

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 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 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 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 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.