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*Plenary sitting*

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**A8-0043/2018**

27.2.2018

**\*\*\*I**  
**REPORT**

on the amended proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council  
(COM(2017)0637 – C8-0379/2017 – 2015/0288(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Pascal Arimont

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council  
(COM(2017)0637 – C8-0379/2017 – 2015/0288(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0635) and the amended proposal (COM(2017)0637),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0379/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinions of the European Economic and Social Committee of 27 April 2016<sup>1</sup> and of 15 February 2018<sup>2</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection (A8-0043/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 264, 20.7.2016, p. 57.

<sup>2</sup> ...

**Proposal for a directive**  
**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1 a) 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 TFEU.***

**Amendment 2**

**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

*Amendment*

(2) For the good functioning of the internal market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, is necessary.

(2) For the good functioning of the internal market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection ***and legal certainty***, is necessary, ***whilst a balance needs to be struck between the rights and obligations of consumers and those of traders.***

**Amendment 3**

**Proposal for a directive**  
**Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) E-commerce is ***one of the main drivers*** 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***

(3) 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 ***create a transparent environment with a fully functioning*** internal market. The full potential of the

internal market. The full 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 whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

#### Amendment 4

#### Proposal for a directive

#### Recital 4

##### *Text proposed by the Commission*

(4) ***The*** Union rules applicable to ***the*** sales of goods are still fragmented although rules on pre-contractual information requirements, the right of withdrawal ***for distance contracts*** and delivery conditions have already been fully harmonised. Other key contractual elements such as the conformity criteria, the remedies and modalities for their exercise for goods which do not conform to the contract are currently subject to minimum harmonisation in Directive 1999/44/EC of the European Parliament and of the Council<sup>46</sup>. Member States have been allowed to go beyond the Union standards and introduce rules that ensure even higher level of consumer protection. Having done 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, the period of the legal guarantee, the period of the reversal of the burden of proof, or the notification of the defect to the ***seller***.

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 whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

##### *Amendment*

(4) ***Certain*** Union rules applicable to sales of goods are still fragmented although rules on pre-contractual information requirements, the right of withdrawal and delivery conditions have already been fully harmonised ***in Directive 2011/83/EU of the European Parliament and of the Council. Rules applicable to offline sales have been harmonised to a lesser extent, such as rules on pre-contractual information requirements***. Other key contractual elements such as the conformity criteria, the remedies and modalities for their exercise for goods which do not conform to the contract are currently subject to minimum harmonisation in Directive 1999/44/EC of the European Parliament and of the Council<sup>46</sup> Member States have been allowed to go beyond the Union standards and introduce rules that ensure even higher level of consumer protection. Having done 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, the

period of the legal guarantee, the period of the reversal of the burden of proof, or the notification of the defect to the *trader*.

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<sup>46</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees OJ L 171, 7.7.1999, p.12.

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<sup>46</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees OJ L 171, 7.7.1999, p.12.

## Amendment 5

### Proposal for a directive Recital 5

#### *Text proposed by the Commission*

(5) Existing disparities may adversely affect businesses and consumers. ***Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council<sup>47</sup>, businesses directing activities to consumers in other Member States need to take account of the mandatory consumer contract law rules of the consumer's country of habitual residence. As these rules differ among Member States, businesses may be faced with additional costs. Consequently many businesses may 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 of commercial expansion and economies of scale. Small and medium enterprises are in particular affected.***

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<sup>47</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) OJ L177, 4.7.2008, p.6.

#### *Amendment*

(5) Existing disparities ***in relation to contract law in different Member States*** may adversely affect businesses and consumers, ***in addition to other key regulatory and non-regulatory issues such as tax laws, delivery network issues, payment systems and language barriers. However, the main difficulties encountered by consumers and the main source of disputes with traders concern the non-conformity of goods with the contract. It is therefore necessary to improve consumer confidence in the internal market and to help to create a level-playing field for traders.***

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<sup>47</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) OJ L177, 4.7.2008, p.6.



## Amendment 6

### Proposal for a directive Recital 8

*Text proposed by the Commission*

(8) In order to remedy the problems due to the fragmentation of national rules, businesses and consumers should be able to rely on a set of **fully** harmonised, targeted rules for **the** sales of goods. Uniform rules are necessary in relation to several essential elements of consumer contract law which under the current minimum harmonisation approach led to disparities and trade barriers across the Union. Therefore, this Directive should repeal the minimum harmonisation Directive 1999/44/EC and introduce **fully** harmonised rules on contracts for the sales of goods.

*Amendment*

(8) In order to remedy the problems due to the fragmentation of national rules **and other problems**, businesses and consumers should be able to rely on a set of harmonised, targeted rules for **all** sales of goods. Uniform rules are necessary in relation to several essential elements of consumer contract law which under the current minimum harmonisation approach led to disparities and trade barriers across the Union. Therefore, this Directive should repeal the minimum harmonisation Directive 1999/44/EC and introduce **a new framework of** harmonised rules on contracts for the sales of goods. **However, Member States should be allowed to maintain or introduce in their national laws provisions on remedies for ‘hidden defects’ or on a short-term right to reject.**

## Amendment 7

### Proposal for a directive Recital 9

*Text proposed by the Commission*

(9) **Fully** harmonised consumer contract law rules will make it easier for traders to offer their products in other Member States. Businesses will have reduced costs as they will no longer need to take account of different consumer mandatory rules. They will enjoy more legal certainty when selling to other Member States through a stable contract law environment.

*Amendment*

(9) **Further** harmonised consumer contract law rules will make it easier for traders to offer their products in other Member States. Businesses will have reduced costs as they will no longer need to take account of different consumer mandatory rules. They will enjoy more legal certainty when selling to other Member States through a stable contract law environment.

## Amendment 8

### Proposal for a directive Recital 10

*Text proposed by the Commission*

(10) Increased competition among retailers is likely to result in wider choices at more competitive prices being offered to consumers. Consumers will benefit from a high level of consumer protection and welfare gains through targeted **fully** harmonised rules. This **in turn** would increase their trust in **the** cross-border commerce. **Consumers will more confidently buy cross-border knowing they would enjoy the same rights across the Union.**

**Amendment 9**

**Proposal for a directive**

**Recital 11**

*Text proposed by the Commission*

(11) This Directive covers rules applicable to **the** sales of goods only in relation to key contract elements needed to overcome contract-law related barriers in the internal market. For this purpose, rules on conformity requirements, remedies available to consumers for lack of conformity of the goods with the contract and modalities for their exercise should be **fully** harmonised **and the** level of consumer protection **as compared to Directive 1999/44/EC, should be increased.**

**Amendment 10**

**Proposal for a directive**

**Recital 13**

*Text proposed by the Commission*

(13) This Directive should not apply to **goods like DVDs and CDs incorporating digital content in such a way that the goods function only as a carrier of the digital content. However, this Directive**

*Amendment*

(10) Increased competition among retailers is likely to result in wider choices at more competitive prices being offered to consumers. Consumers will benefit from a high level of consumer protection and welfare gains through targeted harmonised rules. This would **also** increase their trust in cross-border commerce, **including at a distance and online.**

*Amendment*

(11) This Directive covers rules applicable to sales of goods, only in relation to key contract elements needed to overcome contract-law related barriers in the internal market. For this purpose, rules on conformity requirements, remedies available to consumers for lack of conformity of the goods with the contract and modalities for their exercise should be harmonised **in such a way as to afford a high** level of consumer protection.

*Amendment*

(13) This Directive should not apply to digital content **and digital services embedded in goods, such as DVDs and CDs or smart goods. As regards goods with embedded** digital content **or**

*should apply to digital content **integrated in goods such as household appliances or toys where the digital content is embedded in such a way that its functions are subordinate to the main functionalities of the goods and it operates as an integral part of the goods.***

***embedded digital services, the trader should be liable, under this Directive, to the consumer for meeting his obligations only in respect of the elements of the goods that do not concern the embedded digital content or digital service. The rules of this Directive should be without prejudice to the protection granted to consumers by applicable Union law with respect to embedded digital content or digital service.***

## **Amendment 11**

### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13 a) Due to the specific circumstances and the nature of the merchandise, this Directive should not apply to sales of live animals between trader and consumer.***

## **Amendment 12**

### **Proposal for a directive Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. In addition, in certain areas regulated by this Directive Member States should also be free to lay down rules in relation to those aspects which are not regulated in this Directive : this concerns limitation periods for exercising the consumers' rights **and commercial guarantees**. Finally, in relation to the right of redress of the **seller**, Member States should be free to provide more detailed conditions on the exercise of such **right**.

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. In addition, in certain areas regulated by this Directive Member States should also be free to lay down rules in relation to those aspects which are not regulated in this Directive: this concerns limitation periods for exercising the consumers' rights. Finally, in relation to the right of redress of the **trader and commercial guarantees**, Member States should be free to provide more detailed conditions on the exercise of such **rights**.

## Amendment 13

### Proposal for a directive Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

***(16 a) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered to be a consumer. This reflects a common-sense approach to everyday transactions, and would also provide added legal certainty given the wide range of goods and scope of the proposal.***

## Amendment 14

### Proposal for a directive Recital 17

*Text proposed by the Commission*

*Amendment*

***(17) In order to bring clarity and certainty for sellers and consumers this Directive should define the notion of a contract. That definition should follow the common traditions of all Member States by requiring an agreement intended to give rise to obligations or other legal effects for a contract to exist.***

***deleted***

## Amendment 15

### Proposal for a directive Recital 18

*Text proposed by the Commission*

*Amendment*

**(18) In order to balance the requirement**

**(18) In order to balance the requirement**

of legal certainty with an appropriate flexibility of *the* legal rules, any reference to what can be expected *of* or by a *person* in this Directive 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, to the circumstances of the case and to the usages and practices of the parties *involved*. In particular, the reasonable time for completing a repair or replacement should be objectively ascertained, having regard to the nature of the goods and the lack of conformity.

of legal certainty with an appropriate flexibility of legal rules, any reference to what can be expected *from* or by a *party to a contract* in this Directive 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, to the circumstances of the case and to the usages and practices of the parties *to a contract*. In particular, the reasonable time for completing a repair or replacement should be objectively ascertained, having regard to the nature of the goods and the lack of conformity.

## Amendment 16

### Proposal for a directive Recital 19

#### *Text proposed by the Commission*

(19) In order to provide clarity as to what a consumer can expect from the goods and what the *seller* would be liable for in case of failure to deliver what is expected, it is essential to *fully* harmonise rules for determining the conformity with the contract. Applying a combination of subjective and objective criteria should safeguard legitimate interests of both parties to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract - but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.

#### *Amendment*

(19) In order to provide clarity as to what a consumer can expect from the goods and what the *trader* would be liable for in case of failure to deliver what is expected, it is essential to harmonise rules for determining the conformity with the contract. Applying a combination of subjective and objective criteria should safeguard legitimate interests of both parties to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract - but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.

## Amendment 17

### Proposal for a directive Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

*(19 a) Some of the requirements for conformity of the contract, in particular in relation to quality, durability and appearance, are likely to apply in a different way in relation to the sale of second-hand goods. In many cases, a reasonable consumer's expectations will be lower for second-hand goods than they are for brand new items. Therefore, consumers must be clearer about the intended purpose of such goods when communicating with the trader. In any dispute between trader and consumer on lack of conformity, this factor will often be an important one in determining whether or not the burden of proof has been satisfied in terms of an alleged defect in the goods. However, where a consumer has had the opportunity to examine the goods in person before the conclusion of the contract, Member States might as a derogation and in the light of their particular markets and legal systems, choose to continue to provide that a trader and consumer can expressly agree in writing or on a durable medium a shorter legal guarantee period of not less than one year and, or alternatively, for a shorter period of burden of proof reversal in favour of the consumer of not less than six months.*

## Amendment 18

### Proposal for a directive Recital 19 b (new)

*Text proposed by the Commission*

*Amendment*

*(19 b) In accordance with established practice and specific rules regarding*

*auctioneer's liability, it appears justified for the time being to maintain the possibility for Member States to exclude public auctions of second hand goods where the consumer has had the opportunity to attend the auction in person. Nevertheless, it should be a requirement that consumers are informed by a clear statement in writing or on a durable medium before the auction that these rules do not apply and an express reference given to the relevant statutory or other rights that are applicable. In addition, in line with Directive 2011/83/EU, the use of online platforms for auction purposes which are at the disposal of consumers and traders should not be considered as a public auction within the meaning of this Directive.*

## **Amendment 19**

### **Proposal for a directive**

#### **Recital 20**

*Text proposed by the Commission*

(20) A large number of consumer goods are intended to be installed before they can be usefully used by the consumer. Therefore any lack of conformity resulting from an incorrect installation of the goods should be regarded as a lack of conformity with the contract where the installation was performed by the *seller* or under the *seller's* control, as well as where the goods were installed by the consumer but the incorrect installation is due to incorrect installation instructions.

*Amendment*

(20) A large number of consumer goods are intended to be installed before they can be usefully used by the consumer. Therefore any lack of conformity resulting from an incorrect installation of the goods should be regarded as a lack of conformity with the contract where the installation was performed by the *trader* or under the *trader's* control, as well as where the goods were installed by the consumer but the incorrect installation is due to incorrect installation instructions.

## **Amendment 20**

### **Proposal for a directive**

#### **Recital 21**

*Text proposed by the Commission*

(21) Conformity should cover material defects as well as legal defects. Third party rights and other legal defects might effectively bar the consumer from enjoying the goods in accordance with the contract when the rights' holder rightfully compels the consumer to stop infringing those rights. Therefore the *seller* should ensure that the goods are free from any right of a third party, which precludes the consumer from enjoying the goods in accordance with the *contract*.

*Amendment*

(21) Conformity should cover material defects as well as legal defects. Third party rights and other legal defects might effectively bar the consumer from enjoying the goods in accordance with the contract when the rights' holder rightfully compels the consumer to stop infringing those rights. Therefore the *trader* should ensure that the goods are free *from any restrictions resulting* from any right of a third party, which precludes the consumer from enjoying the goods in accordance with the *subjective and objective conformity criteria*.

**Amendment 21**

**Proposal for a directive  
Recital 23**

*Text proposed by the Commission*

(23) Ensuring longer durability of consumer 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 to increase trust in the functioning of the internal market. For these purposes, product specific Union legislation is the most appropriate approach to introduce 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 followed in such Union product specific legislation. In so far as specific 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

*Amendment*

(23) Ensuring longer durability of consumer 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 to increase trust in the functioning of the internal market. For *those* purposes, product specific Union legislation, *such as Directive 2009/125/EC of the European Parliament and of the Council, or Council Directive 85/374/EEC*, is the most appropriate approach to introduce 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 followed in such Union product specific legislation. In so far as specific durability information is indicated in any



criteria for conformity.

pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the criteria for conformity.

## Amendment 22

### Proposal for a directive Recital 23 a (new)

*Text proposed by the Commission*

*Amendment*

***(23 a) Durability should be defined as the ability of a product to maintain its required performance over a given or long period, under the influence of foreseeable actions, assuming a normal or average rate of usage. The underlying assumption is that the performance of the product will be maintained at an acceptable level, in relation to its initial performance, throughout its working life.***

## Amendment 23

### Proposal for a directive Recital 24

*Text proposed by the Commission*

*Amendment*

(24) Enhancing legal certainty for both consumers and sellers requires a clear indication of the time when the conformity of the goods to the contracts should be assessed. In order to ensure coherence between the present Directive and Directive 2011/83/EU it is appropriate to indicate the time of the passing of risk as the time for assessing the conformity of the goods. However, in cases where the goods need to be installed, that relevant time should be adapted.

(24) Enhancing legal certainty for both consumers and sellers requires a clear indication of the time when the conformity of the goods to the contracts should be assessed, ***subject to national rules on the commencement of prescription periods in exceptional cases***. In order to ensure coherence between the present Directive and Directive 2011/83/EU it is appropriate ***in general*** to indicate the time of the passing of risk as the time for assessing the conformity of the goods. However, in cases where the goods need to be installed, that relevant time should be adapted.

## Amendment 24

### Proposal for a directive

#### Recital 26

*Text proposed by the Commission*

(26) In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first **two years**, in order to benefit from the presumption of lack of conformity, the consumer should only demonstrate that the good is not conforming, without also needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the internal market, a fully harmonised order in which remedies can be exercised should be provided for. ***In particular, the consumer should enjoy a choice between repair or replacement as a first remedy which should help in maintaining the contractual relation and mutual trust. Moreover, enabling consumers to require repair should encourage a sustainable consumption and could contribute to a greater durability of products.***

## Amendment 25

### Proposal for a directive

#### Recital 27

*Text proposed by the Commission*

(27) The consumer's choice between repair and replacement should only be limited where the option chosen would be disproportionate compared to the other option available, ***impossible or unlawful***.

*Amendment*

(26) In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first **year**, in order to benefit from the presumption of lack of conformity, the consumer should only demonstrate that the good is not conforming ***and that the lack of conformity became apparent within a year of delivery of the goods***, without also needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the internal market, a fully harmonised order in which remedies can be exercised should be provided for.

*Amendment*

(27) The consumer's choice between repair and replacement should only be limited where the option chosen would be ***impossible or*** disproportionate compared to the other option available. For instance,

For instance, it might be disproportionate to request the replacement of goods because of a minor scratch where this replacement would create significant costs while, at the same time, the scratch could easily be repaired.

it might be disproportionate to request the replacement of goods because of a minor scratch where this replacement would create significant costs *to the trader* while, at the same time, the scratch could easily be repaired. ***Where, however, only one remedy is available and that remedy imposes costs on the trader that are disproportionate with regard to the value the goods would have if there were no lack of conformity and to the significance of the lack of conformity, it should be possible to limit the consumer's right to reimbursement of the cost of removing the non-conforming goods and of installing the replacement goods to a payment by the trader of a proportionate amount.***

## Amendment 26

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

(28) Where the ***seller*** has not remedied the lack of conformity through repair or replacement without significant inconvenience for the consumer and within ***a reasonable time***, the consumer should be entitled to a price reduction or to terminate the contract. ***In particular any repair or replacement should be successfully accomplished within this reasonable period. What is a reasonable time should be objectively ascertained considering the nature of the goods and the lack of conformity. If upon the lapse of the reasonable period, the seller has failed to successfully remedy the lack of conformity, the consumer should not be obliged to accept any further attempts by the seller in relation to the same lack of conformity.***

#### *Amendment*

(28) Where the ***trader*** has not remedied the lack of conformity through repair or replacement without significant inconvenience for the consumer and within ***one month***, the consumer should be entitled to a price reduction or to terminate the contract.

## Amendment 27

### Proposal for a directive Recital 29

#### *Text proposed by the Commission*

(29) Considering that the right to terminate the contract due to the lack of conformity is an important remedy applicable where repair or replacement are not feasible or have failed, the consumer should *also* enjoy the right to terminate the contract in cases where the lack of conformity is minor. ***This would provide a strong incentive to remedy all cases of a lack of conformity at an early stage.*** In order to make the right to terminate effective for consumers, in situations where the consumer acquires multiple goods, some being an accessory to the main item which the consumer would not have acquired without the main item, and the lack of conformity impacts that main item, the consumer should have the right to terminate the contract also in relation to the accessory elements, even if the latter are in conformity with the contract.

## Amendment 28

### Proposal for a directive Recital 32

#### *Text proposed by the Commission*

(32) In order to increase legal certainty for  *sellers* and overall consumer confidence in cross-border purchases it is necessary to harmonise the period during which the  *seller* is held liable for any lack of conformity which exists at the time when the consumer acquires the physical possession of goods. Considering that the large majority of Member States have foreseen a two-year period when implementing Directive 1999/44 and in practice this is considered by market participants as a reasonable period, this

#### *Amendment*

(29) Considering that the right to terminate the contract due to the lack of conformity is an important remedy applicable where repair or replacement are not feasible or have failed, the consumer should enjoy the right to terminate the contract in cases where the lack of conformity is *not* minor. In order to make the right to terminate effective for consumers, in situations where the consumer acquires multiple goods, some being an accessory to the main item which the consumer would not have acquired without the main item, and the lack of conformity impacts that main item, the consumer should have the right to terminate the contract also in relation to the accessory elements, even if the latter are in conformity with the contract.

#### *Amendment*

(32) In order to increase legal certainty for  *traders* and overall consumer confidence in cross-border purchases it is necessary to harmonise the period during which the  *trader* is held liable for any lack of conformity which exists at the time when the consumer acquires the physical possession of goods. Considering that the large majority of Member States have foreseen a two-year period when implementing Directive 1999/44 and in practice this is considered by market participants as a reasonable period, this

period should be maintained.

period should be maintained. *However, in order to preserve the level of consumer protection that consumers have acquired over the years as a consequence of the implementation of Directive 1999/44 EC, Member States may maintain longer periods during which the trader is held liable in their national law that are already in force at the date of entry into force of this Directive. Moreover, during a period of repair or replacement of goods, the period during which the trader is held liable should be suspended. Also, it should start running anew for replaced components and for the goods the consumer receives as replacement for the faulty goods.*

## **Amendment 29**

### **Proposal for a directive Recital 33**

*Text proposed by the Commission*

*Amendment*

*(33) In order to ensure higher awareness of consumers and easier enforcement of the Union rules on consumer's rights in relation to non-conforming goods, this Directive should align the period of time during which the burden of proof is reversed in favour of the consumer with the period during which the seller is held liable for any lack of conformity.*

*deleted*

## **Amendment 30**

### **Proposal for a directive Recital 34**

*Text proposed by the Commission*

*Amendment*

(34) In order to ensure transparency, certain transparency requirements for commercial guarantees should be provided. Moreover in order to improve legal

(34) In order to ensure transparency, certain transparency requirements for commercial guarantees should be provided. Moreover in order to improve legal

certainty and to avoid that consumers are misled, this Directive should provide that where commercial guarantee conditions contained in advertisements or pre-contractual information 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 the way it should be made available to consumers. Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, 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.

certainty and to avoid that consumers are misled, this Directive should provide that where commercial guarantee conditions contained in advertisements or pre-contractual information 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 the way it should be made available to consumers. Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, 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. ***Advertisements should be understood to include affirmations contained on the website or social media pages linked to the trader.***

## Amendment 31

### Proposal for a directive Recital 35

#### *Text proposed by the Commission*

(35) 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 ***it is justified that the seller*** should be able to pursue remedies against the responsible person ***earlier*** in the chain of transactions. ***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, should be provided by the Member States.

#### *Amendment*

(35) Considering that the ***trader*** is liable towards the consumer for any lack of conformity of the goods resulting from an act or omission of the ***trader*** or a third party, ***the trader*** should be able to pursue remedies against the responsible person in ***previous links of*** the chain of transactions. The details for exercising that right, in particular against whom and how such remedies are to be pursued, should be provided by the Member States. ***Member States should ensure that national law adequately protects the trader when determining the person against whom the trader is able to pursue remedies, the time periods and the relevant actions and conditions of exercise.***

## Amendment 32

### Proposal for a directive Recital 36

*Text proposed by the Commission*

(36) 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.

*Amendment*

(36) 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. ***Those complaints or proceedings should be sufficient as a deterrent.***

## Amendment 33

### Proposal for a directive Recital 42

*Text proposed by the Commission*

(42) 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 online and other distance sales of goods*** cannot be sufficiently achieved by the Member States but can rather 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.

*Amendment*

(42) Since the objectives of this Directive, namely to ***improve the conditions for the establishment and*** the functioning of the internal market, ***to ensure a high level of consumer protection and confidence and to help provide a level playing field for traders*** cannot be sufficiently achieved by the Member States but can rather 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.

## Amendment 34

### Proposal for a directive Recital 42 a (new)

*Text proposed by the Commission*

*Amendment*

***(42 a) It is appropriate for the Commission to review this Directive five years after its entry into force. In its review, the Commission should pay particular attention to the provisions of this Directive regarding remedies and the burden of proof – also with respect to second-hand goods as well as goods sold at public auctions –, the commercial guarantee and producer’s liability and the relationship with the Directive on certain aspects concerning contracts for the supply of digital content and digital services. That review could lead to a Commission proposal to amend this Directive.***

## Amendment 35

### Proposal for a directive Article 1 – title

*Text proposed by the Commission*

*Amendment*

Subject matter and *scope*

Subject matter and *objectives*

## Amendment 36

### Proposal for a directive Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. This Directive *lays* down certain requirements concerning sales contracts concluded between the *seller* and the consumer, in particular rules on conformity of goods, remedies in case of non-conformity and the modalities for the exercise of those remedies.

1. ***The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, including by improving consumer confidence and helping to create a level playing field for traders, by laying down certain requirements concerning sales***



contracts concluded between the *trader* and the consumer, in particular rules on conformity of goods *with the contract*, remedies in case of non-conformity and the modalities for the exercise of those remedies.

#### Amendment 37

##### Proposal for a directive Article 1 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2.** *This Directive shall not apply to contracts for the provision of services. However, in case of sales contracts providing both for the sale of goods and the provision of services, this Directive shall apply to the part relating to the sale of goods.*

*deleted*

#### Amendment 38

##### Proposal for a directive Article 1 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3.** *This Directive shall not apply to any tangible medium incorporating digital content where the tangible medium has been used exclusively as a carrier for the supply of the digital content to the consumer.*

*deleted*

#### Amendment 39

##### Proposal for a directive Article 1 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4.** *Member States may exclude from the scope of this Directive contracts for the sale of second-hand goods sold at public auction where consumers have the*

*deleted*

*opportunity of attending the sale in person.*

#### **Amendment 40**

##### **Proposal for a directive Article 1 – paragraph 5**

*Text proposed by the Commission*

**5. In so far as not regulated therein, this Directive shall not affect national general contract laws such as rules on formation, the validity or effects of contracts, including the consequences of the termination of a contract.**

*Amendment*

**deleted**

#### **Amendment 41**

##### **Proposal for a directive Article 2 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) ‘sales contract’ means any contract under which the *seller* transfers or undertakes to transfer the ownership of goods, including goods which are to be manufactured or produced, to the consumer and the consumer pays or undertakes to pay the price thereof;

*Amendment*

(a) ‘sales contract’ means any contract under which the *trader* transfers or undertakes to transfer the ownership of goods, including goods which are to be manufactured or produced, to the consumer and the consumer pays or undertakes to pay the price thereof, ***including any contract having as its object both goods and services;***

#### **Amendment 42**

##### **Proposal for a directive Article 2 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) ‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

*Amendment*

(b) ‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession; ***where the contract is concluded for a purpose which is partly***

*within and partly outside the natural person's trade, business, craft or profession or an equivalent purpose and that purpose is so limited as not to be predominant in the overall context of the contract, that person shall also be considered to be a consumer;*

#### Amendment 43

##### Proposal for a directive

##### Article 2 – paragraph 1 – point c

*Text proposed by the Commission*

(c) 'seller' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;

*Amendment*

(c) 'trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, **or as an intermediary for a natural person**, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive **in relation to contracts covered by this Directive**;

#### Amendment 44

##### Proposal for a directive

##### Article 2 – paragraph 1 – point d

*Text proposed by the Commission*

(d) 'producer' means the manufacturer of goods, the importer of goods into the Union or any person purporting to be a producer by placing **their** name, trade mark or other distinctive sign on the goods;

*Amendment*

(d) 'producer' means the manufacturer of goods, the importer of goods into the **territory of the Union, the producer of any raw material or the manufacturer of a component part**, or any person purporting to be a producer by placing **his** name, trade mark or other distinctive sign on the goods;

#### Amendment 45

##### Proposal for a directive

##### Article 2 – paragraph 1 – point e a (new)

*Text proposed by the Commission*

*Amendment*

*(e a) 'digital content' means data which is produced and supplied in digital form;*

#### **Amendment 46**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point e b (new)**

*Text proposed by the Commission*

*Amendment*

*(e b) 'digital service' means a service allowing the consumer the creation, processing of or access to data in digital form, or storage of data in digital form, where such data is uploaded or created by the consumer;*

#### **Amendment 47**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point e c (new)**

*Text proposed by the Commission*

*Amendment*

*(e c) 'embedded digital content or digital service' means digital content or a digital service pre-installed in a good;*

#### **Amendment 48**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point e d (new)**

*Text proposed by the Commission*

*Amendment*

*(e d) 'durable medium' means any instrument which enables the consumer or the trader to store information addressed personally to him in a way 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;*

## **Amendment 49**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) ‘commercial guarantee’ means any undertaking by the *seller* or a producer (the guarantor) to the consumer, in addition to his 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;

*Amendment*

(f) ‘commercial guarantee’ means any undertaking by the *trader* or a producer (the guarantor) to the consumer, in addition to his 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;

## **Amendment 50**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(f a) ‘durability’ means the ability of a product to maintain its required performance over a given or long period, assuming a normal or average rate of usage, under the influence of foreseeable actions;*

## **Amendment 51**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point g**

*Text proposed by the Commission*

(g) ‘contract’ means an agreement intended to give rise to obligations or other legal effects;

*Amendment*

*deleted*

## Amendment 52

### Proposal for a directive

#### Article 2 – paragraph 1 – point i

*Text proposed by the Commission*

(i) ‘free of charge’ means free of the **necessary** costs incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials.

*Amendment*

(i) ‘free of charge’ means free of the **usual** costs incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials.

## Amendment 53

### Proposal for a directive

#### Article 2 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 2 a*

##### *Scope*

- 1. This Directive applies to any sales contract concluded between a consumer and a trader.**
- 2. This Directive does not apply to contracts for the provision of services. However, in the case of contracts providing both for the sale of goods and for the provision of services, this Directive shall apply to the part thereof relating to the sale of goods.**
- 3. This Directive does not apply to embedded digital content or embedded digital services.**
- 4. This Directive does not apply to sales of live animals between trader and consumer.**
- 5. Member States may exclude from the scope of this Directive contracts for the sale of second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person, and where they are informed by a clear statement in writing or on a durable medium before the auction that rights deriving from this Directive do not apply,**

*and also informed in that statement about relevant rights that are applicable. In addition, the use of online platforms for auction purposes which are at the disposal of consumers and traders shall not be considered as a public auction within the meaning of this Directive.*

*6. 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 prevail and shall apply to those specific sectors.*

*7. This Directive shall not affect national general contract laws such as rules on limitation or prescription periods, the formation, validity or effects of contracts, including the consequences of the termination of a contract, in so far as they are not regulated in this Directive.*

## Amendment 54

### Proposal for a directive Article 3

*Text proposed by the Commission*

*Amendment*

Article 3

Article 3

Level of harmonisation

Level of harmonisation

Member States shall not maintain or introduce provisions diverging from those laid down in this Directive *including more or less stringent* provisions to ensure a *different* level of consumer protection.

*1. Member States may maintain or introduce in their national law more stringent provisions, compatible with the Treaty in the field covered by this Directive, in order to ensure a higher level of consumer protection.*

*2. Notwithstanding paragraph 1, Member States shall not maintain or introduce in their national law provisions diverging from those laid down in Articles 3a, 4, 5, 6, 7, 8, 8a, 9, 9a, 10, 12, 13, 15 and 18, unless otherwise provided for in this Directive.*

3. *Notwithstanding paragraph 2, Member States may maintain or introduce in their national laws provisions on remedies for ‘hidden defects’ or on a short-term right to reject to ensure a higher level of consumer protection. In the case of Article 8(2a), Member States may maintain more stringent provisions in their national law that are already in force at the date of entry into force of this Directive.*

## **Amendment 55**

### **Proposal for a directive Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 3 a*

#### *Conformity of goods*

*The trader shall supply to the consumer goods which shall meet the requirements of Articles 4, 5, 6 and 7, where applicable.*

## **Amendment 56**

### **Proposal for a directive Article 4 – title**

*Text proposed by the Commission*

*Amendment*

Conformity *with the contract*

*Subjective requirements for* conformity

## **Amendment 57**

### **Proposal for a directive Article 4 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. The seller shall ensure that, in order to conform with the contract, the goods shall, where *relevant*:

1. The seller shall ensure that, in order to conform with the contract, the goods shall, *in particular*, where *applicable*:



## Amendment 58

### Proposal for a directive

#### Article 4 – paragraph 1 – point a

*Text proposed by the Commission*

(a) be of the quantity, quality and description required by the contract, **which includes that** where **the seller shows** a sample or a model to the consumer, the goods shall possess the quality of and correspond to the description of **this** sample or model;

*Amendment*

(a) be of the quantity, quality and description required by the contract. **Where a contract is concluded by reference to** a sample or a model **of the goods that is seen or examined by** to the consumer, the goods shall possess the quality of and correspond to the description of **that** sample or model, **except to the extent that any differences between the sample or model and the goods had been brought to the attention of the consumer before the contract is concluded;**

## Amendment 59

### Proposal for a directive

#### Article 4 – paragraph 1 – point b

*Text proposed by the Commission*

(b) be fit for any particular purpose for which the consumer requires them and which the consumer made known to the **seller** at the time of the conclusion of the contract and which the **seller** has accepted; **and**

*Amendment*

(b) be fit for any particular purpose for which the consumer requires them and which the consumer made known to the **trader at the latest** at the time of the conclusion of the contract and which the **trader** has accepted, **or that is a reasonable purpose in the circumstances;**

## Amendment 60

### Proposal for a directive

#### Article 4 – paragraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

**(b a) be supplied along with all the accessories, any instructions, including on installation, and customer assistance as stipulated by the contract; and**

## Amendment 61

### Proposal for a directive Article 4 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. *In order to conform with the contract, the goods shall also meet the requirements of Articles 5, 6 and 7.*

*deleted*

## Amendment 62

### Proposal for a directive Article 4 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. *Any agreement excluding, derogating from or varying the effects of Articles 5 and 6 to the detriment of the consumer shall be valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods and the consumer has expressly accepted this specific condition when concluding the contract.*

*deleted*

## Amendment 63

### Proposal for a directive Article 5 – title

*Text proposed by the Commission*

*Amendment*

Requirements for conformity *of the goods*

*Objective* requirements for conformity

## Amendment 64

### Proposal for a directive Article 5 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

The goods shall, where *relevant*:

1. *In addition to complying with any conformity requirements stipulated in the contract, the goods shall, where applicable:*

## Amendment 65

### Proposal for a directive

#### Article 5 – paragraph 1 – point a

*Text proposed by the Commission*

(a) be fit for all the purposes for which goods of the same *description* would *ordinarily* be used;

*Amendment*

(a) be fit for all the purposes for which goods of the same *type* would *normally* be used, *taking into account, where applicable, any existing national and Union laws, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct*;

## Amendment 66

### Proposal for a directive

#### Article 5 – paragraph 1 – point b

*Text proposed by the Commission*

(b) be delivered along with *such* accessories including packaging, installation instructions or other instructions as the consumer may expect to receive; and

*Amendment*

(b) be delivered along with *any* accessories, including packaging, installation instructions or *any* other instructions, as the consumer may *reasonably* expect to receive; and

## Amendment 67

### Proposal for a directive

#### Article 5 – paragraph 1 – point c – introductory part

*Text proposed by the Commission*

(c) possess qualities and performance *capabilities* which are *normal* in goods of the same type and which the consumer may 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 earlier links of the chain of transactions, including* the producer, unless the *seller shows* that:

*Amendment*

(c) *be of the quantity and* possess qualities and performance *features, including in relation to appearance, durability, functionality and security,* which are *satisfactory and usually found* in 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 *trader or* the producer, *particularly in advertising or on labelling,*

unless the *trader can show* that:

## Amendment 68

### Proposal for a directive

#### Article 5 – paragraph 1 – point c – point i

*Text proposed by the Commission*

(i) the *seller* was not, and could not reasonably have been, aware of the statement in question;

*Amendment*

(i) the *trader* was not, and could not reasonably have been, aware of the statement in question;

## Amendment 69

### Proposal for a directive

#### Article 5 – paragraph 1 – point c – point ii

*Text proposed by the Commission*

(ii) by the time of conclusion of the contract the statement had been corrected;  
or

*Amendment*

(ii) by the time of conclusion of the contract the statement had been corrected ***and the consumer could not reasonably have been unaware of that correction***; or

## Amendment 70

### Proposal for a directive

#### Article 5 – paragraph 1 – point c – point iii

*Text proposed by the Commission*

(iii) the decision to *buy* the goods could not have been influenced by the statement.

*Amendment*

(iii) the decision to *acquire* the goods could not have been influenced by the statement.

## Amendment 71

### Proposal for a directive

#### Article 5 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. There shall be no lack of conformity within the meaning of paragraph 1 if, at the time of the***

*conclusion of the contract, the consumer was specifically informed that a particular characteristic of the goods was deviating from the conformity requirements stipulated in paragraph 1 and the consumer has expressly and separately accepted this deviation when concluding the contract.*

## Amendment 72

### Proposal for a directive Article 6 – paragraph 1 – point a

*Text proposed by the Commission*

(a) the goods were installed by the *seller* or under the *seller's* responsibility;  
or

*Amendment*

(a) the goods were installed by the *trader* or under the *trader's* responsibility;  
or

## Amendment 73

### Proposal for a directive Article 7 – paragraph 1

*Text proposed by the Commission*

At the time relevant for establishing the conformity with the contract as determined by Article 8, the goods shall be free from any right of a third party, *including based on* intellectual property, *so that* the goods *can be used* in accordance with *the contract*.

*Amendment*

At the time relevant for establishing the conformity with the contract as determined by Article 8, the goods shall be free *of any restriction resulting* from any right of a third party, *in particular* intellectual property *rights, which impedes the use of* the goods in accordance with *Articles 4 and 5*.

## Amendment 74

### Proposal for a directive Article 8 – title

*Text proposed by the Commission*

*Relevant time for establishing conformity with the contract*

*Amendment*

*Liability of the trader*

## Amendment 75

### Proposal for a directive Article 8 – paragraph 1

*Text proposed by the Commission*

1. The **seller** shall be liable for any lack of conformity **with the contract** which exists at the time when:

- (a) the consumer or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods; or
- (b) the goods are handed over to the carrier chosen by the consumer, where that carrier was not proposed by the seller or where the seller proposes no means of carriage.

*Amendment*

1. The **trader** shall be liable for any lack of conformity which exists at the time when:

- (a) the consumer or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods; or
- (b) the goods are handed over to the carrier chosen by the consumer, where that carrier was not proposed by the seller or where the seller proposes no means of carriage, **without prejudice to the rights of the consumer against the carrier, and becomes apparent within two years from the time established above, without prejudice to Article 3(3).**

## Amendment 76

### Proposal for a directive Article 8 – paragraph 2

*Text proposed by the Commission*

2. In cases where the goods were installed by the **seller** or under the **seller's** responsibility, the time when the installation is complete shall be considered as the time when the consumer has acquired **the** physical possession of the goods. In a case where the goods were intended to be installed by the consumer, the time when the consumer had reasonable time for the installation but in any case not later than 30 days after the time indicated in paragraph 1 shall be considered as the time when the consumer has acquired **the** physical possession of the goods.

*Amendment*

2. In cases where the goods were installed by the **trader** or under the **trader's** responsibility **pursuant to point (a) of Article 6**, the time when the installation is complete shall be considered as the time when the consumer has acquired physical possession of the goods. In a case where the goods were intended to be installed by the consumer **pursuant to point (b) of Article 6**, the time when the consumer had reasonable time for the installation but in any case not later than 30 days after the time indicated in paragraph 1 shall be considered as the time when the consumer has acquired physical possession of the

goods.

#### **Amendment 77**

##### **Proposal for a directive**

##### **Article 8 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2 a. In respect of the period laid down in paragraph 1, Member States may maintain more stringent provisions in their national law that are already in force on ... [insert the date of entry into force of this Directive].**

#### **Amendment 78**

##### **Proposal for a directive**

##### **Article 8 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2 b. In the case of the sale of second-hand goods where a consumer has had the opportunity to examine the goods in person before the conclusion of the contract, Member States may maintain provisions that allow for a shorter period than the one set out in paragraph 1, where the trader and consumer concerned have expressly agreed in writing or on a durable medium to such a shorter period, which shall not be less than one year.**

#### **Amendment 79**

##### **Proposal for a directive**

##### **Article 8 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Any lack of conformity with the contract which becomes apparent within two years from the time indicated in**

**deleted**

*paragraphs 1 and 2 is presumed to have existed at the time indicated in paragraphs 1 and 2 unless this is incompatible with the nature of the goods or with the nature of the lack of conformity.*

#### **Amendment 80**

##### **Proposal for a directive Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

##### *Article 8 a*

##### *Burden of proof*

*1. Any lack of conformity with the contract which becomes apparent within one year from the relevant time for establishing conformity with the contract pursuant to paragraphs 1 and 2 of Article 8 shall be presumed to have existed at that time unless this is incompatible with the nature of the goods or with the nature of the lack of conformity.*

*2. In the case of the sale of second-hand goods where a consumer has had the opportunity to examine the goods in person before the conclusion of the contract, Member States may maintain provisions that allow for a shorter period than the one set out in paragraph 1, where the trader and consumer concerned have expressly agreed in writing or on a durable medium to such a shorter period, which shall not be less than six months.*

#### **Amendment 81**

##### **Proposal for a directive Article 9 – title**

*Text proposed by the Commission*

*Amendment*

*Consumer's remedies for the lack of conformity with the contract*

*Remedies for the lack of conformity with the contract*



## Amendment 82

### Proposal for a directive

#### Article 9 – paragraph 1

*Text proposed by the Commission*

1. In the case of a lack of conformity with the contract, the consumer shall be entitled to have the goods brought into conformity **by the seller**, free of charge, by repair or replacement, **in accordance with Article 11**.

*Amendment*

1. In the case of a lack of conformity with the contract, the consumer shall be entitled to have the goods brought into conformity, free of charge, by **means of** repair or replacement **or to receive a proportionate reduction in the price, or to terminate the contract under the conditions set out in this Article**.

## Amendment 83

### Proposal for a directive

#### Article 9 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1 a. The consumer shall have a free choice between repair and replacement, unless the option chosen would be impossible or would impose costs on the trader that would be disproportionate, taking into account the circumstances of the case 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 completed without significant inconvenience to the consumer.**

**In particular, the remedy of replacement shall be presumed disproportionate for the trader if the costs for repair would be lower than or equal to the costs for the alternative remedy of replacement.**

## Amendment 84

### Proposal for a directive Article 9 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***1 b. During the period of repair and replacement of a good, the period referred to in Article 8 shall be suspended until the consumer receives the good replaced or repaired.***

## Amendment 85

### Proposal for a directive Article 9 – paragraph 1 c (new)

*Text proposed by the Commission*

*Amendment*

***1 c. Where as part of the repair of a good, a component is replaced with a new one, or where a faulty good has been replaced with a new good, the trader shall be liable for any new lack of conformity in the replaced component or the replaced good which becomes apparent within two years from reception of the repaired or replaced good, in accordance with the conditions laid down in Articles 8 and 8a.***

## Amendment 86

### Proposal for a directive Article 9 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***2. A repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.***

***deleted***

## Amendment 87

### Proposal for a directive

#### Article 9 – paragraph 3 – introductory part

*Text proposed by the Commission*

3. The consumer shall be entitled to a proportionate reduction of the price in accordance with Article 12 or to terminate the contract in accordance with Article 13 *where*:

*Amendment*

3. ***Without prejudice to Article 3(3)***, the consumer shall be entitled to a proportionate reduction of the price in accordance with Article 12 or to terminate the contract in accordance with Article 13 ***in any of the following cases***:

## Amendment 88

### Proposal for a directive

#### Article 9 – paragraph 3 – point a

*Text proposed by the Commission*

(a) a repair or replacement are impossible or ***unlawful***;

*Amendment*

(a) a repair or replacement are impossible or ***disproportionate in accordance with paragraph 1a***;

## Amendment 89

### Proposal for a directive

#### Article 9 – paragraph 3 – point b

*Text proposed by the Commission*

(b) the ***seller*** has not completed repair or replacement ***within a reasonable time***;

*Amendment*

(b) the ***trader*** has not completed repair or replacement ***in accordance with Articles 9a and 10 respectively***;

## Amendment 90

### Proposal for a directive

#### Article 9 – paragraph 3 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(b a) a lack of conformity appears despite the trader's attempt to bring the goods into conformity,***

## Amendment 91

### Proposal for a directive Article 9 – paragraph 3 – point c

*Text proposed by the Commission*

(c) *a repair or replacement would cause significant inconvenience to the consumer; or*

*Amendment*

*deleted*

## Amendment 92

### Proposal for a directive Article 9 – paragraph 3 – point c a (new)

*Text proposed by the Commission*

*(c a) the lack of conformity is of such a serious nature as to justify the immediate price reduction or termination of the contract; or*

*Amendment*

## Amendment 93

### Proposal for a directive Article 9 – paragraph 3 – point d

*Text proposed by the Commission*

(d) the *seller* has declared, or it is *equally* clear from the circumstances, that the *seller* will not bring the goods in conformity *with the contract* within a reasonable time.

*Amendment*

(d) the *trader* has declared, or it is clear from the circumstances, that the *trader* will not bring the goods in conformity *by repair or replacement* within a reasonable time *or without significant inconvenience for the consumer*.

## Amendment 94

### Proposal for a directive Article 9 – paragraph 4

*Text proposed by the Commission*

4. The consumer shall be entitled to withhold the payment of any outstanding

*Amendment*

4. The consumer shall be entitled to withhold the payment of any outstanding

part of the price, until the *seller* has brought the goods into conformity with the contract.

part of the price, until the *trader* has brought the goods into conformity with the contract.

## Amendment 95

### Proposal for a directive

#### Article 9 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 9 a*

##### *Repair of goods*

*1. A repair pursuant to paragraph 1a of Article 9 shall be completed within one month and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods. The trader shall bear the risk of destruction or additional damage in the goods during the repair period or the transportation back to the consumer.*

*2. The consumer shall be entitled to withhold the payment of any outstanding part of the price until the trader has brought the goods into conformity with the contract by repair.*

## Amendment 96

### Proposal for a directive

#### Article 10 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Where the *seller* remedies the lack of conformity with the contract by replacement, the *seller* shall take back the replaced goods at the *seller's* expense unless the parties have agreed otherwise after the lack of conformity with the contract has been brought to the *seller's* attention by the consumer.

1. Where the *trader* remedies the lack of conformity with the contract by replacement, the *trader* shall take back the replaced goods at the *trader's* expense unless the parties have agreed otherwise after the lack of conformity with the contract has been brought to the *trader's* attention by the consumer.

## **Amendment 97**

### **Proposal for a directive**

#### **Article 10 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3 a.** *A replacement shall be completed within one month from the moment that the trader has acquired physical possession of the goods and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.*

## **Amendment 98**

### **Proposal for a directive**

#### **Article 10 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

**3 b.** *The consumer shall be entitled to withhold the payment of any outstanding part of the price, until the trader has brought the goods into conformity with the contract by replacement.*

## **Amendment 99**

### **Proposal for a directive**

#### **Article 11**

*Text proposed by the Commission*

*Amendment*

#### **Article 11**

**deleted**

#### **Consumer's choice between repair and replacement**

*The consumer may choose between repair and replacement unless the option chosen would be impossible, unlawful or, compared to the other option, 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 with the contract;*

(b) *the significance of the lack of conformity with the contract;*

(c) *whether the alternative remedy could be completed without significant inconvenience to the consumer.*

## Amendment 100

### Proposal for a directive Article 12 – paragraph 1

*Text proposed by the Commission*

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 in conformity *with the contract*.

*Amendment*

*The consumer shall exercise the right to a proportionate reduction of the price by means of an unequivocal statement setting out his decision, notified to the trader.* 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 in conformity.

## Amendment 101

### Proposal for a directive Article 13 – title

*Text proposed by the Commission*

*The consumer's right to terminate* the contract

*Amendment*

*Termination of the contract for lack of conformity*

## Amendment 102

### Proposal for a directive Article 13 – paragraph 1

*Text proposed by the Commission*

1. The consumer shall exercise the right to terminate the contract *by notice to the seller given by any* means.

*Amendment*

1. The consumer shall exercise the right to terminate the contract *by means of an unequivocal statement setting out his decision to terminate the contract, notified*

*to the trader. Where contracts are concluded by digital means, the trader shall provide the consumer with an easy digital means to terminate the contract. The termination shall become effective 14 days after the notification, or on a later date indicated by the consumer.*

## **Amendment 103**

### **Proposal for a directive Article 13 – paragraph 2**

*Text proposed by the Commission*

2. Where the lack of conformity with the contract relates to only some of the goods delivered under the contract and there is a ground for termination of a contract pursuant to Article 9, the consumer may terminate the contract only in relation to those goods and any other goods which the consumer acquired as an accessory to the non-conforming goods.

*Amendment*

2. Where the lack of conformity with the contract relates to only some of the goods delivered under the contract ***which are separable from the other goods*** and there is a ground for termination of a contract pursuant to Article 9 ***in relation to those non-conforming goods***, the consumer may terminate the contract only in relation to those ***separable*** goods and any other goods, which the consumer acquired as an accessory to ***or in conjunction with*** the non-conforming goods, ***unless the consumer cannot be expected to accept performance of the part of the contract in relation to the goods which are in conformity.***

## **Amendment 104**

### **Proposal for a directive Article 13 – paragraph 3 – point -a (new)**

*Text proposed by the Commission*

*Amendment*

***(-a) in the first place, the consumer shall return, at the trader's expense, to the trader, the goods without undue delay and in any event not later than 14 days from the time when the termination becomes effective;***



## Amendment 105

### Proposal for a directive Article 13 – paragraph 3 – point a

*Text proposed by the Commission*

(a) *the seller* shall reimburse to the consumer *the price paid* without undue delay and in any event not later than 14 days from receipt of the *notice and* shall *bear the cost* of the reimbursement;

*Amendment*

(a) *in the second place, the trader* shall reimburse to the consumer *all sums paid under the contract* without undue delay and in any event not later than 14 days from receipt of the *returned goods*. *The trader shall carry out the reimbursement using the same means of payment as the consumer used to pay for the goods, unless the consumer expressly agrees otherwise. The trader shall not impose any fee on the consumer in respect of the reimbursement;*

## Amendment 106

### Proposal for a directive Article 13 – paragraph 3 – point b

*Text proposed by the Commission*

(b) *the consumer shall return, at the seller's expense, to the seller the goods without undue delay and in any event not later than 14 days from sending the notice of termination;*

*Amendment*

*deleted*

## Amendment 107

### Proposal for a directive Article 13 – paragraph 3 – point c

*Text proposed by the Commission*

(c) where the goods cannot be returned because of destruction or loss, the consumer shall pay to the *seller* the monetary value which the non-conforming goods would have had at the date when the return was to be made, if they had been kept by the consumer without destruction

*Amendment*

(c) where the goods cannot be returned because of destruction or loss, the consumer shall pay to the *trader* the monetary value which the non-conforming goods would have had at the date when the return was to be made, if they had been kept by the consumer without destruction

or loss until that date, unless the destruction or loss has been caused by a lack of conformity of the goods with the contract; and

or loss until that date, unless the destruction or loss has been caused by a lack of conformity of the goods with the contract; and

## **Amendment 108**

### **Proposal for a directive Article 13 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 13a**

##### **Right to damages**

**1. The supplier shall be liable to the consumer for any financial loss arising from lack of conformity with the contract or a failure to supply the goods. Damages shall, as far as possible, place the consumer in the position in which he would have been had the goods been in conformity with the contract.**

**The Member States shall lay down detailed rules for the exercise of the right to damages.**

## **Amendment 109**

### **Proposal for a directive Article 14**

*Text proposed by the Commission*

*Amendment*

#### **Article 14**

**deleted**

##### **Time limits**

**The consumer shall be entitled to a remedy for the a lack of conformity with the contract of the goods where the lack of conformity becomes apparent within two years as from the relevant time for establishing conformity. If, under national legislation, the rights laid down in Article 9 are subject to a limitation period, that period shall not be shorter than two years as from the relevant time**

*for establishing conformity with the contract.*

#### **Amendment 110**

##### **Proposal for a directive Article 15 – title**

*Text proposed by the Commission*

Commercial guarantees

*Amendment*

Commercial guarantees ***and liability of producers***

#### **Amendment 111**

##### **Proposal for a directive Article 15 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. The guarantee statement shall be made available on a durable medium and drafted in plain, intelligible language. ***It*** shall include the following:

*Amendment*

2. The guarantee statement shall be made available on a durable medium and ***in writing*** drafted in plain, intelligible language. ***On request by the consumer, it shall be made available on paper, free of charge. The guarantee statement*** shall include the following:

#### **Amendment 112**

##### **Proposal for a directive Article 15 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) a clear statement of the legal rights of the consumer as provided for in this Directive and a clear statement that those rights are not affected by the commercial guarantee; and

*Amendment*

(a) a clear statement of the legal rights of the consumer as provided for in this Directive and a clear statement that those rights are ***to be fulfilled without further conditions and*** not affected by the commercial guarantee; and

#### **Amendment 113**

##### **Proposal for a directive Article 15 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3.** *For the purpose of this Article, ‘durable medium’ means any instrument which enables the parties to store information addressed personally to them in a way 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.*

*deleted*

#### **Amendment 114**

##### **Proposal for a directive Article 15 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5 a.** *Without prejudice to the rights in this Article or any other applicable provisions of Union or national law, a producer giving a guarantee of durability for a period of two years or more in respect of certain goods shall, subject also to the conditions and application of Articles 3, 8 and 8a and related provisions:*

*(a) be liable directly to the consumer to repair or replace those goods for non-conformity;*

*(b) repair or replace those goods, within a reasonable time, and in any event within one month from the moment he has acquired physical possession of or access to the goods for the purpose of repair or replacement.*

#### **Amendment 115**

##### **Proposal for a directive Article 15 – paragraph 5 b (new)**

*Text proposed by the Commission*

*Amendment*

**5 b.** *The producer of goods falling within the scope of paragraph 5a shall*

*provide clear and comprehensible written information about the rights laid down therein, in material or packaging accompanying goods, including the statement that the rights of the consumer as regards the liability of traders from whom the goods were purchased are unaffected;*

## **Amendment 116**

### **Proposal for a directive Article 16 – paragraph 1**

*Text proposed by the Commission*

Where the *seller* is liable to the consumer because of a lack of conformity with the contract resulting from an act or omission by a person in *earlier* 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.

*Amendment*

Where the *trader* is liable to the consumer because of a lack of conformity with the contract 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 transactions. The person against whom the *trader* may pursue remedies and the relevant actions and conditions of exercise, shall be determined by national law. *However, the trader shall be entitled to pursue remedies for a period no shorter than the one referred to in Article 8.*

## **Amendment 117**

### **Proposal for a directive Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 16 a*

##### *Information on spare parts*

*Member States shall encourage traders and producers to inform the consumer in a clear and intelligible manner of the existence of any spare parts or accessories available on the market and necessary for the use of the goods sold.*

## Amendment 118

### Proposal for a directive Article 17 – title

*Text proposed by the Commission*

Enforcement

*Amendment*

Enforcement *and information*

## Amendment 119

### Proposal for a directive Article 17 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

*Amendment*

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive *taking into account in particular of the need for consumers to be informed about, and enabled to enforce, their rights in practice.*

## Amendment 120

### Proposal for a directive Article 17 – paragraph 2 – introductory part

*Text proposed by the Commission*

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:

*Amendment*

2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, *in accordance with justified and appropriate criteria* 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. *Such bodies shall include but shall not be limited to:*

## Amendment 121

### Proposal for a directive

## Article 18 – paragraph 1

*Text proposed by the Commission*

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 with the contract of the goods is brought to the *seller's* attention by the consumer shall not be binding on the consumer ***unless parties to the contract exclude, derogate from or vary the effects of the requirements of Articles 5 and 6 in accordance with Article 4 (3).***

## Amendment 122

### Proposal for a directive Article 20 a (new)

*Text proposed by the Commission*

*Amendment*

***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 with the contract of the goods is brought to the *trader's* attention by the consumer shall not be binding on the consumer.

*Amendment*

### *Article 20 a*

#### *Review*

***The Commission shall, not later than on [the date of five years after entry into force] review the application of this Directive and submit a report to the European Parliament and the Council. This process shall include meaningful and detailed consultation and involvement of the Member States and of consumer, legal and business organisations at Union level. The report shall include, in particular, an evaluation of the provisions of this Directive regarding remedies and the burden of proof – also with respect to second-hand goods as well as goods sold at public auctions –, the commercial guarantee and producer's liability and the relationship with the Directive on certain aspects concerning contracts for the supply of digital content and digital services. The report shall be accompanied, where appropriate, by legislative proposals.***





## EXPLANATORY STATEMENT

### I. Introduction

In order to eliminate the existing legal obstacles to cross-border e-commerce – a sector whose potential is largely untapped –, the European Commission released on 9 December 2015 its proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods (hereafter the Goods Proposal). The Rapporteur welcomes this new attempt to further harmonize European consumer contract law, as this will not only encourage both consumers and sellers to further engage into cross-border sales, but will also allow all stakeholders to reap the benefits of a true (digital) single market.

In the wake of a wide and open consultation with many interested parties – representing both consumer, business, as well as European and national interests –, the Rapporteur draws the following, albeit preliminary, major lessons:

1. **Full harmonization** is key to eliminate the remaining legal obstacles, hindering the completion of the (digital) single market;
2. In light of the already complex and multi-layered consumer acquis, **a single set of rules for distance and face-to-face sales** would considerably lighten and simplify European consumer contract law;
3. There is no clear sign that the current consumer rights, as applied by most EU Member States, are truly ineffective, both in terms of breadth and depth, justifying a reinforcement. This is why the Rapporteur introduced **no major changes** in this respect.

It is in light of the above that the Rapporteur drafted the present report.

Before however outlining his main amendments to the Commission's proposal, it appears sensible to attract the readership's attention to why a full harmonization approach is much needed.

### II. A Plea for Full Harmonization

The Commission's goods proposal draws on the familiar insistence that the existing disparities in consumer sales legislation – due to minimum harmonisation – still create important internal market barriers, adversely affecting businesses and consumers. In this context, the Commission proposes to fully harmonise, albeit in a targeted manner, the key contractual elements for business-to-consumer sales of goods. This new legal framework is not only set to increase confidence amongst consumers – who would be further incentivized to buy online across borders –, but would also reduce transaction costs and enhance legal certainty, making it consequently easier for businesses, especially SMEs, to sell EU-wide.

If one looks at how the current legal framework – first and foremost the Consumer Sales and Guarantees Directive 1999/44/EC (hereafter CSGD) – has been implemented, it cannot be denied that it is still subject to considerable fragmentation. More specifically, consumer protection in the EU features the following main divergences and variations:

- **4 varieties of hierarchy of remedies:** Under the CSGD, in the case of a lack of conformity, the consumer can firstly require the seller to repair or to replace the non-conforming good; if such a request is not appropriate, or where the repair or replacement is not completed within a reasonable time or cause the consumer significant inconvenience, then – in a second stage –, the consumer has a right to reduction of the price or termination for the

contract. Whereas 16 Member States<sup>1</sup> followed this approach, six Member States<sup>2</sup> went beyond this minimum requirement, and offered the consumer from the beginning a free choice between repair, replacement, price reduction or termination. Ten Member States<sup>3</sup> provided a free choice of remedies, which is limited in four of them<sup>4</sup> by the seller's rights to cure or by other conditions, leading to an effect quasi similar to the hierarchy of remedies. Finally two Member States, the United Kingdom and Ireland, adopted the hierarchy of remedies, but added a further remedy, a right to reject a non-conforming good within a short deadline.

- **3 different reversal of the burden of proof periods:** Unless the seller proves otherwise, a lack of conformity which becomes apparent within six months of the delivery of the goods, is presumed to have existed at the time of delivery, unless this is incompatible with the nature of the goods or the lack of conformity. 25 Member States opted for this six months period, but three other Member States extended this period (Poland to one year, France and Portugal to two years).
- **4 variations of legal guarantee periods:** For defects that were present at the time of delivery, the seller can be held liable for a period of no less than two years. While 23 Member States have made use of this two-year period, Sweden introduced a three year legal guarantee, and in Finland and the Netherlands national guarantees are based on the expected lifetime of products. In Ireland and the United Kingdom there is no specific legal guarantee period, but the consumer rights are limited by a prescription period.
- **8 diverging notification duties by the consumer:** In order to benefit from their rights, Member States were authorised to require that consumers must inform the seller of the defect within two months from its discovery. Failing to do so would result in the consumer's loss of right to remedies. While seven Member States<sup>5</sup> did not impose such a notification duty, 14 Member States<sup>6</sup> obliged the consumer to notify the defect within two months. Another group of Member States required the consumer to do so within different periods, i.e. "within a reasonable time"<sup>7</sup>, "without undue delay"<sup>8</sup>, "promptly"<sup>9</sup>, "immediately"<sup>10</sup>, or "within six months"<sup>11</sup>.

It is against this backdrop that the Rapporteur believes that full harmonisation – enshrined in Article 3 of the goods proposal – is the right regulatory approach in the internal market. He is, of course, aware that this approach is not only disputed in Council but is also facing opposition within and outside the IMCO committee. Although very much preferable, a final decision on whether full harmonisation can be obtained needs to be taken when an agreement on the substantial rules has been taken. In any event, the Rapporteur intends to strike the right balance between a high level of consumer protection and a modern, practicable set of

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<sup>1</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Finland, France, Germany, Italy, Latvia, Malta, the Netherlands, Romania, Slovakia, Spain, Sweden.

<sup>2</sup> Croatia, Hungary, Greece, Lithuania, Portugal and Slovenia.

<sup>3</sup> Croatia, Denmark, Estonia, Greece, Hungary, Lithuania, Luxembourg, Poland, Portugal, Slovenia.

<sup>4</sup> Denmark, Estonia, Luxembourg, Poland.

<sup>5</sup> Austria, France, Germany, Greece, Ireland, Poland and the United Kingdom.

<sup>6</sup> Bulgaria, Belgium, Croatia, Cyprus, Estonia, Finland, Italy, Latvia, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain.

<sup>7</sup> Denmark, Lithuania and Sweden.

<sup>8</sup> Czech Republic.

<sup>9</sup> The Netherlands.

<sup>10</sup> Hungary.

<sup>11</sup> Slovakia.

common contract law rules in his draft report and in the forthcoming negotiations with the Members of the IMCO Committee, which would allow to agree on full harmonisation.

### **III. Specific Changes**

#### **1. Extension of the Scope, Article 1**

The Rapporteur proposes to extend the scope to offline sales, as he believes that differentiating between online and over the counter sales would further enhance fragmentation of the acquis. Such fragmentation would not only increase transaction costs for businesses, but also confuse consumers whose rights would vary whether they shop online or offline. Such an extension of scope has not only been promoted by Members of the IMCO committee across all political groups, but has also been backed by the results of the REFIT exercise on the CSGD. Consequently, Directive 1999/44/EC needs to be repealed (Article 19a) and changes to this Directive proposed in Article 19 to be deleted.

#### **2. Relationship with the Consumer Law Acquis**

The rapporteur acknowledges that this proposal is another milestone in the development of the consumer law acquis and that its existing rules continue to be applicable, including the Directive 2011/83/EU on Consumer Rights. It was agreed with the co-Rapporteurs for the proposal on contracts for the supply of digital content to align both proposals as far as possible, while respecting differences resulting from the dealing with different subject matters. For instance, new Article 2a (3) and recital 13 now clarify that tangible goods with embedded digital content fall under the scope of the proposal on digital content.

#### **3. Conformity with the Contract, Article 3a to 5**

A new chapeau rule in Article 3a clarifies that goods must meet subjective and objective conformity requirements, which in turn are laid down in Article 4 and 5. The Rapporteur does not propose any substantive changes to the conformity rules.

#### **4. Relevant Time for Establishing Conformity, Article 8**

The rapporteur welcomes that the Commission proposal also touches on the relevant time for establishing conformity in installation cases. It was necessary though to clearer distinguish between the installation scenarios laid down in Article 6 and in Article 8 in order to avoid confusion about the exact timeframe.

#### **5. Burden of Proof, Article 8a**

When it comes to the burden of proof of lack of conformity, the Rapporteur proposes to uphold the current regime of the CSGD, albeit under a full harmonisation approach. He is well aware of the different opinions within the IMCO committee on this particular question and awaits further discussions and amendments in order to formulate a compromise that suits both the interests of consumers and sellers. A further clarification in recital 26 is put forward in order to update the proposal with the Faber judgment.<sup>1</sup>

#### **6. Consumer Remedies, Article 9 to 13b**

##### **a. Consumer Remedies, Article 9**

The Rapporteur upholds the hierarchy of remedies suggested by the Commission and clarifies in para. 3 that the consumer is entitled to termination where the lack of conformity is not minor. The latter aspect is taken over from Article 3 (6) CSGD. In addition, parts of Article 2

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<sup>1</sup> Judgment in Faber v Autobedrijf Hazet Octhen BV, C-497/13, ECLI:EU:C:2015:357, paragraph 71.

(3) CSGD are reintroduced in Article 8 (5). One could argue that this change might result in an overlap with Article 4 (3). However, while the latter Article covers the possibility to contractually deviate from e.g. objective conformity requirements, Article 9(5) deals with the question under what circumstances consumers are not entitled to remedies. This is in particular important for cases covered by Article 10 (2).

#### **b. Replacement of Goods, Article 10**

Changes proposed in Article 10 basically concern clarifications with regard to the jurisprudence of the EU Court of Justice. For instance, Article 10 (2) codifies parts of the jurisprudence in *Weber/Putz*.<sup>1</sup> It was necessary in this context to clarify that the seller can choose how to replace goods that have already been installed but are not in conformity with the contract as repair is not possible. In addition, recital 27 now clarifies that in case of disproportionate costs the consumer's right to reimbursement of the cost of removing the non-conforming goods and of installing the replacement goods can be limited to a payment by the seller of a proportionate amount.

#### **c. Termination, Article 13-13b**

The rules of termination follow the structure of the rules on conformity, Article 13 introduces a chapeau rule. The new Article 13a deals with the obligations of the seller in the event of termination and follows from former Article 13 (3) (a). The new Article 13a (2) is necessary in order to also outline the obligations of the seller in the event of partial termination as foreseen in the former Article 13 (2). The new Article 13b is moved from former Article 13 (3) (b)-(d) and remained unchanged.

#### **7. Time Limits, Article 14**

Finally, the Rapporteur reintroduces the rationale of Article 7 (1) subparagraph 2 of the CSGD on time limits for second hand goods in the current proposal.

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<sup>1</sup> Judgments in *Gebr. Weber et al. v J. Wittmer et al.*, C-65/09 and C-87/09, EU:C:2011:396, paragraph 74.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Contracts for the online and other distance sales of goods			
<b>References</b>	COM(2017)0637 – C8-0379/2017 – COM(2015)0635 – C8-0391/2015 – 2015/0288(COD)			
<b>Date submitted to Parliament</b>	31.10.2017			
<b>Committee responsible</b> Date announced in plenary	IMCO 21.1.2016			
<b>Committees asked for opinions</b> Date announced in plenary	CULT 21.1.2016	JURI 21.1.2016		
<b>Not delivering opinions</b> Date of decision	CULT 25.1.2016			
<b>Associated committees</b> Date announced in plenary	JURI 28.4.2016			
<b>Rapporteurs</b> Date appointed	Pascal Arimont 2.2.2016			
<b>Discussed in committee</b>	27.4.2016	14.7.2016	29.11.2016	21.3.2017
	28.9.2017			
<b>Date adopted</b>	22.2.2018			
<b>Result of final vote</b>	+: -: 0:	29 4 4		
<b>Members present for the final vote</b>	John Stuart Agnew, Pascal Arimont, Carlos Coelho, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, Evelyne Gebhardt, Maria Grapini, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Antonio López-Istúriz White, Morten Løkkegaard, Marlene Mizzi, Nosheena Mobarik, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Igor Šoltes, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Mihai Țurcanu, Marco Zullo			
<b>Substitutes present for the final vote</b>	Lucy Anderson, Birgit Collin-Langen, Edward Czesak, Kaja Kallas, Arndt Kohn, Adam Szejnfeld, Ulrike Trebesius, Lambert van Nistelrooij			
<b>Substitutes under Rule 200(2) present for the final vote</b>	Cornelia Ernst, Flavio Zanonato, Jaromír Štětina			
<b>Date tabled</b>	27.2.2018			

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

29	+
ALDE	Kaja Kallas, Morten Løkkegaard, Jasenko Selimovic
ECR	Edward Czesak, Daniel Dalton, Nosheena Mobarik, Ulrike Trebesius
EFDD	Marco Zullo
PPE	Pascal Arimont, Birgit Collin-Langen, Anna Maria Corazza Bildt, Antonio López-Istúriz White, Andreas Schwab, Adam Szejnfeld, Róza Gräfin von Thun und Hohenstein, Lambert van Nistelrooij, Jaromír Štětina, Mihai Țurcanu
S&D	Lucy Anderson, Nicola Danti, Evelyne Gebhardt, Maria Grapini, Liisa Jaakonsaari, Arndt Kohn, Marlene Mizzi, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Flavio Zanonato

4	-
EFDD	John Stuart Agnew
PPE	Carlos Coelho
Verts/ALE	Pascal Durand, Igor Šoltes

4	0
EFDD	Robert Jarosław Iwaszkiewicz
ENF	Mylène Troszczynski
GUE/NGL	Cornelia Ernst, Dennis de Jong

Key to symbols:

+ : in favour

- : against

0 : abstention