2011/83/EU, such as aggressive and misleading marketing or selling of a product in the context of unsolicited visits to a consumer's home or excursions. Where such restrictions are adopted on grounds other than consumer

- (55) 依據輔助性原則，並為了有效執法，必須明確指出 2005/29/EC 指令並不影響會員國自由採用內國之規定，以保護消費者為正當性基礎，進一步保障消費者的合法利益，於企業經營者不請自來拜訪其住所以提出要約或銷售產品，或由企業經營者規劃具備促銷或銷售產品之目標或影響的短程旅行等情形下，避免不公平的商業行為。任何此類條款必須符合比例且無差別待遇，並不得禁止這些銷售管道。舉例而言，會員國所採用的國家法律可以定義一天當中，不得未經消費者明示要求而拜訪消費者住所的時間，或於消費者明確指出此類拜訪是不被接受或規定付款程序時，禁止此類拜訪。此外，此類規定可以於 2011/83/EU 規範一致的範圍訂定更多保護條款。因此，2011/83/EU 指令應被修改以允許會員國採取國家措施提供更長的契約解除權行使期間，並取消解除權行使之特定例外。會員國應就任何與此部分相關之國家規範通知執行委員會，使執行委員會可以將此訊息提供給所有利害關係人，並監督這些措施之是否合乎比例與具備合法性。

protection, such as public interest or the respect for consumers' private life protected by Article 7 of the Charter, they fall outside the scope of Directive 2005/29/EC.

- (55) In accordance with the principle of subsidiarity and in order to facilitate enforcement, it should be clarified that Directive 2005/29/EC is without prejudice to Member States' freedom to adopt national provisions to further protect the legitimate interests of consumers against unfair commercial practices in the context of unsolicited visits at their homes by a trader in order to offer or sell products or excursions organised by a trader with the aim or effect of promoting or selling products to consumers where such provisions are justified on grounds of consumer protection. Any such provisions should be proportionate and non-discriminatory and should not prohibit those sales channels as such. National provisions adopted by Member States could, for example, define time of the day when visits to consumers' homes without their express request are not allowed or prohibit such visits when the consumer has visibly indicated that such visits are not acceptable or prescribe the payment procedure. Furthermore, such provisions could lay down more protective rules in the areas harmonised by Directive 2011/83/EU. Directive 2011/83/EU should therefore be amended to allow Member States to adopt national measures to provide a longer period for the right of withdrawal and to derogate from specific exceptions from the right of withdrawal. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and monitor the

(56) 關於在企業經營者所在地以外地點規劃之活動，採取激進且誤導作為等事宜，2005/29/EC 指令之規定不影響會員國得對企業經營者施加之任何建立的條件或授權的機制。此外，該指令並不影響國家契約法，尤其是關於契約之有效性、契約之成立或效果的規則。於企業經營者所在地點以外規劃之活動採取激進且誤導之作為，依據指令第 5 條至第 9 條，可以視個案之評估予以禁止。除此之外，該指令附件 1 規範了針對企業經營者之行為造成以下印象時的一般禁止規定，即企業經營者讓人以為其並非以與其業務相關之目的行事，且其作為造成一個消費者於契約成立前不得離開該場所的印象。執行委員會得以評估是否現行規則為會員國有效處理此類行為，提供了適當的程度的消費者保護以及適當的工具。

(57) 本指令不應影響國家契約法當中未受約束的各個層面。因此，本指令不影響國家契約法之規範，例如在欠缺同意或涉及未經授權之商業活動時，契約的成立及其效力。

(58) 為確保民眾能夠獲得關於消費者權利，與法庭外紛爭解決措施的最新資訊，執行委員會應盡可能發展使用者友善、行動

proportionate nature and legality of those measures.

- (56) As regards aggressive and misleading practices in the context of events organised at places other than trader's premises, Directive 2005/29/EC is without prejudice to any conditions of establishment or of authorisation regimes that Member States can impose on traders. Furthermore, that Directive is without prejudice to national contract law, and in particular to the rules on validity, formation or effect of a contract. Aggressive and misleading practices in the context of events organised at places other than trader's premises can be prohibited on the basis of a case-by-case assessment under Articles 5 to 9 of that Directive. In addition, Annex I to that Directive contains a general prohibition of practices where the trader creates the impression that the trader is not acting for purposes relating to the trader's profession, and practices that create the impression that the consumer cannot leave the premises until a contract is formed. The Commission should assess whether the current rules provide an adequate level of consumer protection and adequate tools for Member States to effectively address such practices.
- (57) This Directive should not affect aspects of national contract law that are not regulated by it. Therefore, this Directive should be without prejudice to national contract law regulating for instance the conclusion or the validity of a contract in cases such as lack of consent or unauthorised commercial activity.
- (58) In order to ensure that citizens have access to up-to-date information on their consumer rights and on out-of-court dispute

響應、易於取得且任何人(包括殘障人士)皆可使用的線上入口。(為所有人設計)

(59) 根據會員國與執行委員會於 2011 年 9 月 28 日所為之共同政策宣言的解釋性文件，會員國承諾於有正當理由之情形下，配合於轉換措施之通知中附上一份或多份文件，說明指令的組成部分與國家轉換文件之間相應的部分。關於本指令，立法者認為傳遞此類文件有其合理性。

(60) 既然本指令之目的在於促進消費者保護法之優化執法與現代化，不可能由會員國達到充分的實現，基於這些問題具備橫跨整個歐盟的共通特性，可以於歐盟的層級達到更佳的實踐，因此依據歐盟運作條約第 5 條之規定之輔助性原則，得以由歐盟採取相關措施。而依據上述條款建立的比例原則，本指令不會超過為達到這些目標所必須之範圍。

resolution, the online entry point to be developed by the Commission should, as far as possible, be user- friendly, mobile-responsive, easily accessible and usable by all, including persons with disabilities ('design for all').

- (59) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (60) Since the objectives of this Directive, namely better enforcement and modernisation of consumer protection law, cannot be sufficiently achieved by the Member States but can rather, by reason of the Union-wide character of the problem, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

已通過本指令：

第 1 條

修訂 93/13/EEC 指令

於 93/13/EEC 指令以下條文新增：

第 8b 條

1. 會員國應訂定違反依據本指令所訂定之國家規定所適用的處罰規則，並應採取所有必要措施以確保規則之執行。規定之處罰必須具備有效性、符合比例並有嚇阻性。
2. 會員國應將此類處罰，限制於契約條款於國家法律中之所有情形下，均被明確定義為不公平之情形，或賣方或供應商持續採用依據第 7 條(2)項的最終決定認定為不公平之契約條款的情形。
3. 會員國應確保以下非窮盡與指示性的標準，於課予處罰時將被適當考量：
 - (a) 違法行為之性質、嚴重性、規模與持續期間；
 - (b) 賣方或供應商為消費者遭受之損害，所採取的減輕或補救之任何行動；
 - (c) 賣方或供應商過往的違法行為；

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendment to Directive 93/13/EEC

In Directive 93/13/EEC, the following article is inserted:

‘Article 8b

1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
2. Member States may restrict such penalties to situations where the contractual terms are expressly defined as unfair in all circumstances in national law or where a seller or supplier continues to use contractual terms that have been found to be unfair in a final decision taken in accordance with Article 7(2).
3. Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account for the imposition of penalties, where appropriate:
 - (a) the nature, gravity, scale and duration of the infringement;
 - (b) any action taken by the seller or supplier to mitigate or remedy the damage suffered by consumers;
 - (c) any previous infringements by the seller or supplier;

- (d) 若有相關資料可取得，對於賣方或供應商因違法行為所獲得之財產上利益或所避免之損失；
 - (e) 於跨境個案，其他會員國就相同之違法行為對賣方或供應商課予之處罰，此類處罰資訊得透過歐洲議會與理事會 2017/2394 規則建立的機制取得；
 - (f) 任何其他適用於個案情形之加重或減輕因素。
- 4. 於不影響本條第 2 項之前提下，會員國應確保於依據歐盟 2017/2394 規則第 21 條課予處罰時，應包括透過行政程序處以罰鍰，或提起法律訴訟處以罰鍰，或兩者兼具，而最高的罰款金額至少達到賣方或供應商於該會員國或相關之會員國年度營業額的 4%。
 - 5. 當個案依據第 4 項課予罰款，但賣方或供應商的年度營業額資訊無法取得時，會員國得提出課予罰款之可能性，其最高的金額應不得少於 200 萬歐元。
 - 6. 會員國應於 2021 年 11 月 28 日以前，將第 1 項所涉之規則與措施通知執行委員會，並應立即將任何因其影響所為之任何接續修正案通知執行委員會。

- (d) the financial benefits gained or losses avoided by the seller or supplier due to the infringement, if the relevant data are available;
 - (e) penalties imposed on the seller or supplier for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council;
 - (f) any other aggravating or mitigating factors applicable to the circumstances of the case.
4. Without prejudice to paragraph 2 of this Article, Member States shall ensure that, when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4 % of the seller's or supplier's annual turnover in the Member State or Member States concerned.
 5. For cases where a fine is to be imposed in accordance with paragraph 4, but information on the seller's or supplier's annual turnover is not available, Member States shall introduce the possibility to impose fines, the maximum amount of which shall be at least EUR 2 million.
 6. Member States shall, by 28 November 2021, notify the Commission of the rules and measures referred to in paragraph 1 and shall notify it, without delay, of any subsequent amendment affecting them.

第 2 條

修訂 98/6/EC 指令

98/6/EC 指令修改如下：

(1) 以下條文新增：(1)

第 6a 條

1. 任何關於降價的聲明皆須指出該企業經營者於決定實施降價前之一段時間內，採用的先前價格。
2. 該先前價格係指該企業經營者於實施降價前至少 30 天之期間內所採用的最低價格。
3. 會員國可以針對會迅速變質或過期的商品訂定不同的規則。
4. 若該商品進入市場的時間少於 30 天，會員國亦得規定較第 2 項規定之期間更短之期間。
5. 當降價為逐步增加的狀況時，會員國得規定該先前價格係指第一次施行降價前尚未進行降價的價格。

(2) 原第 8 條取代為：

第 8 條

Article 2

Amendments to Directive 98/6/EC

Directive 98/6/EC is amended as follows:

(1) the following article is inserted:

‘Article 6a

1. Any announcement of a price reduction shall indicate the prior price applied by the trader for a determined period of time prior to the application of the price reduction.
2. The prior price means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction.
3. Member States may provide for different rules for goods which are liable to deteriorate or expire rapidly.
4. Where the product has been on the market for less than 30 days, Member States may also provide for a shorter period of time than the period specified in paragraph 2.
5. Member States may provide that, when the price reduction is progressively increased, the prior price is the price without the price reduction before the first application of the price reduction.’;

(2) Article 8 is replaced by the following:

‘Article 8

1. 會員國應訂定違反依據本指令所訂定之國家規範所適用的處罰規則，並應採取一切必要的措施以確保其被執行。該處罰規定必須具備有效性、符合比例並具備嚇阻性。
2. 會員國應確保以下非窮盡與指示性的標準，於課予處罰時將被適當考量：
 - (a) 違法行為之性質、嚴重性、規模與持續期間；
 - (b) 企業經營者為消費者遭受之損害，所採取的減輕或補救之任何行動；
 - (c) 企業經營者過往的違法行為；
 - (d) 若有相關資料可取得，對於企業經營者因違法行為所獲得之財產上利益或所避免之損失；
 - (e) 於跨境個案，其他會員國就相同之違法行為對企業經營者課予之處罰，此類處罰資訊得透過歐洲議會與理事會 2017/2394 規則建立的機制取得；
 - (f) 任何其他適用於個案情形之加重或減輕因素。
3. 會員國應於 2021 年 11 月 28 日以前，將第 1 項所涉之規則與措施通知執行委員會，並應立即將任何因其影響所為之任何接續修正案通知執行委員會。

1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
2. Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account for the imposition of penalties, where appropriate:
 - (a) the nature, gravity, scale and duration of the infringement;
 - (b) any action taken by the trader to mitigate or remedy the damage suffered by consumers;
 - (c) any previous infringements by the trader;
 - (d) the financial benefits gained or losses avoided by the trader due to the infringement, if the relevant data are available;
 - (e) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council;
 - (f) any other aggravating or mitigating factors applicable to the circumstances of the case.
3. Member States shall, by 28 November 2021, notify the Commission of the rules and measures referred to in paragraph 1 and shall notify it, without delay, of any subsequent amendment affecting them.

第3條

修訂 2005/29/EC 指令

2005/29/EC 指令修改如下：

(1) 第2條，第1項修正如下：

(a) 第(c)點以下列規定取代：

‘(c) 「產品」指任何商品或服務，包括不動產、數位服務與數位內容，以及權利及義務；’；

(b) 下列項目新增：

‘(m) 「排序」(ranking) 指企業經營者所呈現、安排或傳達對產品相對凸顯之作為，但與其用以呈現、安排或傳達之技術方法無關。

(n) 「網路市集」指一種由企業經營者或代表企業經營者之人所操作之軟體，包含網站、網站的一部分或應用程式，能夠允許消費者與其他企業經營者或消費者成立遠距契約的服務。’；

(2) 第3條，第5項及第6項以下列規定取代：

‘5. 本指令並不限制會員國針對企業經營者透過未經約定拜訪消費者之住所或由企業經營者規劃具備向消費者促銷或銷售產品之目標或影響的短程旅行，以激進或誤導的行銷或銷售行為，採取保障消費者合法權利之條款。此類規定必

Article 3

Amendments to Directive 2005/29/EC

Directive 2005/29/EC is amended as follows:

(1) in Article 2, the first paragraph is amended as follows:

(a) point (c) is replaced by the following:

‘(c) ‘product’ means any good or service including immovable property, digital service and digital content, as well as rights and obligations;’;

(b) the following points are added:

‘(m) ‘ranking’ means the relative prominence given to products, as presented, organised or communicated by the trader, irrespective of the technological means used for such presentation, organisation or communication;

(n) ‘online marketplace’ means a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers.’;

(2) in Article 3, paragraphs 5 and 6 are replaced by the following:

‘5. This Directive does not prevent Member States from adopting provisions to protect the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices in the context of unsolicited visits by a trader to a

須符合比例、無差別待遇，並基於保護消費者之理由。

6. 會員國就以第 5 項為基礎之國家法律訂立，及其後之任何變動，應該立即通知執行委員會。執行委員會應使此資訊易於由消費者與企業經營者透過專用的網站上取得。’；

(3) 第 6 條(2)項，新增以下內容：

- ‘(c) 任何於一個會員國及其他會員國境內所為相同商品之行銷，若該商品具備明顯不同之組成或特徵，除非具備合法或客觀因素證明其為合理。’；

(4) 第 7 條修正如下：

(a) 第 4 項修正如下：

(i) 第(d)點以下列規定取代：

- ‘(d) 付款、交付與旅行的安排，若超出專業盡責的要求；’；

(ii) 新增下列規定：

- ‘(f) 無論第三方提供產品者是否為企業經營者，應以該第三方提供者對網路市集提供者之聲明，於網路市

consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.

6. Member States shall notify the Commission without delay of any national provisions adopted on the basis of paragraph 5 as well as of any subsequent changes. The Commission shall make this information easily accessible to consumers and traders on a dedicated website.';

(3) in Article 6(2), the following point is added:

- '(c) any marketing of a good, in one Member State, as being identical to a good marketed in other Member States, while that good has significantly different composition or characteristics, unless justified by legitimate and objective factors.';

(4) Article 7 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) point (d) is replaced by the following:

- '(d) the arrangements for payment, delivery and performance, if they depart from the requirements of professional diligence;';

(ii) the following point is added:

- '(f) for products offered on online marketplaces, whether the third party offering the products is a trader or not,

集提供產品。’；

(b) 新增下列規定：

‘4a. 當提供消費者得以透過關鍵字、詞組或其他輸入搜尋不同企業經營者或消費者提供之產品時，無論最終於何處完成交易，對於決定回應消費者搜尋結果之排序的主要相關重要參數的一般資訊（於搜尋結果呈現時，可於網路介面特定部分直接且容易取得），相較於其他參數應被認定為具實質性的參數。本項規定不適用於歐洲議會與理事會(EU)2019/1150 規則第 2 條第(6)點定義之網路搜尋引擎提供者。

(c) 新增下列規定：

‘6. 於交易者提供接取消費者對商品之評論時，則關於企業經營者是否及如何確保發布之評論來自於實際使用或購買該產品之消費者的相關資訊，應被認為具備實質意義。’；

(5) 新增下列規定：

‘第 11a 條

on the basis of the declaration of that third party to the provider of the online marketplace.’;

(b) the following paragraph is inserted:

‘4a. When providing consumers with the possibility to search for products offered by different traders or by consumers on the basis of a query in the form of a keyword, phrase or other input, irrespective of where transactions are ultimately concluded, general information, made available in a specific section of the online interface that is directly and easily accessible from the page where the query results are presented, on the main parameters determining the ranking of products presented to the consumer as a result of the search query and the relative importance of those parameters, as opposed to other parameters, shall be regarded as material. This paragraph does not apply to providers of online search engines as defined in point (6) of Article 2 of Regulation (EU) 2019/1150 of the European Parliament and of the Council.

(c) the following paragraph is added:

‘6. Where a trader provides access to consumer reviews of products, information about whether and how the trader ensures that the published reviews originate from consumers who have actually used or purchased the product shall be regarded as material.’;

(5) the following article is inserted:

‘Article 11a

求償

1. 消費者因不公平商業行為受到損害，應有權取得適當且有效的救濟，包括對消費者遭受之損害的補償，以及適當時降低價格或終止契約。會員國可以決定這些救濟適用的條件與效力。會員國得適當考量該商業行為之嚴重性與性質、消費者遭受的損害以及其他相關情況。
2. 這些救濟措施不影響消費者依據歐盟法或國家法律得以適用之其他救濟。’；

(6) 第 13 條以下列規定取代：

‘第 13 條

罰則

1. 會員國應訂定違反依據本指令所訂定之國家規範所適用的處罰規則，並應採取一切必要的措施以確保其被執行。該處罰規定必須具備有效性、符合比例並具備嚇阻性。
2. 會員國應確保以下非窮盡與指示性的標準，於課予處罰時將被適當考量：

Redress

1. Consumers harmed by unfair commercial practices, shall have access to proportionate and effective remedies, including compensation for damage suffered by the consumer and, where relevant, a price reduction or the termination of the contract. Member States may determine the conditions for the application and effects of those remedies. Member States may take into account, where appropriate, the gravity and nature of the unfair commercial practice, the damage suffered by the consumer and other relevant circumstances.
2. Those remedies shall be without prejudice to the application of other remedies available to consumers under Union or national law.’;

(6) Article 13 is replaced by the following:

‘Article 13

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
2. Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account for the imposition of penalties, where appropriate:

- (a) 違法行為之性質、嚴重性、規模與持續期間；
 - (b) 企業經營者為消費者遭受之損害，所採取的減輕或補救之任何行動；
 - (c) 企業經營者過往的違法行為；
 - (d) 若有相關資料可取得，對於企業經營者因違法行為所獲得之財產上利益或所避免之損失；
 - (e) 於跨境個案，其他會員國就相同之違法行為對企業經營者課予之處罰，此類處罰資訊得透過歐洲議會與理事會 2017/2394 規則建立的機制取得；
 - (f) 任何其他適用於個案情形之加重或減輕因素。
3. 會員國應確保當依據歐盟 2017/2394 規則第 21 條課予處罰時，應包括可能透過行政程序處以罰鍰，或提起法律訴訟處以罰鍰，或兩者兼具，而最高的處罰金額至少達到賣方或供應商於該會員國或相關之會員國年度營業額的 4%。於不影響該規則之前提下，會員國得以基於國家憲法上之理由，限制罰鍰的課予。
- (a) 違反本指令第 6、7、8、9 條與附件 I；及

- (a) the nature, gravity, scale and duration of the infringement;
 - (b) any action taken by the trader to mitigate or remedy the damage suffered by consumers;
 - (c) any previous infringements by the trader;
 - (d) the financial benefits gained or losses avoided by the trader due to the infringement, if the relevant data are available;
 - (e) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council;
 - (f) any other aggravating or mitigating factors applicable to the circumstances of the case.
3. Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4 % of the trader's annual turnover in the Member State or Member States concerned. Without prejudice to that Regulation, Member States may, for national constitutional reasons, restrict the imposition of fines to:
- (a) infringements of Articles 6, 7, 8, 9 and of Annex I to this Directive; and

(b) 企業經營者持續利用國家主管機關或法院已認定不公平之商業行為，而該商業行為並非第(a)點指出之違法行為。

4. 當個案依據第 3 項課予罰款，但企業經營者的年度營業額資訊無法取得時，會員國可以採用課予罰款之可能性，其最高的金額至少為 200 萬歐元。

5. 會員國應於 2021 年 11 月 28 日以前，將第 1 項所涉之規則與措施通知執行委員會，並應立即將任何因其影響所為之任何接續修正案通知執行委員會。

(7) 附件 I 修正如下：

(a) 新增下列規定：

‘11a 回應消費者之線上搜尋提供搜尋結果，但並未明確揭露就該搜尋結果有任何為達到產品更高排序之付費廣告或費用。’；

(b) 新增下列規定：

‘23a. 若企業經營者透過自動化方式獲得門票，轉賣給消費者，以規避對於一個人可以購買門票之數量限制或任何其他適用於購買門票之規則。

- (b) a trader's continued use of a commercial practice that has been found to be unfair by the competent national authority or court, when that commercial practice is not an infringement referred to in point (a).
 - 4. For cases where a fine is to be imposed in accordance with paragraph 3, but information on the trader's annual turnover is not available, Member States shall introduce the possibility to impose fines, the maximum amount of which shall be at least EUR 2 million.
 - 5. Member States shall, by 28 November 2021, notify the Commission of the rules and measures referred to in paragraph 1 and shall notify it, without delay, of any subsequent amendment affecting them.
- (7) Annex I is amended as follows:
- (a) the following point is inserted:
 - '11a. Providing search results in response to a consumer's online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results.';
 - (b) the following points are inserted:
 - '23a. Reselling events tickets to consumers if the trader acquired them by using automated means to circumvent any limit imposed on the number of tickets that a person can buy or any other rules applicable to the purchase of tickets.

23b. 聲明消費者對於產品所提交之評論，係出自實際上使用或購買該產品之人，而並未採取合理與合乎比例的步驟，檢視該評論是否來自於此類消費者。

23c. 提交或委託其他法人或自然人提交虛假的消費者評論或背書，或虛假陳述消費者的評論或社會背書，以促銷產品。’。

第 4 條

修訂 2011/83/EU 指令

2011/83/EU 指令修正如下：

(1) 第 2 條第 1 項修正如下：

(a) 第(3)點以下列規定取代：

‘(3) 「商品」指歐洲議會與歐盟理事會(EU)2019/771 指令第 2 條第(5)款定義之商品；

(b) 下列規定新增：

‘(4a) 「個人資料」指歐洲議會與理事會(EU)2016/679 規則第 4 條第(1)款中定義之個人資料。

(c) 第(5)點與第(6)點以下列規定取代：

‘(5) 「銷售契約」指企業經營者移轉或承諾移轉商品之所

- 23b. Stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers.
- 23c. Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products.’.

Article 4

Amendments to Directive 2011/83/EU

Directive 2011/83/EU is amended as follows:

(1) in Article 2, the first paragraph is amended as follows:

(a) point 3 is replaced by the following:

‘(3) ‘goods’ means goods as defined in point (5) of Article 2 of Directive (EU) 2019/771 of the European Parliament and of the Council;

(b) the following point is inserted:

‘(4a) ‘personal data’ means personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council;

(c) points (5) and (6) are replaced by the following:

‘(5) ‘sales contract’ means any contract under which the trader

有權予消費者之任何契約，包括以商品或服務為標的之任何契約。

- (6) 「服務契約」指銷售契約以外，企業經營者據以提供或承諾提供服務(包括數位服務)予消費者之契約；’；

(d) 第(11)點以下列規定取代：

‘(11) 「數位內容」指歐洲議會與理事會(EU)2019/770 指令第 2 條第(1)款定義之數位內容；

(e) 下列規定新增：

‘(16) 「數位服務」指歐洲議會與理事會(EU)2019/770 指令第 2 條第(2)款定義之數位內容；

(17) 「網路市集」指一種由企業經營者或代表企業經營者之人所操作之軟體，包含網站、網站的一部分或應用程式，能夠允許消費者與其他企業經營者或消費者成立遠距契約的服務；

(18) 「網路市集提供者」指任何向消費者提供網路市集之企業經營者；

(19) 「相容性」指歐洲議會與理事會(EU)2019/770 指令第 2 條第(10)款定義之相容性；

(20) 「功能性」指歐洲議會與理事會(EU)2019/770 指令

transfers or undertakes to transfer ownership of goods to the consumer, including any contract having as its object both goods and services;

(6) ‘service contract’ means any contract other than a sales contract under which the trader supplies or undertakes to supply a service, including a digital service, to the consumer;’;

(d) point (11) is replaced by the following:

‘(11) ‘digital content’ means digital content as defined in point (1) of Article 2 of Directive (EU) 2019/770 of the European Parliament and of the Council;

(e) the following points are added:

‘(16) ‘digital service’ means a digital service as defined in point (2) of Article 2 of Directive (EU) 2019/770;

(17) ‘online marketplace’ means a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers;

(18) ‘provider of an online marketplace’ means any trader which provides an online marketplace to consumers;

(19) ‘compatibility’ means compatibility as defined in point (10) of Article 2 of Directive (EU) 2019/770;

(20) ‘functionality’ means functionality as defined in point

第 2 條第(11)款定義之功能性；

(21) 「相互操作性」指歐洲議會與理事會(EU)2019/770 指令第 2 條第(12)款定義之相互操作性。’；

(2) 第 3 條修正如下：

(a) 第 1 項以下列規定取代：

‘1. 本指令按其條款規定之條件與範圍，應適用於任何企業經營者與消費者訂定，由消費者支付或承諾支付價金之任何契約。水、瓦斯、電力與區域供熱之契約(包括由公共提供者所提供)，若其係以契約為基礎所提供，亦適用之。’；

(b) 下列規定新增：

‘1a. 本指令亦適用於當企業經營者提供或承諾供應非以有形媒介提供的數位內容，或向消費者提供數位服務，而消費者提供或承諾提供個人資料予企業經營者之情形。除非消費者提供個人資料僅限於供企業經營者於依據本指令供應非以有形媒介提供的數位內容，或依據本指令提供數位服務，或讓企業經營者得以遵循以該企業經營者為主體的法律要求，且企業經營者並未將這些資料用於其他目的。’；

(11) of Article 2 of Directive (EU) 2019/770;

(21) ‘interoperability’ means interoperability as defined in point (12) of Article 2 of Directive (EU) 2019/770.’;

(2) Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer where the consumer pays or undertakes to pay the price. It shall apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.’;

(b) the following paragraph is inserted:

‘1a. This Directive shall also apply where the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer are exclusively processed by the trader for the purpose of supplying the digital content which is not supplied on a tangible medium or digital service in accordance with this Directive or for allowing the trader to comply with legal requirements to which the trader is subject, and the trader does not process those data for any other purpose.’;

(c) 第 3 項修正如下：

(i) 第(k)款以下列規定取代：

‘(k) 針對旅客運送服務，第 8 條(2)項與第 19、21 及 22 條規定除外；’；

(ii) 下列規定新增：

‘(n) 以執行方法或其他法律授權方式出售之任何商品。’；

(3) 第 5 條第 1 項修正如下：

(a) 第(e)款以下列規定取代：

‘(e) 除了有關商品、數位內容及數位服務之法律保證存在的提醒外，亦包括售後服務以及商業保證之存在及條件(如適用時)；’；

(b) 第(g)款與第(h)款以下列規定取代：

‘(g) 適用時，具備數位內容元素之商品、數位內容以及數位服務的功能性，包括可適用的技術保護措施。

(h) 適用時，任何企業經營者已意識到，或可合理預期已意識到之數位內容元素商品、數位內容及數位服務相關的相容性與相互操作性。’；

(4) 第 6 條修正如下：

(a) 第 1 項修正如下：

(c) paragraph 3 is amended as follows:

(i) point (k) is replaced by the following:

‘(k) for passenger transport services, with the exception of Article 8(2) and Articles 19, 21 and 22;’;

(ii) the following point is added:

‘(n) for any goods sold by way of execution or otherwise by authority of law.’;

(3) in Article 5, paragraph 1 is amended as follows:

(a) point (e) is replaced by the following:

‘(e) in addition to a reminder of the existence of the legal guarantee of conformity for goods, digital content and digital services, the existence and the conditions of after-sales services and commercial guarantees, where applicable;’;

(b) points (g) and (h) are replaced by the following:

‘(g) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content and digital services;

(h) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content and digital services that the trader is aware of or can reasonably be expected to have been aware of.’;

(4) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) 第(c)款以下列規定取代：

‘(c) 企業經營者設立之地域地址，以及企業經營者之電話號碼與電子郵件地址；此外，如果企業經營者提供其他線上溝通的方式以保證消費者得以透過耐用媒介保存其與企業經營者間之任何書面信函，包括該信函之日期與時間，該資訊亦應包括其他方式之細節；所有這些企業經營者所提供的通訊方法需能夠讓消費者迅速聯繫企業經營者，並與其進行有效的溝通；於適用的情況下，該企業經營者也應提供其地域地址，以及其所代表之企業經營者的身分。’；

(ii) 下列規定新增：

‘(ea) 適用時，該價格係根據自動化決策機制之個人化定價；’；

(iii) 第(l)款以下列規定取代：

‘(l) 對於商品、數位內容或數位服務具備一致性之法律保證的提醒；’；

(iv) 第(r)款與(s)款以下列規定取代：

‘(r) 適用時，具備數位內容元素之商品、數位內容以及數位服務的功能性，包括可適用的技術保護措施；

(i) point (c) is replaced by the following:

‘(c) the geographical address at which the trader is established as well as the trader’s telephone number and email address; in addition, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means; all those means of communication provided by the trader shall enable the consumer to contact the trader quickly and communicate with him efficiently; where applicable, the trader shall also provide the geographical address and identity of the trader on whose behalf he is acting.’;

(ii) the following point is inserted:

‘(ea) where applicable, that the price was personalised on the basis of automated decision-making.’;

(iii) point (l) is replaced by the following:

‘(l) a reminder of the existence of a legal guarantee of conformity for goods, digital content and digital services.’;

(iv) points (r) and (s) are replaced by the following:

‘(r) where applicable, the functionality, including applicable technical protection measures, of goods with digital elements, digital content and digital

(s) 適用時，任何企業經營者已意識到，或可合理預期已意識到之數位內容元素商品、數位內容及數位服務相關的相容性與相互操作性。’；

(b) 第 4 項以下列規定取代：

‘4. 本條第 1 項第(h)、(i)與(j)款指涉之資訊，得以附件 I (A)所列之解除契約示範說明提供。若企業經營者已提供這些說明給消費者並正確填寫，則應已滿足本條第 1 項第(h)、(i)與(j)款所規定之資訊要求。參考附件 I(A)建立之解除契約示範說明，所指涉之 14 天解約期限，若會員國已依據第 9 條第(1a)款採用相關規則，則應改為 30 天的解約期限。’；

(5) 新增下列規定：

‘第 6a 條

對於透過網路市集成立之契約的額外特定資訊要求

1. 於消費者於網路市集受到遠距契約或任何相對要約之約束前，網路市集提供者應於不影響 2005/29/EC 指令執行之前提下，以清楚、可理解並適合遠距通訊的方式，向消費者提供以下資訊：

services;

(s) where applicable, any relevant compatibility and interoperability of goods with digital elements, digital content and digital services that the trader is aware of or can reasonably be expected to have been aware of.’;

(b) paragraph 4 is replaced by the following:

‘4. The information referred to in points (h), (i) and (j) of paragraph 1 of this Article may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 of this Article if the trader has supplied these instructions to the consumer, correctly filled in. The references to the withdrawal period of 14 days in the model instructions on withdrawal set out in Annex I(A) shall be replaced by references to a withdrawal period of 30 days in cases where Member States have adopted rules in accordance with Article 9(1a).’;

(5) the following article is inserted:

‘Article 6a

Additional specific information requirements for contracts concluded on online marketplaces

1. Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the provider of the online marketplace shall, without prejudice to Directive 2005/29/EC, provide the consumer with the following

- (a) 一般資訊，可以透過提案呈現頁面之直接且易於連結的網路介面之特定部分獲得的資訊、依據 2005/29/EC 指令第 2 條(1)項(m)款所定義，決定排序之主要參數資訊、作為回應消費者搜尋結果之提案資訊，以及這些參數相對於其他參數之重要性資訊；
 - (b) 關於該提供商品、服務或數位內容之第三方提供者是否為企業經營者之資訊，以第三方提供者向網路市集提供者提出之聲明為基礎；
 - (c) 於第三方商品、服務或數位內容之提供者不是企業經營者時，歐盟消費者保護法產生之消費者權利不適用於該契約；
 - (d) 於可適用之情況下，第三方商品、服務或數位內容提供者與網路市集提供者間，關於契約上的義務如何分配，此類資訊不影響任何網路市集提供者或第三方企業經營者依據歐盟法或國家法規定中與契約相關之任何責任。
2. 於不影響 2000/31/EC 適用之前提下，本條規定並不禁止會員國對於網路市集提供者課予額外的資訊要求。此類規定

information in a clear and comprehensible manner and in a way appropriate to the means of distance communication:

- (a) general information, made available in a specific section of the online interface that is directly and easily accessible from the page where the offers are presented, on the main parameters determining ranking, as defined in point (m) of Article 2(1) of Directive 2005/29/EC, of offers presented to the consumer as a result of the search query and the relative importance of those parameters as opposed to other parameters;
 - (b) whether the third party offering the goods, services or digital content is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace;
 - (c) where the third party offering the goods, services or digital content is not a trader, that the consumer rights stemming from Union consumer protection law do not apply to the contract;
 - (d) where applicable, how the obligations related to the contract are shared between the third party offering the goods, services or digital content and the provider of the online marketplace, such information being without prejudice to any responsibility that the provider of the online marketplace or the third-party trader has in relation to the contract under other Union or national law.
2. Without prejudice to Directive 2000/31/EC, this Article does not prevent Member States from imposing additional

必須符合比例、無差別待遇，並基於保護消費者之理由。’；

(6) 第 7 條第 3 項已下列規定取代：

‘3. 於消費者希望提供服務，或供應水、瓦斯或電力，而並未以限額或設定的數量出售，或於第 9 條(2)款規定之解除契約行使期間開始提供區域供熱，而該契約讓消費者擔負付款之義務時，該企業經營者應要求該消費者透過耐用媒介提出此類明示要求，並須讓消費者認知，一旦該契約已由企業經營者充分履行，該消費者將不再擁有契約解除權。’；

(7) 第 8 條修正如下：

(a) 第 4 項以下列規定取代：

‘4. 若該契約係以遠距通訊的方式締結，且該方式僅允許有限的空間或時間顯示資訊，企業經營者至少應於契約成立之前提供或以特定方式提供締約前資訊，包括商品或服務的主要特徵、企業經營者之身分、總價、契約解除權、契約期間，以及若契約期限不確定則提供契約終止的條件。可分別參考第 6 條(1)項第(a)、(b)、(e)、(h)及(o)款，除了(h)款提到之附件 I (B)建立的示範解除契約格式外。其他第 6 條(1)項指涉之資訊，包括該示範解除契約格式，應由企業經營者依據本條第 1 項之規定，以適當的方式提供給消費者。’；

information requirements for providers of online marketplaces. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.’;

- (6) in Article 7, paragraph 3 is replaced by the following: ‘3. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating to begin during the withdrawal period provided for in Article 9(2), and the contract places the consumer under an obligation to pay, the trader shall require that the consumer make such an express request on a durable medium and request the consumer to acknowledge that, once the contract has been fully performed by the trader, the consumer will no longer have the right of withdrawal.’;

- (7) Article 8 is amended as follows:

- (a) paragraph 4 is replaced by the following:

‘4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on or through that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to, respectively, in points (a), (b), (e), (h) and (o) of Article 6(1) except the model withdrawal form set out in Annex I (B) referred to in point (h). The

(b) 第 8 項已下列規定取代：

‘8. 於消費者希望提供服務，或供應水、瓦斯或電力，而並未以限額或設定的數量出售，或於第 9 條(2)款規定之解除契約行使期間開始提供區域供熱，而該契約讓消費者擔負付款之義務時，該企業經營者應要求該消費者提出明示要求，並須讓消費者認知，一旦該契約已由企業經營者充分履行，該消費者將不再擁有契約解除權。’；

(8) 第 9 條修正如下：

(a) 新增下列段落規定：

‘1a. 會員國可以採用相關規則，針對企業經營者透過未經約定拜訪消費者之住所，或由企業經營者規劃具備向消費者促銷或銷售產品之目標或影響的短程旅行而締結之契約，將依據第 1 項規定的 14 天契約解除權行使期間，延長至 30 天，以保障消費者面對激進或誤導之行銷或銷售行為的合法權利。此類規定必須符合比例、無差別待遇，並基於保護消費者之理由。’；

other information referred to in Article 6(1), including the model withdrawal form, shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.’;

(b) paragraph 8 is replaced by the following:

‘8. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, to begin during the withdrawal period provided for in Article 9(2), and the contract places the consumer under an obligation to pay, the trader shall require that the consumer make an express request and request the consumer to acknowledge that, once the contract has been fully performed by the trader, the consumer will no longer have the right of withdrawal.’;

(8) Article 9 is amended as follows

(a) the following paragraph is inserted:

‘1a. Member States may adopt rules in accordance with which the withdrawal period of 14 days referred to in paragraph 1 is extended to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer’s home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers for the purpose of protecting legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices. Such rules shall be proportionate, non-

(b) 於第 2 項，前言部分以下列規定取代：

‘2. 於不影響第 10 條規定之適用下，本條第 1 項規定之解除權行使期間應於 14 天後屆至，或會員國已依據本條第 1a 項規定採取相關規則，則於 30 天後屆至：’；

(9) 第 10 條第 2 項修正如下：

‘2. 若企業經營者以於第 9 條(2)項規定之日起 12 個月內，向消費者提供本條第 1 項規定之資訊，則契約解除期間將於 14 天屆至，或於會員國依據第 9 條(1a)項採用相關規則，則以消費者收到該資訊後 30 天屆至。’；

(10) 第 13 條，新增下列項次：

‘4. 於消費者之個人資料層面，企業經營者應遵守(EU)2016/679 規則規定之義務。

5. 企業經營者應避免使用除了個人資料以外，消費者於使用企業經營者提供之數位內容或數位服務時所創造的任何內容，除非此類內容：

(a) 於企業經營者提供之數位內容或數位服務之外無其他

discriminatory and justified on grounds of consumer protection.’;

(b) in paragraph 2, the introductory part is replaced by the following:

‘2. Without prejudice to Article 10, the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days or, in cases where Member States have adopted rules in accordance with paragraph 1a of this Article, 30 days from:’;

(9) in Article 10, paragraph 2 is replaced by the following:

‘2. If the trader has provided the consumer with the information provided for in paragraph 1 of this Article within 12 months from the day referred to in Article 9(2), the withdrawal period shall expire 14 days or, in cases where Member States have adopted rules in accordance with Article 9(1a), 30 days after the day upon which the consumer receives that information.’;

(10) in Article 13, the following paragraphs are added:

‘4. In respect of personal data of the consumer, the trader shall comply with the obligations applicable under Regulation (EU) 2016/679.

5. The trader shall refrain from using any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader, except where such content:

(a) has no utility outside the context of the digital content or

用途；

- (b) 僅與消費者利用企業經營者所提供之數位內容或數位服務時之活動相關；
 - (c) 企業經營者已將其與其他資料整合而不可分離，或需投入不成比例之努力分離；或
 - (d) 為消費者與其他人共同產製，而其他消費者可以繼續使用該內容。
6. 除了第 5 項(a)、(b)或(c)款指涉之情況外，企業經營者應基於消費者的要求，向消費者提供個人資料以外，消費者於使用企業經營者提供之數位內容或數位服務時，所提供或創作之任何內容。
7. 該消費者有權於不受企業經營者阻礙之合理期間內，以通常使用且機器可讀的格式，免費取回該數位內容。
8. 於契約解除且不影響第 6 項規定之適用下，企業經營者得防止消費者者就數位內容或數位服務進一步的使用，尤其透過讓消費者無法接取該數位內容或數位服務，或讓消費者之帳號失效。’；

- digital service supplied by the trader;
- (b) only relates to the consumer's activity when using the digital content or digital service supplied by the trader;
 - (c) has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts; or
 - (d) has been generated jointly by the consumer and others, and other consumers are able to continue to make use of the content.
6. Except in the situations referred to in point (a), (b) or (c) of paragraph 5, the trader shall, at the request of the consumer, make available to the consumer any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader.
7. The consumer shall be entitled to retrieve that digital content free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format.
8. In the event of withdrawal from the contract, the trader may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer, without prejudice to paragraph 6.²;

(11) 第 14 條修正如下：

(a) 下列段落新增：

‘2a. 於契約解除的情況下，消費者應避免使用數位內容或數位服務，並避免讓第三方得以取得。’；

(b) 第 4 項第(b)(i)點以下列規定替代：

‘(i) 消費者未於第 9 條規定之 14 天或 30 天的期間結束前，事前明示同意開始履行；’；

(12) 第 16 條修正如下：

(a) 第 1 段修正如下：

(i) 第(a)點以下列規定取代：

‘(a) 服務契約於該服務已完全履行，但若該契約讓消費者負擔付款的義務時，只有在該履行之啟動已取得消費者事前明示的同意並認知一旦企業經營者完全履行該契約時，其將喪失契約解除權；’；

(ii) 第(m)點以下列規定取代：

‘(m) 非以有形媒介提供數位內容之契約，若該契約使消費者負擔付款的義務，而該契約之履行已開始，則：

(11) Article 14 is amended as follows:

(a) the following paragraph is inserted:

‘2a. In the event of withdrawal from the contract, the consumer shall refrain from using the digital content or digital service and from making it available to third parties.’;

(b) in paragraph 4, point (b)(i) is replaced by the following:

‘(i) the consumer has not given prior express consent to the beginning of the performance before the end of the 14-day or 30-day period referred to in Article 9’;

(12) Article 16 is amended as follows:

(a) the first paragraph is amended as follows:

(i) point (a) is replaced by the following:

‘(a) service contracts after the service has been fully performed but, if the contract places the consumer under an obligation to pay, only if the performance has begun with the consumer’s prior express consent and acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader’;

(ii) point (m) is replaced by the following:

‘(m) contracts for the supply of digital content which is not supplied on a tangible medium if the performance has begun and, if the contract places the consumer under an obligation to pay, where:

(i) 消費者於契約解除權行使期間，已事前明示同意其履行；

(ii) 消費者已認知其將因此喪失契約解除權；及

(iii) 企業經營者已依據第 7 條(2)項或第 8 條(7)項確認。’；

(b) 新增以下段落規定：

‘會員國得針對因未經約定拜訪消費者之住所，或由企業經營者規劃具備向消費者促銷或銷售產品之目標或影響的短程旅行所締結之契約，得取消第 1 項(a)、(b)、(c)與(e)點規定之契約解除權例外規定，目的在保障消費者面對關於激進或誤導行銷或銷售行為的合法權益。此類規定應合乎比例、無差別待遇，並基於保護消費者之理由。

於使消費者承擔付款義務之契約，若消費者特別要求企業經營者到府維修，會員國得規定該消費者於該服務完全履行後，將喪失契約解除權，前提該履行之啟動已得到消費者事前明示同意。’；

- (i) the consumer has provided prior express consent to begin the performance during the right of withdrawal period;
 - (ii) the consumer has provided acknowledgement that he thereby loses his right of withdrawal; and
 - (iii) the trader has provided confirmation in accordance with Article 7(2) or Article 8(7).’;
- (b) the following paragraphs are added:

‘Member States may derogate from the exceptions from the right of withdrawal set out in points (a), (b), (c) and (e) of the first paragraph for contracts concluded in the context of unsolicited visits by a trader to a consumer’s home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers for the purpose of protecting the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.

In the case of service contracts which place the consumer under an obligation to pay where the consumer has specifically requested a visit from the trader for the purpose of carrying out repairs, Member States may provide that the consumer loses the right of withdrawal after the service has been fully performed provided that the performance has begun with the consumer’s prior express consent.’;

(13) 第 24 條以下列規定取代：

第 24 條

罰則

1. 會員國應訂定違反依據本指令所訂定之國家規範所適用的處罰規則，並應採取一切必要的措施以確保其被執行。該處罰規定必須具備有效性、符合比例並具備嚇阻性。
2. 會員國應確保以下非窮盡與指示性的標準，於課予處罰時將被適當考量：
 - (a) 違法行為之性質、嚴重性、規模與持續期間；
 - (b) 企業經營者為消費者遭受之損害，所採取的減輕或補救之任何行動；
 - (c) 企業經營者過往的違法行為；
 - (d) 若有相關資料可取得，對於企業經營者因違法行為所獲得之財產上利益或所避免之損失；
 - (e) 於跨境個案，其他會員國就相同之違法行為對企業經營者課予之處罰，此類處罰資訊得透過歐洲議會與理事會 2017/2394 規則建立的機制取得；
 - (f) 任何其他適用於個案情形之加重或減輕因素。

(13) Article 24 is replaced by the following:

‘Article 24

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
2. Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account for the imposition of penalties, where appropriate:
 - (a) the nature, gravity, scale and duration of the infringement;
 - (b) any action taken by the trader to mitigate or remedy the damage suffered by consumers;
 - (c) any previous infringements by the trader;
 - (d) the financial benefits gained or losses avoided by the trader due to the infringement, if the relevant data are available;
 - (e) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council;
 - (f) any other aggravating or mitigating factors applicable to the circumstances of the case.

3. 會員國應確保當依據歐盟 2017/2394 規則第 21 條課予處罰時，應包括可能透過行政程序處以罰鍰，或提起法律訴訟處以罰鍰，或兩者兼具，而最高的罰款金額至少達到賣方或供應商於該會員國或相關之會員國年度營業額的 4%。
4. 當個案依據第 3 項課予罰款，但企業經營者的年度營業額資訊無法取得時，會員國可以提出課予罰款之可能性，其最高的金額不得少於 200 萬歐元。
5. 會員國應於 2021 年 11 月 28 日以前，將第 1 項所涉之規則與措施通知執行委員會，並應立即將任何因其影響所為之接續修正案通知執行委員會。

(14) 第 29 條第 1 項修正如下：

- ‘1. 於成員國採用第 3 條(4)項、第 6 條(7)項、第 6 條(8)項、第 7 條(4)項、第 8 條(6)項、第 9 條(1a)項、第 9 條(3)項以及第 16 條第 2 及第 3 項之規範選擇時，應於 2021 年 11 月 28 日將其採用及隨後的變動通知執行委員會。’；

(15) 附件 I 修正如下：

(a) 第 A 部分修正如下：

- (i) 「解約權」之下第 3 段，以下列規定取代：‘為行使

3. Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4 % of the trader's annual turnover in the Member State or Member States concerned.
 4. For cases where a fine is to be imposed in accordance with paragraph 3, but information on the trader's annual turnover is not available, Member States shall introduce the possibility to impose fines, the maximum amount of which shall be at least EUR 2 million.
 5. Member States shall, by 28 November 2021, notify the Commission of the rules and measures referred to in paragraph 1 and shall notify it, without delay, of any subsequent amendment affecting them.
- (14) in Article 29, paragraph 1 is replaced by the following:
- '1. Where a Member State makes use of any of the regulatory choices referred to in Article 3(4), Article 6(7), Article 6(8), Article 7(4), Article 8(6), Article 9(1a), Article 9(3) and the second and third paragraphs of Article 16, it shall inform the Commission thereof by 28 November 2021, as well as of any subsequent changes.';
- (15) Annex I is amended as follows:
- (a) part A is amended as follows:
 - (i) the third paragraph under 'Right of withdrawal' is

解約權，你必須以明確的陳述(透過郵寄信件或電子郵件)，將你解除契約的決定告知我們[2]。你可以使用附隨的解除契約示範格式，但並不強制。[3]’；

(ii) 「完成說明」之第 2 點，以下列規定取代

‘[2.] 輸入您的名字、地理地址、電話號碼與電子郵件地址。’；

(b) 第 B 部分第 1 個縮排修正如下：

‘至[企業經營者姓名、地理地址、電子郵件地址將由企業經營者輸入]：’。

第 5 條

消費者權益信息

執行委員會應確保民眾得以透過依據歐洲議會與理事會 (EU)2018/1724 規則建立之單一數位入口，搜尋關於他們之消費者權利或法庭外紛爭解決措施資訊，使其可以：

(a) 以清楚、可理解並易於取得的方式，獲得其歐盟消費者權利之最新資訊；及

(b) 視所涉各方當事人，透過依據(EU)No524/2013 規則建立之線

replaced by the following: ‘To exercise the right of withdrawal, you must inform us [2] of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post or email). You may use the attached model withdrawal form, but it is not obligatory. [3]’;

- (ii) point 2 under ‘Instructions for completion’ is replaced by the following:

‘[2.] Insert your name, geographical address, telephone number and email address.’;

- (b) in part B, the first indent is replaced by the following:

‘To [here the trader’s name, geographical address and email address are to be inserted by the trader]:’.

Article 5

Information on consumer rights

The Commission shall ensure that citizens seeking information on their consumer rights or on out-of-court dispute resolution benefit from an online entry point, through the single digital gateway established by Regulation (EU) 2018/1724 of the European Parliament and of the Council (18), enabling them to:

- (a) access up-to-date information about their Union consumer rights in a clear, understandable and easily accessible manner; and
- (b) submit a complaint through the online dispute resolution platform

上紛爭解決平台，向主管之歐洲消費者中心網路提出申訴。

第 6 條

委員會的報告和審查

執行委員會應於 2024 年 5 月 28 日前向歐洲議會與理事會提交關於本指令適用情形之報告。該報告應特別包括本指令規定關於以下面向之評估：

- (a) 於企業經營者營業所在地以外之場所規劃之活動；以及
- (b) 關於以相同商品行銷，但具備明顯不同之組成或特徵之案例，包括是否應該對此類個案施以更嚴格的要求，包含 2005/29/EC 指令附件 I 所規範之禁止規定，以及是否有必要就商品差異性的資訊提供更詳細的規定。

該報告的提出，必要時須同時附上立法建議。

第 7 條

轉換

1. 會員國應於 2021 年 11 月 28 日前通過與公布遵守本指令所必

established under Regulation (EU) No 524/2013 and to the competent centre of the European Consumer Centres Network, depending on the parties involved.

Article 6

Reporting by the Commission and review

By 28 May 2024, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council. That report shall include in particular an assessment of the provisions of this Directive regarding:

- (a) events organised at places other than the trader's business premises; and
- (b) cases of goods marketed as identical but having significantly different composition or characteristics, including whether those cases should be subject to more stringent requirements, including prohibition in Annex I to Directive 2005/29/EC and whether more detailed provisions on information about the differentiation of goods are necessary.

That report shall be accompanied, where necessary, by a legislative proposal.

Article 7

Transposition

1. By 28 November 2021, Member States shall adopt and publish the

須之相關措施，並立即通知執委會。

會員國應自 2022 年 5 月 28 日起執行上述措施。

會員國採用上述措施時，應包含對於本指令之引用，或併同正式發布時附加該引用。表示該引用之方法應由會員國決定之。

2. 會員國應就其採用，屬於本指令涵蓋範圍之國家法律條款，與執委會溝通。

第 8 條

生效施行

本指令應於歐盟官方公報發布後第 20 日生效。

第 9 條

發布

本指令已對會員國發布。

於史特拉斯堡，2019 年 11 月 27 日。

歐洲議會

議長

D.M.SASSOLI

理事會

主席

T.TUPPURAINEN

measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 28 May 2022.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 8

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 9

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 27 November 2019.

For the European Parliament

The President

D.M.SASSOLI

For the Council

The President

T.TUPPURAINEN

外國消費者保護法規翻譯叢書索引

（第 1 輯至第 27 輯）

壹、亞太地區

國別	法規名稱（中文譯名及原文名稱）	輯別	頁次
日本	消費者保護基本法	第 2 輯	2-13
日本	國民生活中心法 國民生活セソタ—法	第 2 輯	14-43
日本	製造物責任法	第 3 輯	2-9
日本	東京都消費生活條例	第 2 輯	44-95
日本	關於訪問販賣等之法律 訪問販賣に關する法律	第 2 輯	96-131
日本	日本關於訪問販賣之法律 訪問販賣に關する法律	第 8 輯	250-331
日本	日本有關高爾夫球場等會員契約適正化之法律 ゴルフ場等に係る會員契約の適正化に關する法律	第 8 輯	332-359
日本	關於訪問販賣等之法律 （昭和 51 年 6 月 4 日法律第 57 號、平成 11 年 12 月 22 日號外法律第 160 號）	第 10 輯	223-332
日本	消費者契約法	第 10 輯	333-354
日本	洗濯業標準營業約款暨施行細則 クリーニング業に關する標準營業約款、 クリーニング業に關する標準營業約款施行細則	第 13 輯	146-169
日本	美容業標準營業約款暨施行細則 美容業に關する標準營業約款、 美容業に關する標準營業約款施行細則	第 13 輯	170-189

日本	理容業標準營業約款暨施行細則 理容業に関する標準營業約款、 理容業に関する標準營業約款施行細則	第 13 輯	190-211
日本	消費者契約法施行細則	第 15 輯	2-61
日本	關於預付式票券之規範等法律	第 16 輯	2-71
日本	消費者契約法	第 17 輯	2-117
日本	與特定商交易相關之法律	第 18 輯	2-337
日本	消費者教育促進法 消費者教育の推進に関する法律	第 21 輯	1-28
日本	消費者安全法	第 21 輯	29-98
日本	食品標示法 食品表示法	第 22 輯	1-34
日本	消費者財產損害集體請求賠償民事訴訟 程序特別法 消費者の財産的被害の集団的な回復の ための民事の裁判手続の特例に関する 法律	第 22 輯	35-162
日本	消費生活用製品安全法	第 25 輯	1-174
日本	資金決算法 資金決済に関する法律	第 26 輯	1-242
韓國	消費者保護法 Consumers Protection Act	第 1 輯	13-32, 119-142
韓國	消費者保護法施行令 Enforcement Decree of the consumers Protection Act	第 1 輯	33-48, 143-162
韓國	訪問販賣等之法律	第 2 輯	132-153
韓國	韓國 2007 年電子商務消費者保護法 (Act on Consumer Protection in Electronic Commerce, etc August 3, 2007)	第 20 輯	137-212

韓國	韓國 2008 年電子商務消費者保護法施行細則 (Enforcement Decree of the Act on Consumer Protection in Electronic Commerce, etc. December 31, 2008)	第 20 輯	213-268
韓國	韓國 2007 年訪問買賣等法 (Door-to-Door Sales, etc. Act July 19, 2007)	第 20 輯	269-382
韓國	韓國 2008 年訪問買賣等法施行細則 (Enforcement Decree of the Door-to-door Sales, etc. Act December 31, 2008)	第 20 輯	383-452
新加坡	消費者保護法 Consumer Protection (Trade Descriptions and Safety Requirements) Act	第 1 輯	49-63, 163-182
新加坡	消費者保護（公平交易）法 CONSUMER PROTECTION (FAIR TRADING) ACT (CHAPTER 52A)	第 25 輯	175-344
香港	消費者委員會條例 Consumer Council Ordinance	第 1 輯	1-12, 105-118
以色列	1981 年消費者保護法 Consumer Protection Law 1981	第 4 輯	2-45
澳洲	1974 年交易行為規制法 Consumer Protection Law	第 6 輯	1-905
澳洲	1997 年 9 月消費者保護法第 2 次檢討報告 Audit of Consumer Protection Law-Second Report 1997	第 8 輯	360-541
澳洲	消費者申訴仲裁庭條例（1987 第 206 號） Consumer Tribunals Act 1987 No.206	第 9 輯	1-122
澳洲	1987 消費者請求案件仲裁法庭條例— 施行細則 Consumer Claims Tribunals Act 1987- Regulation	第 9 輯	123-154

澳洲	1974 年貿易業務法(摘錄) Trade Practices Act 1974	第 13 輯	50-81
澳洲	2010 年競爭與消費者法－關於不公平契約條款(Part 2-3—Unfair Contract Terms)與特別保護章節(Chapter 3—Specific protections)	第 19 輯	216-491
紐西蘭	1993 年消費者擔保法 Consumer Guarantees Act 1993	第 7 輯	7-113
紐西蘭	1988 年爭議法庭法（合併並修正 1976 年小額請求法庭之法） Disputes Tribunals Act 1988（An Act to consolidate and amend the Small Claims Tribunals Act）	第 7 輯	114-295
紐西蘭	1967 年訪問買賣法 Door to Door Sales Act 1967	第 7 輯	296-363

貳、歐洲地區

國別	法規名稱（中文譯名及原文名稱）	輯別	頁次
德國	瑕疵產品責任法 Gesetz über die Haftung für fehlerhafte Produkte	第 3 輯	68-89
德國	到宅交易及類似交易取消法 Gesetz über den Widerruf von Haustürgeschäften und ähnlichen Geschäften	第 2 輯	156-167
德國	一般交易條款規制法 Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen（AGB-Gesetz）	第 3 輯	12-67
德國	聯邦經濟部設置消費者顧問會規程 Geschäftsordnung des Verbraucherbeirates Beim Bundesminister für Wirtschaft	第 3 輯	155-246

德國	商品安全要求基準及保護 CE 標識法律 （商品安全法） Entwurf Gesetz zur Regelung der Sicherheitsanforderungen an Produkte- und zum Schutz der CE – Kennzeichnung （Produktsicherheitsgesetz ProdSG）	第 9 輯	247-326
德國	食品、香煙產品、化妝品及其他生活必需品之交易法律 Gesetz über den Verkehr mit Lebensmitteln, Kosmetischen Mitteln und sonstigen Bedarfsgegenständen	第 9 輯	327-480
德國	德國民法中有關消費者保護規定 Bürgerliches Gesetzbuch (BGB)	第 23 輯	15-114
德國	德國民法一般交易條款規定 Bürgerliches Gesetzbuch (BGB)	第 24 輯	47-80
瑞典	消費者銷售法 The Consumer Sales Act	第 1 輯	65-80, 183-202
瑞典	行銷法 The Marketing Practices Act	第 1 輯	81-86, 203-210
瑞典	消費者保險法 The Consumer Insurance Act	第 1 輯	87-101, 221-228
瑞典	送達到戶銷售法 The Door-to Door Sales Act	第 1 輯	101,104 229-234
丹麥	1994 年產品安全法 Danish Product Safety Act 1994	第 8 輯	2-33
丹麥	1994 年行銷措施法 The Danish Marketing Practices Act 1994	第 8 輯	34-63
丹麥	1994 年聯合付帳卡法 Consolidated Payment Cards etc. Act 1994	第 8 輯	64-109
丹麥	1995 年安全玩具及誤食似物之玩具法 Order on safety requirements for toys and products which due to their outward Appearance may be mistaken for food 1995	第 8 輯	110-175

英國	消費者保護(營業所外交易之取消權)條例 Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987	第2輯	168-195
英國	1987年消費者保護法—產品責任 Consumer Protection Act 1987-Product Liability	第3輯	90-121
英國	1987年消費者保護法 Consumer Protection Act 1987	第4輯	48-329
英國	1991年煙火安全規定 Consumer Protection The Fireworks (Safety) Regulations 1997	第8輯	179-229
英國	2006年消費者貸款法 Consumer Credit Act 2006	第14輯	246-431
英國	2012年消費者保險資訊揭露及表示法 Consumer Insurance (Disclosure and Representations) Act 2012	第21輯	179-214
英國	2012年消費者支付附加費用權利法 The Consumer Rights (Payment Surcharges) Regulations 2012	第21輯	215-242
英國	2013年消費者契約(契約資訊、契約解除及附加費用)規則 The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013	第22輯	247-380
英國	2015年消費者權利法 Consumer Rights Act 2015	第23輯	169-618
比利時	1991年消費者保護法 Consumer Protection Act 1991	第5輯	2-195
奧地利	1993年消費者保護(歐洲經濟區)法 Consumer Protection (EEA) Act 1993	第5輯	196-213
奧地利	1993年產品責任法 Product Liability (EEA) Act 1993	第5輯	214-226

比利時	1991 年消費者信用法 Consumer Credit Act 1981	第 7 輯	366-577
比利時	1992 年消費者信用（呆帳）令 Consumer Credit (Bed Debts) Decree 1992	第 7 輯	578-607
比利時	1992 年誤導性職業廣告法 Misleading Professional Advertising Act 1992	第 7 輯	608-631
愛爾蘭	2007 年消費者保護法 Consumer Protection Act 2007	第 16 輯	72-359

參、美洲地區

國別	法規名稱（中文譯名及原文名稱）	輯別	頁次
加拿大 安大略省	1990 年消費者保護法 Consumer Protection Act 1990	第 5 輯	228-297
加拿大 安大略省	1990 年消費者保護法 176 號規則 Consumer Protection Act Regulation	第 5 輯	298-339
加拿大 安大略省	2002 年消費者保護法（摘錄） Consumer Protection Act, 2002	第 13 輯	110-145
加拿大 安大略省	2002 年消費者保護法 Consumer Protection Act, 2002	第 14 輯	2-169
加拿大	產品安全法 Canada Consumer Product Safety Act	第 19 輯	121-215
加拿大	消費性商品包裝標示法 Consumer Packaging and Labelling Act	第 24 輯	1-46
美國	德克薩斯州律師職業操守守則（摘錄） Texas Disciplinary Rules of Professional Conduct	第 13 輯	2-13
美國	華盛頓州律師職業守則（摘錄） Washington State Court : Rules of Professional Conduct	第 13 輯	14-23
美國	特區（D.C.）律師職業守則（摘錄） D.C. Rules of Professional Conduct	第 13 輯	24-27

美國	新澤西州律師職業守則（摘錄） Rules of Professional Conduct	第 13 輯	28-49
美國	消費者產品安全法 Consumer Product Safety Act	第 15 輯	62-285
美國	2008 年消費者產品安全改良法 Consumer Product Safety Improvement Act of 2008	第 17 輯	118-407
美國	聯邦民事訴訟規則第 23 條 Federal Rules of Civil Procedure Rule 23. Class Actions	第 22 輯	163-180
美國	聯想法典第 28 卷第 1332 條 28 U.S. Code § 1332 - Diversity of citizenship; amount in controversy; costs	第 22 輯	181-198
美國	2005 年團體訴訟公平法 Class Action Fairness Act of 2005	第 22 輯	199-246
美國	訪問買賣猶豫期施行細則 PART 429—RULE CONCERNING COOLING-OFF PERIOD FOR SALES MADE AT HOMES OR AT CERTAIN OTHER LOCATIONS	第 23 輯	1-14
美國	兒童線上隱私保護法施行細則 Part312—Children's online Privacy Protection Rule	第 24 輯	81-130
美國	消費者評論公平法 Consumer Review Fairness Act of 2016	第 24 輯	131-146
巴西	法律編號第 8078 號 消費者防禦法規—提供消費者保護及其解決之道 Consumer Defense Code Provides for Consumer's Protection and Makes Other Arrangements	第 14 輯	170-245

肆、國際組織

國別	法規名稱（中文譯名及原文名稱）	輯別	頁次
歐體	歐洲經濟共同體保護營業所外交易契約消費者指令 Council Directive of 20 December 1985 to protect the consumer in respect of contracts negotiated from business premises (85/577/EEC)	第 2 輯	198-217
歐體	歐體 93/13 號有關消費者契約不公平條款之指令 Council Directive of 5 Apr., 1993 on unfair terms in consumer contracts (93/13/EEC)	第 3 輯	194-231
歐體	產品責任指令 Council Directive of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (85/374/EEC)	第 3 輯	158-193
歐體	1990 關於服務責任之理事會指令草案 Vorschlang für eine Richtlinie des Rates über die Haftung bei Dienstleistungen 1990 KOM(90) 482 endg.-SKY 308	第 8 輯	230-249
歐體	2002/91 號有關有機之農製品和糧食製品規章（摘錄） on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (Council Regulation 2092/91/EEC)	第 13 輯	82-109
歐盟	遠距契約之消費者保護指令 Richtlinie 97/7/EG, 20. Mai 1997	第 10 輯	1-58
歐盟	消費者信用指令 Directive 87/102/EEC, 22 December 1986	第 10 輯	59-96

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