

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 (Text with EEA relevance)

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.

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 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

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- 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 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⁽¹⁾ 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⁽²⁾ 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 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⁽³⁾.

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.

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- (1) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information ([OJ L 345, 31.12.2003, p. 90](#)).
- (2) Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012 ([OJ L 310, 26.11.2015, p. 1](#)).
- (3) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ([OJ L 167, 22.6.2001, p. 10](#)).