



Brussels, 19 February 2016
(OR. en)

6150/16

Interinstitutional Files:

2015/0287 (COD)

2015/0288 (COD)

LIMITE

JUSTCIV 17
CONSOM 30
DIGIT 10
AUDIO 12
CODEC 165

NOTE

From: Presidency

To: Permanent Representatives Committee/Council

No. Cion doc.: 15251/15 JUSTCIV 290 CONSOM 220 DIGIT 116 AUDIO 40 CODEC
1731 + ADD 1 + ADD 2
15252/15 JUSTCIV 291 CONSOM 221 CODEC 1733 + ADD 1 + ADD 2
15261/15 JUSTCIV 292 CONSOM 223

Subject: a) Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content **(First reading)**
b) Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods **(First reading)**
- Progress report

I. INTRODUCTION

1. By letters of 9 December 2015, the Commission transmitted to the Council a proposal for a Directive on certain aspects concerning contracts for the supply of digital content (hereinafter 'Directive on digital content')¹ and a proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods (hereinafter 'Directive on online sales of goods')².

¹ See document 15251/15 JUSTCIV 290 CONSOM 220 DIGIT 116 AUDIO 40 CODEC 1731 + ADD 1 + ADD 2.

² See document 15252/15 JUSTCIV 291 CONSOM 221 CODEC 1733 + ADD 1 + ADD 2.

2. The two proposed Directives are part of the "Digital Single Market Strategy for Europe"¹. Their general objective is to contribute to faster growth of the Digital Single Market, for the benefit of both consumers and businesses. With a targeted full harmonisation approach the proposed Directives aim at eliminating the key contract law-related obstacles to cross-border supply of digital content and online and other distance sales of goods. The purpose of these proposals is to remove the legal uncertainty faced by both consumers and businesses and to reduce the additional costs incurred by businesses, due to the complexity of the legal framework resulting from differences in contract law between Member States.
3. The Presidency is of the view that these proposals are an important element of the European Digital Single Market Strategy. For the Union as a whole, boosting confidence in the digital economy is an important driver of robust economic growth. The Presidency has put the examination of this file at the top of its agenda. This priority is reflected, in particular, in the scheduling of 18 meeting days of the Working Party on Civil Law Matters (Contract Law) during the first half of 2016.
4. The proposed Directives are subject to the ordinary legislative procedure.
5. The European Economic and Social Committee should adopt its opinion on the proposed Directives in due course.

¹ See document 8672/15 COMPET 185 TELECOM 109 AUDIO 11 DIGIT 32 RECH 107 MI 291 PI 32 IND 72 ECOFIN 308 ENER 139 DATAPROTECT 70 CYBER 31 JUSTCIV 101 E-JUSTICE 56 CULT 29 EDUC 122.

II. WORK AT TECHNICAL LEVEL

6. On 28 and 29 January 2015, the Working Party had a first general exchange of views on the essential features of the proposed Directives, as well as on the Impact Assessment and the Commission Communication accompanying the proposals¹.
7. Although the views expressed by the Member States were still of a preliminary nature, the discussions at the above meeting have shown a general support of the proposed Directives' stated objectives of modernizing and simplifying the rules for e-commerce, by creating a business-friendly environment for traders selling abroad while increasing consumers' trust and maintaining a high level of consumer protection.
8. However, it was also said by many Member States that the risk of creating different rules for online and offline sales of goods needs to be avoided and that it would be premature to start the examination of the proposal for a Directive on online sales of goods, in particular taking into account that relevant information resulting from the Fitness Check evaluation of several EU consumer and marketing law Directives (including the Consumer Sales and Guarantees Directive 1999/44/EC) under the 'Regulatory Fitness and Performance Programme' (REFIT), which is currently carried out by the Commission, is not yet available. The results of the evaluation regarding Directive 1999/44/EC are expected by September 2016. Some other Member States underlined the importance of coherence in the field of contract law and between the two proposals.
9. In the light of the above, the Presidency proposes to concentrate the work at technical level by examining first the proposal for a Directive on digital content, while not losing sight of the coherence between this proposal and the proposal for a Directive on online sales of goods. The Working Party already started the Article by Article examination of the proposal for a Directive on digital content with a focus on the underlying objectives of the Articles (or in other words: the intended results) at the meeting of 9 and 10 February 2016.

¹ See document 15261/15 JUSTCIV 292 CONSOM 223.

10. The Presidency aims at bringing forward the discussions on this file and, if the progress at technical level allows it, to address some key issues to the Council (JHA) in June 2016.

III. CONCLUSIONS

11. Against this backdrop, COREPER/the Council is invited to
 - a) take note of this progress report; and
 - b) endorse the approach proposed by the Presidency that the work should focus first on the examination of the proposal for a Directive on digital content.
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