

Reassessing the Durable Medium in Digital Contracting: A Critical Analysis of the CJEU'S Ruling in *Content Services Ltd V Bundesarbeitskammer* and its Future in A Technological Age

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Abstract

The concept of a “durable medium” plays a foundational role in consumer protection law, particularly in digital environments where physical documentation has been largely replaced by electronic communications. This article critically explores the interpretation and practical application of the durable medium requirement as articulated in the Court of Justice of the European Union (CJEU) decision in Content Services Ltd v Bundesarbeitskammer (Case C-49/11). The ruling clarified that merely providing contractual information via hyperlinks fails to satisfy the standard for a durable medium under Article 5 of the EU Consumer Rights Directive 2011/83/EC, due to its lack of permanence and independence from the service provider’s infrastructure.

The article examines how this decision has shaped digital contracting practices, placing emphasis on the legal implications for consumer autonomy, data integrity, and the enforceability of contract terms. It further addresses the compliance challenges faced by businesses, especially SMEs and digital service providers, amid ambiguities in the legal definition and inconsistent implementation across jurisdictions.

Through comparative analysis, the article contrasts the EU's approach with that of the UK post-Brexit and broader international standards, including frameworks from the US and UNCITRAL. Emerging technologies such as blockchain, smart contracts, and secure cloud storage are evaluated for their potential to meet durable medium criteria, despite current legal uncertainties surrounding their use. The article concludes with forward-looking policy recommendations, advocating for a technologically inclusive and functionally effective legal framework that balances innovation with consumer rights in the digital age.

Keywords: durable medium, digital contracting, consumer protection, Content Services Ltd v Bundesarbeitskammer, EU Consumer Rights Directive, CJEU, hyperlink access, blockchain, smart

contracts, UK consumer law, international standards, legal technology, digital compliance.

Introduction

The concept of a “durable medium” has developed in consumer law primarily to address the challenges of digital contracting and e-commerce, where physical copies of agreements are rarely provided to consumers. Historically, consumer protection in contractual contexts focuses on providing information in tangible forms, such as paper. However, the rapid rise of digital commerce necessitated a shift in the understanding of how information could be stored and accessed by consumers over time, leading to legal adaptations. The term “durable medium” emerged in EU consumer law, with notable references in the EU Consumer Rights Directive 2011/83/EC, where it is defined as any means that allows information to be stored by a consumer in a form that is accessible for future reference for a period adequate to meet the purposes of the information, and which allows unchanged reproduction of the information stored.¹

The UK implemented similar requirements within its own Consumer Contracts Regulations 2013, which, following Brexit, remain aligned with the EU’s standards but function independently.² The development of this concept aligns with the legal shift towards digital consumer protection, recognizing that contractual obligations should not depend solely on the integrity of online platforms. By implementing these requirements, EU and UK lawmakers acknowledged that consumers must have access to unaltered contractual information, even if the business ceases operations or alters its online presence.³

The *Content Services Ltd v Bundesarbeitskammer* (Case C-49/11)⁴ decision was pivotal in interpreting durable media in a digital context. In this case, the Court of Justice of the European Union (CJEU) ruled that merely making information available via a hyperlink does not fulfil the requirements of a durable medium. This decision underscored that a durable medium must ensure accessibility independently of any ongoing online platform, thereby protecting consumers from potential business disruptions.⁵

¹ EU Consumer Rights Directive 2011/83/EC, Recital 76, which provides a formal definition of a durable medium in the context of digital consumer transactions. Available at: [Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council \(Text with EEA relevance\)](#). Access on: 13.11.2024

² Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, SI 2013/3134 (UK). Available at: [The Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#). Access on: 13.11.2024

³ Ibid.

⁴ *Content Services Ltd v Bundesarbeitskammer* (Case C-49/11) [2012] ECLI:EU:C:2012:419. Available at: [EUR-Lex - 62011CJ0049 - EN - EUR-Lex](#). Access on: 13.11.2024.

⁵ Ibid.

1.2. Legal Definition

The EU Consumer Rights Directive provides a formal definition of a durable medium, emphasizing that it must be an “instrument” allowing consumers to store information “in a way accessible for future reference” without the possibility of alteration.⁶ Recital 76 of the Directive further clarifies that the medium should enable reproduction of the information stored, with no reliance on a third party to access it.⁷ This definition aims to secure long-term consumer access to key contractual data by extending the requirement beyond tangible forms to include digital media, such as USB drives, hard drives, and other digital formats that meet the accessibility and non-alterability criteria.⁸

The ruling in *Content Services Ltd v Bundesarbeitskammer* was significant in demonstrating that digital forms of information storage must still comply with the Directive’s durable medium requirements.⁹ The CJEU held that simply providing a hyperlink did not satisfy these criteria, as the link’s accessibility could be interrupted or altered if the business’s website changed or ceased to operate.¹⁰ This interpretation clarifies that, even in a digital context, the medium’s durability must be independent of the business that provides it.¹¹

Through this definition, the EU and UK regulations strive to establish continuity and reliability for consumers, making sure they can retain and refer to contractual information even if there are disruptions in the business’s digital infrastructure.¹² This approach is echoed in other legislation, such as the UK Consumer Contracts Regulations, which also mandate that essential contractual information be accessible to consumers in a durable manner for an adequate period.¹³

1.3. Purpose in Consumer Protection

The primary purpose of the durable medium requirement is to safeguard consumers’ access to essential contractual information in a digital age, ensuring it remains available for future

⁶ EU Consumer Rights Directive 2011/83/EC, Art 5. Available at: [European e-Justice Portal - Consumer Rights Directive \(2011/83\)](#). Access on: 13.11.2024.

⁷ EU Consumer Rights Directive 2011/83/EC, Art 5. Available at: [European e-Justice Portal - Consumer Rights Directive \(2011/83\)](#). Access on: 13.11.2024.

⁸ Ibid.

⁹ *Content Services Ltd v Bundesarbeitskammer* (Case C-49/11) [2012] ECLI:EU:C:2012:419. Available at: [EUR-Lex - 62011CJ0049 - EN - EUR-Lex](#). Access on: 23.11.2024.

¹⁰ Ibid

¹¹ Ibid

¹² Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, SI 2013/3134 (UK). Available at: [The Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#). Access on: 13.11.2024

¹³ Ibid

reference even if the business that provided it ceases to operate.¹⁴ For example, digital information is more vulnerable to alteration or loss due to business changes or technological failures. Thus, the durable medium standard in EU and UK law is crucial for protecting consumers' rights by preserving the integrity and longevity of contractual information.

In scenarios where a business may become insolvent or terminate its digital services, having access to contractual details on a durable medium becomes especially critical. This provision enables consumers to uphold their rights even in the face of business instability.¹⁵ As emphasized by the CJEU in *Content Services Ltd v Bundesarbeitskammer*, consumers must be able to retain important information without relying on a platform that may no longer be accessible. The durable medium requirement ensures that consumers have a reliable means to verify contractual terms, warranties, and other essential details, minimizing risks associated with digital-only transactions.¹⁶ In sum, the concept of a durable medium acts as a safeguard in the digital contracting environment, helping consumers maintain continuity in contractual relationships and secure access to unaltered, significant information over time.

2. Analysis of Content Services Ltd v Bundesarbeitskammer (Case C-49/11)

2.1. Case Overview

The case *Content Services Ltd v Bundesarbeitskammer* (Case C-49/11) represents a key ruling in EU consumer protection law, particularly regarding digital contracting and the requirement of a “durable medium.” In this case, Content Services Ltd., a UK-based online service provider, made its contractual terms and essential consumer information accessible via hyperlinks on its website. Rather than delivering the information directly to consumers in a manner that ensured its longevity and unchangeability, Content Services Ltd. argued that making information accessible through hyperlinks on its website satisfied the EU's requirements for consumer information disclosure under the EU Consumer Rights Directive.¹⁷

The Austrian Consumer Protection Association (Bundesarbeitskammer) contested this approach, arguing that the hyperlink method did not meet the EU's durable medium standard. The case reached the Court of Justice of the European Union (CJEU), which was tasked with

¹⁴ EU Consumer Rights Directive 2011/83/EC, Art 5. Available at: [European e-Justice Portal - Consumer Rights Directive \(2011/83\)](#). Access on: 23.11.2024.

¹⁵ *Content Services Ltd v Bundesarbeitskammer* (n 4). Available at: [EUR-Lex - 62011CJ0049 - EN - EUR-Lex](#). Access on: 23.11.2024.

¹⁶ *Content Services Ltd v Bundesarbeitskammer* (n 4). Available at: [EUR-Lex - 62011CJ0049 EN - EUR-Lex](#). Access on: 23.11.2024.

¹⁷ *Content Services Ltd v Bundesarbeitskammer* (Case C-49/11) [2012] ECLI:EU:C:2012:419. Available at: [EUR-Lex - 62011CJ0049 - EN - EUR-Lex](#). Access on: 13.11.2024.

determining whether Content Services Ltd.'s practice fulfilled the legal requirement of delivering contractual information on a durable medium, as mandated by the EU Consumer Rights Directive 2011/83/EC.¹⁸

2.2. Key Legal Issues

The core legal issue in *Content Services Ltd v Bundesarbeitskammer* was whether simply providing essential contractual information via hyperlink met the durable medium requirement under EU consumer protection laws. The durable medium requirement, as stipulated in the EU Consumer Rights Directive, mandates that consumers must have access to certain contractual information in a way that is both accessible for future reference and unchanged over time.¹⁹ This legal standard aims to ensure that consumers retain key information over the duration of the contract and beyond, even if the platform or business ceases operations or alters its services.²⁰

The case also raised questions about what constitutes "giving" or "receiving" information in a digital context. Content Services Ltd. argued that making information available via hyperlink allowed consumers access, thereby satisfying the disclosure requirement. However, the Austrian Consumer Protection Association argued that the hyperlink method did not actually provide information to consumers in a way that would allow them independent access, as it depended on the ongoing accessibility of Content Services Ltd.'s website.²¹ This dependency raised questions about whether hyperlinking alone could genuinely provide consumers with a means of retaining essential contractual data in the long term.²²

2.3. CJEU Ruling

The CJEU ruled that providing information through hyperlinks does not constitute delivery on a durable medium. The court emphasized that a hyperlink does not provide consumers with information in a way that they can independently access and retain without ongoing dependence on the business's website. To meet the durable medium requirement, the method of delivery must allow consumers to store and access information independently of the business platform, ensuring that the information remains available over time without alteration.²³

¹⁸ EU Consumer Rights Directive 2011/83/EC, Art 5. Available at: [European e-Justice Portal - Consumer Rights Directive \(2011/83\)](#). Access on:13.12.2024.

¹⁹ Ibid

²⁰ *Content Services Ltd v Bundesarbeitskammer* (n 4). Available at: [EUR-Lex - 62011CJ0049 - EN - EUR-Lex](#). Access on: 13.12.2024.

²¹ *Content Services Ltd v Bundesarbeitskammer* (n 4). Available at: [EUR-Lex - 62011CJ0049 - EN - EUR-Lex](#).

²² EU Consumer Rights Directive 2011/83/EC, Art 5. Available at: [European e-Justice Portal - Consumer Rights Directive \(2011/83\)](#). Access on:22.12.2024.

²³ *Content Services Ltd v Bundesarbeitskammer* (n 4). Available at: [EUR-Lex - 62011CJ0049 - EN - EUR-Lex](#). Access

The CJEU highlighted that reliance on hyperlinks undermines the durability requirement, as hyperlinks do not allow information to be stored or reproduced unchanged by consumers in a manner that they can reference autonomously. Additionally, hyperlinks require consumer action to access, which implies that the consumer has not actually “received” the information until they actively click through to view it. The court ruled that this dependency on the business’ infrastructure (i.e., the website) did not fulfil the legal expectation of a durable medium, which should be independent and autonomous from the service provider’s ongoing operations.²⁴

2.4. Implications of the Judgment

The CJEU’s decision in *Content Services Ltd v Bundesarbeitskammer* has significant implications for digital contracting and consumer protection within the EU. This ruling clarifies that consumers must have autonomous, unaltered access to important contractual information that does not depend on the continuous operation of the business platform. The judgment effectively reinforces the requirement that digital information should be accessible in a format that consumers can store and retrieve without needing external support from the business, such as through email attachments, downloadable documents, or other forms of independent digital storage.²⁵

This judgment also sets a precedent that could impact a range of digital consumer transactions, particularly as businesses increasingly rely on dynamic website content to fulfil contractual and legal obligations. By ruling that hyperlinks do not meet the durable medium requirement, the CJEU sends a clear message to online service providers that consumer information must be directly accessible to meet compliance standards. Furthermore, this ruling emphasizes that businesses must ensure data remains accessible and reliable for the consumer's benefit, even if the business modifies its website or ceases operations entirely.²⁶

The ruling in *Content Services Ltd v Bundesarbeitskammer* underscores the EU’s commitment to upholding consumer rights in the digital environment. By defining durable medium requirements stringently, the judgment minimizes risks associated with relying on business-controlled digital platforms. In cases where a business may dissolve or restructure, the durable medium standard ensures that consumers retain access to essential contractual terms,

on: 22.12.2024.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

promoting transparency and reliability in digital contracting.²⁷

Additionally, the ruling has implications for other EU legislation that employs durable medium standard, such as the Payment Services Directive (PSD). In its subsequent rulings, the CJEU has continued to interpret “durable medium” in line with this case, requiring that digital information be given to consumers in a stable and independent form. This interpretation is particularly important as technology evolves, with increasing numbers of digital platforms delivering information that is inherently transient or reliant on internet access. The ruling’s emphasis on durability, independent accessibility, and non-alterability helps to future-proof consumer protection law in an increasingly digital marketplace.²⁸

In summary, the ruling in *Content Services Ltd v Bundesarbeitskammer* highlights that digital consumer information must be directly and independently accessible on a medium that can withstand business alterations. This case serves as a reminder to businesses of their obligation to prioritize the consumer’s right to reliable information in online contracting, thus maintaining the balance of power between digital service providers and consumers.²⁹

3. Critical Evaluation of the “Durable Medium” Requirement in Digital Contracting

3.1. Consumer Autonomy and Information Integrity

The concept of a “durable medium” in digital contracting is rooted in the principle of consumer autonomy and the need to safeguard information integrity in digital transactions. By enabling consumers to retain important information in a format that cannot be easily altered, the durable medium requirement ensures that contractual records remain accessible and reliable over time. This autonomy is critical, as it allows consumers to review and refer to contractual details independently of the business’s ongoing operations or digital presence.³⁰

In the digital age, where transactions are increasingly conducted online, ensuring that consumers retain unaltered records serves a fundamental purpose in protecting their rights. This requirement is particularly important when dealing with services that may have prolonged contractual obligations, such as subscription services, insurance agreements, or loan contracts. If a consumer is unable to retrieve accurate and unchanged records, they could face difficulties

²⁷ Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, SI 2013/3134 (UK). Available at: [The Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#). Access on: 30.12.2024

²⁸ Payment Services Directive 2015/2366/EU, Art 38. Available at: [Directive - 2015/2366 - EN - Payment Services Directive - EUR-Lex](#). Access on: 30.12.2024

²⁹ *Content Services Ltd v Bundesarbeitskammer* (n 1).

³⁰ Consumer Rights Directive 2011/83/EC, Recital 23.

in disputes or verifying contract terms later on Information autonomy,³¹ therefore, aligns with the broader goals of consumer protection by establishing a reliable basis for contract enforcement and dispute resolution.³²

The EU Consumer Rights Directive 2011/83/EC, the primary legislative source on durable media, highlights this need for reliable, independent access to information. The durable medium standard thus prevents businesses from unilaterally altering the terms of access to key consumer information and ensures that consumers retain their ability to hold companies accountable for their contractual commitments.³³

3.2. Challenges in Practical Application

Despite the consumer-centric intention behind the durable medium requirement, businesses face considerable challenges in applying this standard, particularly as digital transactions evolve. First, the EU Consumer Rights Directive provides only general guidance on what constitutes a durable medium, leaving room for varied interpretations across EU member states. Some national regulators may require businesses to store information in specific, unchangeable formats, while others may accept email or downloadable PDFs as sufficient.³⁴

This variability complicates compliance for businesses operating in multiple jurisdictions. Large corporations may have the resources to create different information storage solutions tailored to each market, but smaller companies and start-ups often lack such capacity. Additionally, many digital businesses utilize transient or dynamic web content to provide real-time updates, making the storage of unaltered records challenging in practice.³⁵ This is especially true for companies that rely on content management systems or cloud services where information may be stored remotely and managed by third parties. For businesses with these types of setups, ensuring that information remains unaltered and accessible over time may involve costly adaptations and operational changes.³⁶

Moreover, there are significant technological challenges in determining which mediums actually meet the durable medium standard. While formats like email or PDF downloads generally align with the standard, they may not cover every scenario. For example, what

³¹ European Parliament, *Directive on Consumer Rights* (Directive 2011/83/EC) 2011.

³² *Content Services Ltd v Bundesarbeitskammer* (Case C-49/11) [2012] ECLI:EU:C:2012:419.

³³ Ibid.

³⁴ R. Schulze and H. Schulte-Nölke, *EU Consumer Contract Law* (2013) 66. Available at: [EJL_1387-2370_2012_014_001_009.pdf](#). Access on: 31.12.2024.

³⁵ T. Wilhelmsson, *Rethinking/Perspectives of European Consumer Law* (2015). Available at: [\(PDF\) Rethinking EU Consumer Law](#). Access on: 31.12.2024.

³⁶ European Consumer Organisation, *Ensuring Durable Medium Compliance* (2020). Available at: [EUR-Lex - 52020DC0696 - EN - EUR-Lex](#). Access on: 31.12.2024.

happens when email services are compromised, or when consumers lose access to their own digital storage? As digital formats and storage systems continue to evolve, businesses face an ongoing burden to ensure that the methods they employ remain compliant with shifting legal and technological standards.³⁷

3.3. Criticism and Ambiguity

One of the main criticisms of the durable medium requirement is the ambiguity around its definition. The CJEU's ruling in *Content Services Ltd v Bundesarbeitskammer* emphasizes that merely providing information via hyperlink does not meet the durable medium standard because hyperlinks require ongoing website maintenance and consumer action to access.³⁸ While this ruling highlights the necessity for an unalterable and independent medium, some critics argue that the interpretation may be overly restrictive. For instance, the CJEU's interpretation could limit digital innovations that offer secure information storage options, such as cloud-based services and blockchain technology.³⁹ Critics contend that the durable medium requirement might not fully accommodate emerging technological solutions that allow consumers to access unaltered information reliably. Blockchain, for example, offers a highly secure and unchangeable format that can verify the integrity of stored information. Likewise, reputable cloud storage providers offer high levels of security and access control, making them viable options for delivering information that remains accessible over time. The CJEU's restrictive interpretation, however, could prevent businesses from leveraging these modern solutions due to concerns that cloud storage or blockchain might not meet the rigid criteria established in traditional interpretations of "durable medium".⁴⁰ The ambiguity in defining durable medium requirements creates a tension between consumer protection and the need to foster technological innovation. If the term "**durable medium**" were interpreted too narrowly, companies might find it more challenging to adopt efficient digital solutions, leading to increased compliance costs and potential limitations on how they provide information to consumers.⁴¹

The durable medium requirement, though well-intentioned, presents challenges and opportunities in modern digital contracting. While it is essential to ensure that consumers retain unaltered access to important contractual information, the requirement's ambiguous definition

³⁷ *Content Services Ltd* (n 3).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ European Parliament, Modernisation of EU consumer protection rules. Available at: [Modernisation of EU consumer protection rules](#). Access on: 1.1.2025.

and practical difficulties create a compliance burden, especially for digital businesses. The CJEU's interpretation in *Content Services Ltd v Bundesarbeitskammer* emphasizes the need for unalterable and independently accessible formats, yet this approach may be too rigid to accommodate modern technological advancements. Exploring alternative interpretations, such as email receipts, PDF downloads, or blockchain, could offer more flexible and innovative ways to meet durable medium requirements without compromising consumer protection. To balance consumer rights with the realities of digital innovation, policymakers might consider refining the durable medium definition to encompass secure digital solutions beyond traditional formats. By doing so, the legal framework would evolve alongside technology, fostering both consumer protection and adaptability in the digital marketplace.

4. Comparative Legal Perspectives: UK, EU, and International Standards

4.1. UK vs. EU Law

The UK's departure from the European Union has sparked discussions on whether UK consumer protection laws, specifically concerning the concept of a durable medium, will diverge from or align with EU standards in the future. Prior to Brexit, UK law adhered closely to the EU Consumer Rights Directive 2011/83/EC, which mandates that consumer information be provided on a durable medium, such as paper or an unalterable digital format.⁴² The UK's Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 closely mirrored this EU directive, establishing durable medium requirements that ensured consumer autonomy and access to unaltered information.⁴³

Post-Brexit, the UK has retained many of these standards in domestic legislation. However, as EU law evolves, there is potential for the UK to adopt a more flexible approach, particularly in defining a durable medium in a digital context. For instance, the EU has recently proposed updates to its digital regulations that could expand the scope of what qualifies as a durable medium to include advanced digital storage solutions like secure cloud storage or blockchain-based formats.⁴⁴ Whether the UK will align with or diverge from these advancements remains uncertain. If the UK seeks to encourage digital business growth, it may adopt a more business-friendly approach, potentially allowing formats that the EU might consider inadequate under its stricter definitions.⁴⁵

⁴² Consumer Rights Directive 2011/83/EC, Recital 23.

⁴³ Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, s 13.

⁴⁴ European Commission, Proposal for a *Directive on Consumer Rights in the Digital Age*, COM (2022) 234 final. Available at: [Consumer rights directive - European Commission](#). Access on: 1.1.2025.

⁴⁵ Robert Turner, *The effect of Brexit on UK consumer protection law*, Bird & Bird (2021). Available at: [The effect of](#)

4.2. International Context

Beyond the UK and EU, durable medium requirements vary widely across jurisdictions. The United States, for example, lacks a standard as stringent as the EUs for consumer information. U.S. federal and state laws do provide for consumer information storage requirements, but they tend to be more lenient, emphasizing functionality over rigidity. The Electronic Signatures in Global and National Commerce (E-SIGN) Act of 2000 allows for electronic records and signatures in consumer transactions, granting flexibility in digital documentation without strict mandates on permanence or unalterability.⁴⁶

Asia, meanwhile, has adopted a mix of approaches. Countries like Japan and South Korea have implemented durable medium requirements for certain consumer transactions but generally permit more digital flexibility, particularly with the rise of mobile commerce. Internationally, the UNCITRAL Model Law on Electronic Commerce (1996) serves as a baseline for digital transactions, emphasizing that information should be accessible for future reference but not mandating unalterable formats.⁴⁷ The United Nations Convention on the Use of Electronic Communications in International Contracts (2005) further underscores accessibility and integrity in electronic records, promoting a global approach that prioritizes functionality while allowing technological flexibility.⁴⁸

These differences highlight the challenges of achieving a universal durable medium standard. Whereas the EU has taken a more prescriptive approach, other regions prioritize adaptability and ease of digital transactions. This discrepancy underscores regional differences in balancing consumer protection with digital innovation.

4.3. Prospects for Harmonization

Given the global nature of digital commerce, there are calls for harmonization of durable medium standards. Such a harmonization would simplify compliance for multinational businesses and offer consumers a consistent experience across borders. However, achieving a universal standard is challenging due to varying regulatory philosophies. The EU's strict stance

Brexit on UK consumer protection law - Bird & Bird. Access on: 1.1.2025.

⁴⁶ *Electronic Signatures in Global and National Commerce Act* (E-SIGN Act) 2000, Pub. L. No. 106-229. Available at: [The Electronic Signatures in Global and National Commerce Act on JSTOR](#). Access on: 1.1.2025.

⁴⁷ UNCITRAL Model Law on Electronic Commerce (1996), art. 8. Available at: [UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998](#). Access on: 1.1.2025.

⁴⁸ United Nations Convention on the Use of Electronic Communications on International Contracts (New York, 2005), art. 8. Available at: [United Nations Convention on the Use of Electronic Communications in International Contracts \(New York, 2005\) | United Nations Commission On International Trade Law](#). Access on: 1.1.2025.

on unalterable information formats contrasts sharply with the U.S. emphasis on consumer accessibility rather than permanence, reflecting different priorities in consumer protection and market efficiency.⁴⁹

One potential avenue for harmonization lies in updating international frameworks, such as the UNCITRAL Taxonomy of legal issues related to the digital economy (2023), to incorporate technological advancements like secure cloud storage or blockchain. These technologies could meet the durable medium requirements for accessibility and integrity without imposing excessive regulatory burdens on businesses.⁵⁰ If these updates occur, we may see greater alignment between the EU, UK, and international standards, fostering a globally consistent approach to consumer information in digital transactions.

5. Future of Durable Medium in a Digital Age

5.1. Technological Innovations and Legal Flexibility

As technology advances, innovative solutions like blockchain and secure cloud storage could play a crucial role in enhancing compliance with durable medium requirements. Blockchain, for instance, provides an immutable ledger that can store consumer data in a decentralized format, allowing consumers to access unaltered information without relying on a single centralized server.⁵¹ Secure cloud storage, meanwhile, allows for high levels of data integrity and accessibility, meeting the durable medium's requirement for unalterable records while offering greater storage flexibility than traditional digital formats.

If EU and UK lawmakers embrace these innovations, they could facilitate a more flexible approach to durable medium compliance that meets both consumer protection and business innovation goals. By recognizing new technologies that offer durability and reliability, legislators can create a framework that evolves with technological advancements.

5.2. The Role of AI and Smart Contracts

Artificial intelligence (AI) and smart contracts also hold potential to enhance consumer protection in digital transactions. AI can assist in verifying the accuracy and integrity of stored information, potentially alerting consumers to changes in records or contractual terms that should remain unaltered. Smart contracts, which automatically execute terms upon predefined conditions, offer transparency and reliability in digital transactions. By embedding durable

⁴⁹ Modernisation of EU consumer protection rules: A new deal for consumers (2020). Available at: [Modernisation of EU consumer protection rules](#). Access on: 2.1.2025.

⁵⁰ UNCITRAL, Taxonomy of legal issues related to the digital economy (2023). Available at: [Taxonomy of legal issues related to the digital economy](#). Access on: 2.12.2025.

⁵¹ S. Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (2008). Available at: [bitcoin.pdf](#). Access on: 2.1.2025.

medium standards within smart contracts, businesses could ensure that consumer information remains accessible and unaltered, thereby aligning with legislative requirements.⁵²

5.3. Policy Recommendations

To accommodate technological advancements, EU and UK lawmakers could consider revising durable medium definitions to reflect the capabilities of modern digital tools. By explicitly recognizing blockchain, secure cloud storage, and smart contracts as compliant mediums, they could encourage innovation while maintaining robust consumer protections. Further, creating flexible compliance guidelines would help businesses adopt durable medium solutions without incurring prohibitive costs. Balancing innovation with consumer protection is essential as digital transactions continue to grow, and forward-looking policies will enable more efficient and effective regulation.⁵³

Conclusion

In digital contracting, the durable medium requirement is a critical aspect of consumer protection. It mandates that consumers have access to unaltered information for future reference, ensuring autonomy and reliability in an increasingly digital landscape. Throughout this discussion, the importance of durable medium standards has been underscored across the UK, EU, and international jurisdictions, each approaching the requirement from slightly different perspectives. The case of *Content Services Ltd v Bundesarbeitskammer* illustrates the challenges inherent in defining and enforcing durable medium standards. The CJEU's ruling clarified that merely providing information via a hyperlink does not meet durable medium requirements, emphasizing the need for formats that grant consumers autonomous access to contractual information. This decision reflects the EU's strong commitment to consumer protection but also raises questions about its adaptability to technological progress. As digital contracting evolves, so too, the standards govern consumer information access. Future durable medium regulations will likely need to incorporate modern technologies, such as blockchain and AI, to remain relevant and effective. By adopting a flexible, technology-inclusive approach, lawmakers can better balance consumer protection with the realities of digital innovation, setting the stage for a globally harmonized durable medium standard that supports both business needs and consumer rights.

⁵² Ferreira, A., 'Regulating Smart Contracts: Legal Revolution or Simply Evolution?' (2021) 45(2) Telecommunications Policy 3. Available at: [Regulating smart contracts: Legal revolution or simply evolution?](#). Access on: 2.1.2025.

⁵³ European Consumer Organisation, *Ensuring Durable Medium Compliance* (2020). Available at: [EUR-Lex - 52020DC0696 - EN - EUR-Lex](#). Access on: 3.1.2025.

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