



**2015/0288(COD)**

18.11.2016

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on certain aspects concerning contracts for the online and other distance sales  
of goods  
(COM(2015)0635 – C8-0391/2015 – 2015/0288(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Pascal Arimont

Rapporteur for the opinion (\*):

Heidi Hautala, Committee on Legal Affairs

(\*): Associated committee – Rule 54 of the Rules of Procedure

### ***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 online and other distance sales of goods (COM(2015)0635 – C8-0391/2015 – 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),
  - 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 (C8-0391/2015),
  - 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 opinion of the European Economic and Social Committee of 27 April 2016<sup>1</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 and the opinion of the Committee on Legal Affairs (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  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.

## Amendment 1

### Proposal for a directive Title 1

*Text proposed by the Commission*

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on certain aspects concerning contracts for  
the *online and other distance sales of  
goods*  
(Text with EEA relevance)

*Amendment*

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on certain aspects concerning contracts for  
the *sale of goods and repealing Directive  
1999/44/EC*  
(Text with EEA relevance)

Or. en

## Amendment 2

### Proposal for a directive Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(4a) In order to avoid discrepancies between the rules governing distance sales and those governing face-to-face sales, an alignment of both regimes is necessary. This, in turn, will prevent confusion between the different sales channels, reduce complexity and increase clarity, facilitate cross-border sales, increase competition and reduce sellers' compliance costs and prices.***

Or. en

### *Justification*

*This additional recital is necessary in order to explain extension to offline sales. Wording taken from point 2.5 of the Commission's note on initial REFIT results.*

## Amendment 3

### Proposal for a directive

#### Recital 5

*Text proposed by the Commission*

(5) The Union rules applicable to the **online and other distance** 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. 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 subject to minimum harmonisation in Directive 1999/44/EC of the European Parliament and of the Council<sup>39</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 the Union legislation on consumer contract law significantly diverge today on essential elements of a sales contract, 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.

*Amendment*

(5) The Union rules applicable to the 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 **for distance sales and other contracts in Directive 2011/83/EU of the European Parliament and of the Council<sup>38a</sup>**. 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 subject to minimum harmonisation in Directive 1999/44/EC of the European Parliament and of the Council<sup>39</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 the Union legislation on consumer contract law significantly diverge today on essential elements of a sales contract, 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.

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<sup>38a</sup> **Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).**

<sup>39</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.

<sup>39</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).

Or. en

#### **Amendment 4**

##### **Proposal for a directive Recital 7**

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

(7) While consumers enjoy a high level of protection *when they purchase online or otherwise at a distance from abroad as a result of the application of Regulation (EC) No 593/2008, fragmentation also impacts negatively on consumers' levels of confidence in e-commerce. While several factors contribute to this mistrust,* uncertainty about key contractual rights ranks prominently among consumers' concerns. This uncertainty exists independently of whether or not consumers are protected by the mandatory consumer contract law provisions of their own Member State in the case where a seller directs his cross-border activities to them or whether or not consumers conclude cross-border contracts with a seller without the respective seller pursuing commercial activities in the consumer's Member State.

###### *Amendment*

(7) While consumers enjoy a high level of protection *granted under the acquis,* uncertainty about key contractual rights ranks prominently among consumers' concerns. This uncertainty exists independently of whether or not consumers are protected by the mandatory consumer contract law provisions of their own Member State in the case where a seller directs his cross-border activities to them or whether or not consumers conclude cross-border contracts with a seller without the respective seller pursuing commercial activities in the consumer's Member State.

Or. en

#### **Amendment 5**

##### **Proposal for a directive Recital 8**



*Text proposed by the Commission*

(8) In order to remedy those problems, businesses and consumers should be able to rely on a set of fully harmonised, targeted rules for the online and other distance 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.

*Amendment*

(8) In order to remedy those **and other** problems, businesses and consumers should be able to rely on a set of fully harmonised, targeted rules for the **sale of goods, including** online and other distance 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.

Or. en

**Amendment 6**

**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 **at a distance** to other Member States through a stable contract law environment.

*Amendment*

(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.

Or. en

**Amendment 7**

**Proposal for a directive  
Recital 10**

*Text proposed by the Commission*

(10) Increased competition among

*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 fully harmonised rules. This in turn would increase their trust in *the* cross-border commerce *at a distance and in particular online. Consumers will more confidently buy at a distance cross-border knowing they would enjoy the same rights across the Union.*

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 cross-border commerce.

Or. en

## Amendment 8

### Proposal for a directive

#### Recital 11

*Text proposed by the Commission*

(11) This Directive covers rules applicable to the online and other distance sales *of goods* only in relation to key contract elements needed to overcome contract-law related barriers in the Digital Single 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*

(11) This Directive covers rules applicable to the *sale of goods, including* online and other distance sales, only in relation to key contract elements needed to overcome contract-law related barriers in the *Single Market and the* Digital Single 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 *in such a way as to afford a high* level of consumer protection.

Or. en

## Amendment 9

### 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 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.*

*Amendment*

(13) This Directive should not apply to digital content *integrated in goods such as household appliances, toys, DVDs and CDs where that digital content is embedded in such a way that it operates as an integral part of the goods and cannot easily be de-installed by the consumer, unless the seller proves that the lack of conformity lies in the hardware of the good.*

Or. en

## **Amendment 10**

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

*Text proposed by the Commission*

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. Member States should also be free to provide more detailed conditions in relation to aspects regulated in this Directive to the extent those are not fully harmonised by this Directive: *this concerns* limitation periods for exercising *the* consumers' rights, commercial guarantees, and the right of redress of the seller.

*Amendment*

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. Member States should also be free to provide more detailed conditions in relation to aspects regulated in this Directive to the extent those are not fully harmonised by this Directive, *such as* limitation periods for exercising consumers' rights, commercial guarantees, and the right of redress of the seller.

Or. en

## **Amendment 11**

### **Proposal for a directive Recital 15**

*Text proposed by the Commission*

(15) Where referring to the same concepts, the rules of this Directive should be applied and interpreted in a manner consistent with the rules of Directive **1999/44/EC and Directive 2011/83/EU** of the European Parliament and of the Council<sup>41</sup> as interpreted by the case law of the Court of Justice of the European Union.

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<sup>41</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council OJ L 304, 22.11.2011, p.64.

*Amendment*

(15) Where referring to the same concepts, the rules of this Directive should be applied and interpreted in a manner consistent with the rules of Directive 2011/83/EU of the European Parliament and of the Council<sup>41</sup> as interpreted by the case law of the Court of Justice of the European Union.

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<sup>41</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

Or. en

## **Amendment 12**

### **Proposal for a directive Recital 17**

*Text proposed by the Commission*

***(17) In order to bring clarity and certainty for sellers and consumers the Directive should define the notion of a contract. This definition follows 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.***

*Amendment*

***deleted***

Or. en

## Amendment 13

### Proposal for a directive Recital 18

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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 *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 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.

Or. en

## Amendment 14

### 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 right's 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 right's holder rightfully compels the consumer to stop infringing those rights. Therefore the seller 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 contract.

## Amendment 15

### 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 establish that the good is not conforming, without 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 **Digital** Single 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*

(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 **six months**, in order to benefit from the presumption of lack of conformity, the consumer should only establish that the good is not conforming **and that the lack of conformity became apparent within six months of delivery of the goods**, without 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 Single 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.

Or. en

##### *Justification*

*Re-introducing the current burden of proof system and clarification on the basis of the Faber judgement, (C-497/13), para. 71.*

## Amendment 16

### 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**. 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.

*Amendment*

(27) The consumer's choice between repair **or** replacement should only be limited where the **remedy** chosen would be disproportionate compared to the **alternative remedy** available, impossible **or unlawful**. 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. **Where, however, only one remedy is available and that remedy imposes costs on the seller 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 seller of a proportionate amount.**

Or. en

*Justification*

*Clarification needed as also a result from the Weber Putz jurisprudence (joined cases C-65/09, C-87/09), para. 74*

## Amendment 17

### Proposal for a directive

#### Recital 29

*Text proposed by the Commission*

(29) Considering that the right to

*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 *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.

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.

Or. en

## Amendment 18

### 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 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, the seller should be able to pursue remedies against the responsible person ***in previous links of*** 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.

Or. en



## Amendment 19

### Proposal for a directive Recital 38

*Text proposed by the Commission*

(38) Directive 1999/44/EC should be ***amended to exclude distance sales contracts from its scope of application.***

*Amendment*

(38) Directive 1999/44/EC should be ***repealed.***

Or. en

*Justification*

*Alignment with new Art. 19a.*

## Amendment 20

### Proposal for a directive Article 1 – title

*Text proposed by the Commission*

Subject matter ***and scope***

*Amendment*

Subject matter

Or. en

## Amendment 21

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

*Text proposed by the Commission*

1. This Directive ***lays*** down certain requirements concerning ***distance*** 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 these remedies.

*Amendment*

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 by laying*** down certain requirements concerning sales contracts concluded between the seller and the consumer, in particular rules on conformity of goods ***with the contract***, remedies in ***cases*** of

non-conformity and the modalities for the exercise of these remedies.

Or. en

*Justification*

*Concerning rewording: Alignment with Art. 1 CRD and amended Art. 1 Digital Content Proposal. Concerning deletion: Alignment with CRD and Digital Content Proposal, .i.e. distinguishing between subject matter (Art. 1) and scope (Art. 2a).*

**Amendment 22**

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

*Text proposed by the Commission*

*Amendment*

**2. This Directive shall not apply to distance 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**

Or. en

*Justification*

*Alignment with CRD and Digital Content Proposal, .i.e. distinguishing between subject matter (Art. 1) and scope (Art. 2a).*

**Amendment 23**

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

*consumer.*

Or. en

*Justification*

*Alignment with CRD and Digital Content Proposal, .i.e. distinguishing between subject matter (Art. 1) and scope (Art. 2a).*

**Amendment 24**

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

*Text proposed by the Commission*

*Amendment*

**4. 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.** **deleted**

Or. en

*Justification*

*Alignment with CRD and Digital Content Proposal, .i.e. distinguishing between subject matter (Art. 1) and scope (Art. 2a).*

**Amendment 25**

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

*Text proposed by the Commission*

*Amendment*

(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.

(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, **including any contract having as its object both goods**

*and services.*

Or. en

*Justification*

*Alignment with Art. 2 (5) CRD.*

**Amendment 26**

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

*Text proposed by the Commission*

*Amendment*

*(da) 'embedded digital content' means pre-installed digital content which operates as an integral part of the good and cannot easily be de-installed by the consumer or which is necessary for the conformity of the good with the contract;*

Or. en

*Justification*

*Alignment with Art 2 (2a) from Digital Content Proposal as amended by the Rapporteurs.*

**Amendment 27**

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

*Text proposed by the Commission*

*Amendment*

*(e) 'distance sales contract' means any sales contract concluded under an organised distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded;*

*deleted*

## Amendment 28

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

*Text proposed by the Commission*

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

*Amendment*

**deleted**

Or. en

## Amendment 29

### Proposal for a directive Article 2 a (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 2 a**

##### **Scope**

- 1. This Directive shall apply to any sale contract concluded between a consumer and a seller.**
- 2. This Directive shall 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 shall not apply to goods in which digital content is embedded unless the supplier proves that the lack of conformity lies in the hardware of the good.**
- 4. 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.*

*5. This Directive shall not affect national general contract laws such as rules on 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.*

Or. en

#### *Justification*

*Article 2a (3) Justification: Alignment with Article 3 (3a) Digital Content as amended by the rapporteurs; Article 2a (5) Justification: Alignment with Art 3 (2) CRD and Art. 3 (7) Digital Content Proposal. Article 2a (6) Justification: Alignment with Art. 3 (5) of the CRD and Art. 3 (9) Digital Content Proposal.*

#### **Amendment 30**

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

*Text proposed by the Commission*

*Amendment*

##### *Article 3a*

##### *Conformity with the contract*

*In order to conform with the contract, the goods must meet the requirements of Articles 4, 5, 6 and 7.*

Or. en

#### **Amendment 31**

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

*Text proposed by the Commission*

*Amendment*

Conformity with the contract

*Subjective requirements for conformity with the contract*

Or. en

## Amendment 32

### Proposal for a directive

#### Article 4 – paragraph 1 – introductory part

*Text proposed by the Commission*

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

*Amendment*

1. In order to conform with the contract, the goods shall, where ***applicable***:

Or. en

## Amendment 33

### 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, ***including in any pre-contractual statement which forms an integral part of the contract. 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 ***that*** sample or model;

Or. en

## Amendment 34

### Proposal for a directive

#### Article 4 – paragraph 1 – point c

*Text proposed by the Commission*

(c) ***possess the qualities and performance capabilities indicated in any pre-contractual statement which forms an integral part of the contract.***

*Amendment*

***deleted***

*Justification**Alignment with Article 6 of the Digital Content Proposal.***Amendment 35****Proposal for a directive  
Article 4 – paragraph 2***Text proposed by the Commission**Amendment*

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

Or. en

**Amendment 36****Proposal for a directive  
Article 5 – title***Text proposed by the Commission**Amendment*

Requirements for conformity *of the goods* **Objective** requirements for conformity **with the contract**

Or. en

**Amendment 37****Proposal for a directive  
Article 5 – paragraph 1 – point c – introductory part***Text proposed by the Commission**Amendment*

(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

(c) possess qualities and performance capabilities which are normal 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



persons in earlier links of the chain of transactions, including the producer, unless the seller shows that:

seller or other persons in earlier links of the chain of transactions, including the producer, unless the seller shows that:

Or. en

## Amendment 38

### 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 must 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 conformity with the contract as determined by Article 8, the goods must be free from any **restriction resulting from any** right of a third party, including **any restriction based on intellectual property rights, that may prevent the consumer from using the goods** in accordance with the contract.

Or. en

#### *Justification*

*Alignment with Art. 8 Digital Content Proposal as amended by the rapporteurs.*

## Amendment 39

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

#### *Text proposed by the Commission*

(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*

(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.**

Or. en

*Justification*

*Alignment with Article 20 CRD.*

**Amendment 40**

**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 *a case governed by 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 *governed by point (b) of Article 6*, the time when the consumer *has* 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.

Or. en

*Justification*

*Clearer differentiation of the relevant time for lack of conformity for instance in cases laid down in Article 6.*

**Amendment 41**

**Proposal for a directive  
Article 8 – paragraph 3**

*Text proposed by the Commission*

3. *Any lack of conformity with the contract which becomes apparent within two years from the time indicated in paragraphs 1 and 2 is presumed to have existed at the time indicated in paragraphs 1 and 2 unless this is*

*Amendment*

*deleted*

*incompatible with the nature of the goods  
or with the nature of the lack of  
conformity.*

Or. en

*Justification*

*Proposal for restructuring of the text: see Article 8a (new) below.*

**Amendment 42**

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

*Text proposed by the Commission*

*Amendment*

**Article 8a**

**Burden of proof**

***Any lack of conformity with the contract  
which becomes apparent within six  
months from the time indicated in  
paragraphs 1 and 2 of Article 8 shall be  
presumed to have existed at the time  
indicated in paragraphs 1 and 2 of Article  
8 unless this is incompatible with the  
nature of the goods or with the nature of  
the lack of conformity.***

Or. en

*Justification*

*Proposal for restructuring of the text: see deletion of Article 8(3) below.*

**Amendment 43**

**Proposal for a directive  
Article 9 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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:

the contract in accordance with Article 13 *for a lack of conformity with the contract which is not minor* where:

Or. en

#### **Amendment 44**

##### **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 *is* impossible or unlawful;

Or. en

#### **Amendment 45**

##### **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 seller has not completed repair or replacement *in accordance with paragraph 1* within a reasonable time;

Or. en

#### **Amendment 46**

##### **Proposal for a directive Article 9 – paragraph 5**

*Text proposed by the Commission*

5. The consumer shall not be entitled to a remedy to the extent that the consumer has contributed to the lack of conformity with the contract or its effects.

*Amendment*

5. The consumer shall not be entitled to a remedy to the extent that the consumer has contributed to the lack of conformity with the contract or its effects *or was aware, or could not reasonably have been*

*unaware, of the lack of conformity at the time of conclusion of the contract.*

Or. en

*Justification*

*Positive knowledge of the lack of conformity must be interpreted as acceptance of lack, see also Art. 2 (3) of the Sales Directive.*

**Amendment 47**

**Proposal for a directive  
Article 10 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

1. Where the seller remedies the lack of conformity with the contract by replacement ***at the place where the goods are situated***, 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.

Or. en

*Justification*

*Clarification that for the seller the place to fulfil the obligation to replace shall be the place where the good is located, e.g. at the consumer's place.*

**Amendment 48**

**Proposal for a directive  
Article 10 – paragraph 2**

*Text proposed by the Commission*

2. Where the consumer had installed the goods in a manner consistent with their nature and purpose, before the lack of conformity with the contract became apparent, the obligation to take back the

*Amendment*

2. Where the consumer had installed the goods in a manner consistent with their nature and purpose, before the lack of conformity with the contract became apparent, the ***seller shall fulfil the***

replaced goods **shall include the** removal of the non-conforming goods and the installation of replacement goods, or bearing the costs thereof.

obligation to take back the replaced goods **either by** removal of the non-conforming goods and the installation of replacement goods, or **by** bearing the costs thereof.

Or. en

#### *Justification*

*Clarification that seller can choose how to replace goods.*

### **Amendment 49**

#### **Proposal for a directive Article 10 – paragraph 3**

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

3. The consumer shall not be liable to pay for any use made of the replaced goods in the period prior to the replacement.

##### *Amendment*

3. The consumer shall not be liable to pay for any use made of the replaced goods in the period prior to the replacement.  
**Points (b) and (c) of Article 13b shall apply accordingly.**

Or. en

#### *Justification*

*Justification: It must also be clarified that destruction, loss etc. must be regulated, e.g. by aligning with termination rules.*

### **Amendment 50**

#### **Proposal for a directive Article 11 – paragraph 1 – introductory part**

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

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:

##### *Amendment*

The consumer may choose between repair **or** replacement unless the **remedy** chosen would be impossible **or** unlawful or, compared to the **alternative remedy**, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

*Justification*

*Eliminating interpretation difficulties resulting from the use of “option” and “remedy” for the same right. COM wording is taken from Art 111 CESL, which also uses the differentiation.*

**Amendment 51**

**Proposal for a directive  
Article 11 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 52**

**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 **an unequivocal statement to the seller expressing the decision to terminate the contract**.

Or. en

*Justification*

*Alignment with Art 11 (1) (b) of the CRD. The rest of Art. 13 moved to Art 13a or b in order to better distinguish between the obligations of the seller and consumer in case of termination. This also aligns the text with structure of Art. 13 and 14 CRD.*

## Amendment 53

### 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 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.***

Or. en

*Justification*

*Clarification of the rationale behind this provision. Partial termination only where partial performance is possible, i.e. by divisible goods. Full termination possible if it is clear from the circumstances that the consumer only has an interest in the whole contract.*

## Amendment 54

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

*Text proposed by the Commission*

3. ***Where the consumer terminates a contract as a whole or in relation to some of the goods delivered under the contract in accordance with paragraph 2:***

***(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*

***deleted***



*(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;*

*(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 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*

*(d) the consumer shall pay for a decrease in the value of the goods only to the extent that the decrease in value exceeds depreciation through regular use. The payment for decrease in value shall not exceed the price paid for the goods.*

Or. en

## **Amendment 55**

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

*Text proposed by the Commission*

*Amendment*

#### **Article 13a**

#### **Obligations of the seller in the event of termination**

**1. Where the consumer terminates the contract in its entirety, 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 unequivocal statement terminating the contract in accordance with Article 13(1), and shall bear the cost of the reimbursement.**

2. *Where the consumer terminates a part of the contract in accordance with Article 13(2), the seller shall reimburse to the consumer the part of the price paid corresponding to the goods which are not in conformity with the contract and any other goods which the consumer acquired as an accessory to the non-conforming goods.*

Or. en

*Justification*

*Follows from Article 13 (3) (a). Article 13a (2) is introduced in order to deal with partial termination mentioned in Article 13 (2).*

**Amendment 56**

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

*Text proposed by the Commission*

*Amendment*

**Article 13b**

***Obligations of the consumer in the event of termination***

***Where the consumer terminates the contract in its entirety or in relation to some of the goods delivered under the contract in accordance with Article 13(2), the consumer shall:***

***(a) return the non-conforming goods to the seller, at the seller's expense, without undue delay and in any event not later than 14 days after giving the unequivocal statement terminating the contract;***

***(b) pay to the seller, where the goods cannot be returned because of destruction or loss, 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*

*(c) pay for any decrease in the value of the goods only to the extent that the decrease in value exceeds depreciation through regular use. The payment to be made for any such decrease in value shall not exceed the price paid for the goods.*

Or. en

*Justification*

*Article 13b (c) Justification: Follows from Article 13 (3) (b) to (d).*

**Amendment 57**

**Proposal for a directive**

**Article 14 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. In the case of second-hand goods, the seller and consumer may agree on a shorter period than that provided for in paragraph 1. That shorter period may not be less than one year.*

Or. en

*Justification*

*Reintroducing the rationale of Article 7 (1) subpara. 2 Directive 1999/44/EC in this proposal.*

**Amendment 58**

**Proposal for a directive**

**Article 15 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

2. The guarantee statement shall be *drafted in plain, intelligible language and shall be made available to the consumer upon request*. It shall include the

following:

Or. en

## Amendment 59

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

*Text proposed by the Commission*

(b) the terms of the commercial guarantee that go beyond the legal rights of the consumer, information about the duration, transferability, territorial scope and existence of any charges which the consumer might incur in order to benefit from the commercial guarantee, the name and address of the guarantor and, if different from the guarantor, the person against whom any claim is to be made and the procedure by which the claim is to be made.

*Amendment*

(b) the terms of the commercial guarantee that go beyond the legal rights of the consumer ***as provided for in this Directive***, information about the duration, transferability, territorial scope and existence of any charges which the consumer might incur in order to benefit from the commercial guarantee, the name and address of the guarantor and, if different from the guarantor, the person against whom any claim is to be made and the procedure by which the claim is to be made.

Or. en

## Amendment 60

### Proposal for a directive Article 15 – paragraph 4

*Text proposed by the Commission*

4. The Member States may lay down additional rules on commercial guarantees insofar as those rules do not reduce the protection set out in this Article.

*Amendment*

4. ***To the extent not covered by this Article***, the Member States may lay down additional rules on commercial guarantees insofar as those rules do not reduce the protection set out in this Article.

Or. en

*Justification*

*Alignment with recital 14 of this proposal.*

**Amendment 61**

**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 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 ***previous*** 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.

Or. en

*Justification*

*Alignment with Art. 4 Sales Directive.*

**Amendment 62**

**Proposal for a directive  
Article 19 – title**

*Text proposed by the Commission*

Amendments to ***Directive 1999/44/EC***, Regulation (EC) No 2006/2004 and Directive 2009/22/EC

*Amendment*

Amendments to Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Or. en

## Amendment 63

### Proposal for a directive

#### Article 19 – paragraph 1

Directive 1999/44/EC

Article 1

*Text proposed by the Commission*

*Amendment*

**1. Article 1 of Directive 1999/44/EC is amended as follows:** *deleted*

**(a) paragraph 1 is replaced by the following:**

**“1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of contracts for the sale of consumer goods and associated guarantees, which are not distance sales contracts, in order to ensure a uniform minimum level of consumer protection in the context of the internal market.”**

**(b) paragraph 2 is amended as follows:**

**(i) point (f) is replaced by the following:**

**“(f) repair: shall mean, in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale;”**

**(ii) the following point is added:**

**“(g) ‘distance sales contract’ means any sales contract concluded under an organised distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded”**

Or. en

*Justification*

*Deletion follows the extension of scope and the repeal of Directive 1999/44/EC in Article 19a.*

**Amendment 64**

**Proposal for a directive**  
**Article 19 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 19a**

**Repeal**

***Directive 1999/44/EC is repealed as of  
(date of application of this Directive).  
References to the repealed Directive shall  
be construed as references to this  
Directive.***

Or. en

*Justification*

*The Sales Directive needs to be repealed as the scope of this Directive is extended to offline sales. Wording taken from Art. 31 CRD.*

## 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.