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*****I**

REPORT

on the proposal for a directive of the European Parliament and of the Council
on consumer rights
(COM(2008)0614 – C7-0349/2008 – 2008/0196(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Andreas Schwab

Rapporteur for the opinion(*):
Diana Wallis, Committee on Legal Affairs

(*) Associated committee - Rule 50 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

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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(*) Associated committee - Rule 50 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on consumer rights

(COM(2008)0614 – C7-0349/2008 – 2008/0196(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2008)0614),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0349/2008),
 - having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
 - having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 16 July 2009¹,
 - having regard to the opinion of the Committee of the Regions of 22 April 2009²,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer protection and the opinions of the Committee on Legal Affairs and the Committee on Economic and Monetary Affairs (A7-0038/2011),
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.

¹ OJ C 317, 23.12.2009, p. 54.

² OJ C 200, 25.8.2009, p. 76.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects ***and move away from the minimum harmonisation approach in the former Directives under which*** Member States ***could*** maintain or adopt ***stricter*** national rules.

Amendment

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects ***whilst allowing*** Member States ***to*** maintain or adopt national rules ***in relation to certain other aspects, providing for a higher level of consumer protection.***

Amendment 2

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited ***by consumers***. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over

Amendment

(5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few

the last few years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium size enterprises (including individual *entrepreneurs*) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to *the* better functioning of the business to consumer internal market.

years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium size enterprises (including individual *traders*) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of *certain aspects of* consumer information and *of* the right of withdrawal in distance and off-premises contracts will contribute to *a high level of consumer protection and* better functioning of the business to consumer internal market.

Amendment 3

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) The laws of the Member States on consumer contracts show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. The existing Community legislation in the field of consumer contracts concluded at a distance or away from business premises consumer goods and guarantees as well as unfair contract terms establishes minimum standards for harmonising legislation allowing the Member States the possibility to maintain or introduce more stringent measures which ensure a higher level of consumer protection in their territories. Furthermore, many issues are regulated inconsistently between directives or have been left open. These issues have been

deleted

addressed differently by the Member States. As a result, the national provisions implementing directives on consumer contract law diverge significantly.

Amendment 4

Proposal for a directive Recital 7

Text proposed by the Commission

(7) ***These*** disparities create significant internal market barriers affecting business and consumers. They increase compliance costs to business wishing to engage in cross border sale of goods or provision of services. Fragmentation also undermines consumer confidence in the internal market. ***The negative effect on consumer confidence is strengthened by an uneven level of consumer protection across the Community. This problem is particularly acute in the light of new market developments.***

Amendment 5

Proposal for a directive Recital 8

Text proposed by the Commission

(8) Full harmonisation of some key regulatory aspects ***will*** considerably increase legal certainty for both consumers and ***business***. ***Both*** consumers and ***business*** will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the *Community*. ***The effect will be to*** eliminate the barriers stemming from the fragmentation of the rules and ***to*** complete the internal market in this area. ***These barriers can only be eliminated by establishing uniform rules at Community***

Amendment

(7) ***Certain*** disparities ***in the Member States' legislation in the field of consumer contracts, particularly contracts concluded at a distance or away from business premises***, create significant internal market barriers affecting business and consumers. They increase compliance costs to business wishing to engage in cross border sale of goods or provision of services. ***Inappropriate*** fragmentation also undermines consumer confidence in the internal market.

Amendment

(8) ***Unless otherwise specified and in accordance with Article 169 of the Treaty on the Functioning of the European Union, the provisions of this Directive should not hinder the Member States from adopting or maintaining more stringent measures of national law, which improve consumer protection. However, the*** full harmonisation of some key regulatory aspects ***is justified in order to secure a single regulatory framework for consumer protection and in order to*** considerably increase legal certainty for both consumers and ***traders in cross-***

level. Furthermore consumers will enjoy a high common level of protection across the Community.

border business. In this case, both consumers and traders will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Union. Thus, the consumer will enjoy a high common level of protection across the Union. Furthermore, by establishing uniform rules at Union level, this should eliminate the barriers stemming from the disproportionate fragmentation of the rules and complete the internal market in this area.

Amendment 6

**Proposal for a directive
Recital 10 a (new)**

Text proposed by the Commission

Amendment

(10a) This Directive should not apply to healthcare, that is to say health services provided by health professionals to patients to assess, maintain or restore their health.

Amendment 7

**Proposal for a directive
Recital 10 b (new)**

Text proposed by the Commission

Amendment

(10b) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the very specific nature of those activities, in the light of which Member States should be able to adopt other or more stringent consumer protection measures in relation to such activities.

Amendment 8

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The existing **Community** legislation **on consumer** financial services contains numerous rules on consumer protection. For this reason **the provisions of this Directive cover contracts relating to financial services only insofar as this is necessary to fill the regulatory gaps.**

Amendment

(11) The existing **Union** legislation ***inter alia relating to*** consumer financial services ***or package travel*** contains numerous rules on consumer protection. For this reason, ***Articles 5 to 19 and Article 23a of this Directive should not apply to contracts relating to financial services and Articles 9 to 19 should not apply to distance and off-premises contracts relating to package travel, without prejudice to other provisions of existing Union legislation. With regard to financial services, Member States should be encouraged to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at Union level, in such a way that a level playing field for all consumers and all contracts relating to financial services is ensured. The Commission should aim at complementing Union legislation in the field of financial services in order to close existing gaps and protect consumers in all types of contracts***

Amendment 9

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Articles 9 to 19 of this Directive should be without prejudice to the application of the provisions of the Member States relating to the acquisition of immovable property and guarantees relating to immovable property or the formation or transfer of rights in rem in

immovable property. This includes agreements connected with such legal acts, such as sales of immovable property still to be developed and hire-purchase.

Amendment 10

**Proposal for a directive
Recital 11b (new)**

Text proposed by the Commission

Amendment

(11b) As no difficult psychological situation applies when contracts, in accordance with the provisions of the Member States, are established by a public office-holder, such contracts should be excluded from the scope of Articles 9 to 19 of this Directive.

Amendment 11

**Proposal for a directive
Recital 11 c (new)**

Text proposed by the Commission

Amendment

(11c) For the purposes of this Directive, leasing contracts for motor vehicles, where the motor vehicle is returned at the end of the contract, should be considered as motor vehicle rental services.

Amendment 12

**Proposal for a directive
Recital 11 d (new)**

Text proposed by the Commission

Amendment

(11d) Many Member States have chosen

to apply national consumer protection rules to other entities such as non-governmental organisations, start-up businesses and small and medium-sized enterprises, and others may wish to do so. It should be recalled that Member States may extend the scope of the national rules adopted in order to implement this Directive to cover natural or legal persons who are not consumers within the meaning of this Directive.

Amendment 13

Proposal for a directive Recital 11 e (new)

Text proposed by the Commission

Amendment

(11e) Digital content transmitted to the consumer in a digital format, where the consumer obtains the possibility of use on a permanent basis or in a way similar to the physical possession of a good, should be treated as goods for the application of the provisions of this Directive which apply to sales contracts. However, a withdrawal right should only apply until the moment the consumer chooses to download the digital content.

Amendment 14

Proposal for a directive Recital 12

Text proposed by the Commission

Amendment

(12) The new definition of distance contract should cover all cases where ***sales and service*** contracts are concluded using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). This should create a level playing field for all distance

(12) The new definition of distance contract should cover all cases where contracts ***concerning the supply of a good or the provision of a service*** are concluded ***between the trader and the consumer under an organised distance sales or service-provision scheme and without the***

traders. *It should also improve legal certainty as compared to the current definition requiring the presence of an organised distance selling scheme run by the trader up to the conclusion of the contract.*

simultaneous physical presence of the parties, using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). *Websites offering purely information on the trader, his goods and/or services should not be covered by the definition of such an organised distance sales or service-provision scheme, even if such websites indicate one or more means of distance communication.* This should create a level playing field for all distance traders.

Amendment 15

Proposal for a directive Recital 13

Text proposed by the Commission

(13) The particular circumstances under which an offer was made or the contract was negotiated should not be relevant in the definition of a distance contract. The fact that the trader *is an occasional distance seller or that he* uses an organised scheme run by a third party such as an online platform, should not deprive consumers of their protection. Similarly, a transaction negotiated face to face between the trader and the consumer away from business premises should be a distance contract, if the contract has then been concluded through the exclusive use of means of distance communication, such as the Internet or telephone. For traders, a simpler definition of a distance contract should improve legal certainty and protect them from unfair competition.

Amendment

(13) The particular circumstances under which an offer was made or the contract was negotiated should not be relevant in the definition of a distance contract. The fact that the trader uses an organised *distance sales or service-provision* scheme run by a third party such as an online platform, should not deprive consumers of their protection. Similarly, a transaction negotiated face to face between the trader and the consumer away from business premises should be a distance contract, if the contract has then been concluded through the exclusive use of means of distance communication, such as the Internet or telephone. For traders, a simpler definition of a distance contract should improve legal certainty and protect them from unfair competition.

Amendment 16

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are ***under psychological pressure*** no matter whether they have solicited the trader's visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract.

Amendment

(14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are ***temporarily in a special situation which is different from the situation in a shop, for instance from a psychological point of view and as regards the scope for comparing goods and prices***, no matter whether they have solicited the trader's visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract ***only when the main components of the contract have been determined in the course of an excursion, a leisure event or a sales demonstration. Nevertheless, contracts under which the payment to be made by the consumer does not exceed EUR 40 should not be covered by the above definition, so that for instance street traders, whose goods are supplied immediately, are not overburdened with obligations as regards information. A right of withdrawal is also unnecessary in such cases, since the implications of such contracts are readily understandable. Nevertheless Member States should remain free, and be encouraged, to set a lower value.***

Amendment 17

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Business premises should include premises in whatever form (such as shops or lorries) which serve as a permanent place of **business** for the trader. Market stalls **and fair stands** should be treated as business premises even though they may be used by the trader on a temporary basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.

Amendment

(15) Business premises should include premises in whatever form (such as shops, **taxis** or lorries) which serve as a permanent place of **activity** for the trader. Market stalls should be treated as business premises even though they may be used by the trader on a temporary **and regular** basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.

Amendment 18

**Proposal for a directive
Recital 16**

Text proposed by the Commission

(16) **The definition of durable medium** should include in particular **documents on** paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard **drive of the computer** on which **the** electronic mail or a **pdf file** is stored.

Amendment

(16) Durable **media** should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards **or** the hard **disks of computers. In order to qualify as a "durable medium", an** electronic mail or **an Internet website should firstly enable the consumer to store the information for as long as it is relevant for him to protect his interests stemming from his relationship with the trader. Secondly, the electronic mail or website should allow for the information to be stored in such a way as to make it impossible for the trader to change it unilaterally.**

Amendment 19

**Proposal for a directive
Recital 17**

Text proposed by the Commission

(17) *Consumers* should be entitled to receive information before the conclusion of *the* contract. *However traders should not have to provide the information when already apparent from the context. For example in an on-premises transaction, the main characteristics of a product, the identity of the trader and the arrangements for delivery may be apparent from the context. In distance and off-premises transactions, the trader should always provide the information on arrangements for payment, delivery, performance and the complaint handling policy, since these might not be apparent from the context.*

Amendment

(17) *The consumer* should be *given comprehensive* information before *he is bound by an on-premises contract, a distance contract, an off-premises contract or a corresponding contract offer. In providing that information, the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.*

Amendment 20

**Proposal for a directive
Recital 20**

Text proposed by the Commission

(20) *The consumer should know whether he is contracting with the trader or with an intermediary acting on behalf of another consumer, since in the latter case the consumer may not enjoy the protection under this Directive. Therefore the intermediary should inform of this fact and the consequences thereof. The notion of intermediary should not include online trading platforms which do not conclude the contract in the name of or on behalf of any other party.*

Amendment

deleted

Amendment 21

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, ***which allows him to*** ascertain the nature and functioning of the goods.

Amendment

(22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, ***so that, until the expiration of the withdrawal period, he can*** ascertain the nature, ***quality*** and functioning of the goods. ***Such a right of withdrawal should also be granted for off-premises contracts.***

Amendment

22

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) ***To ensure legal certainty, it is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits should apply to the calculation of the periods contained in this Directive. Therefore, all periods contained in this Directive should be understood to be expressed in calendar days.***

Amendment

deleted

Amendment 23

Proposal for a directive

Recital 26

Text proposed by the Commission

(26) ***When the consumer orders more than one good from the same trader, he should be entitled to exercise the right of withdrawal in respect of each of these***

Amendment

(26) ***Where goods are supplied in more than one delivery, the withdrawal period should begin from the day on which the consumer or a third party other than the***

goods. If the goods are delivered separately, the withdrawal period should **start when the consumer acquires the material possession of each individual good**. Where a good is delivered in different lots or pieces, the withdrawal period should start when the consumer **or a third party indicated by the consumer** acquires the material possession of the last lot or piece.

carrier and indicated by the consumer acquires the material possession of the **first partial shipment**. Where a good is delivered in different lots or pieces, the withdrawal period should start when the consumer acquires the material possession of the last lot or piece. **If multiple goods are ordered by the consumer in one order and but are delivered separately, the withdrawal period should start when the consumer acquires possession of the last good**.

Amendment 24

Proposal for a directive Recital 27

Text proposed by the Commission

(27) If the trader has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty over time, a **three-month** limitation period should be **introduced, provided that the trader has fully performed his contractual obligations. The trader should be regarded as having fully performed his obligations when he has delivered the goods or has fully provided the services ordered by the consumer.**

Amendment 25

Proposal for a directive Recital 28

Text proposed by the Commission

(28) Differences in the ways in which the right of withdrawal is exercised in the

Amendment

(27) If the trader has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty over time, a **one-year** limitation period should be introduced. **However, Member States should be allowed to maintain existing legislation to extend that limitation period.**

Amendment

(28) Differences in the ways in which the right of withdrawal is exercised in the

Member States have caused costs for businesses selling cross-border. The introduction of a harmonised **standard** withdrawal form to be used by the consumer should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Community**-wide standard form relating for example to the font size.

Amendment 26

Proposal for a directive Recital 30

Text proposed by the Commission

(30) In case of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses born by the trader to deliver goods to the consumer.

Member States have caused costs for businesses selling cross-border. The introduction of a harmonised **model** withdrawal form to be used by the consumer should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Union**-wide standard form relating for example to the font size.

Amendment

(30) In case of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses born by the trader to deliver goods to the consumer, ***with the exception of payments for express deliveries at the express wish of the consumer. Reimbursement should be possible by any means of payment, provided they are legal tender in the Member State where the consumer receives them. Therefore, reimbursement shall not take place in the form of vouchers or credit notes.***

Amendment 27

Proposal for a directive Recital 33

Text proposed by the Commission

(33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate given the nature of the

Amendment

(33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate, given the nature of the

product. That is applicable for example to wine supplied a long time after the conclusion of the contract of a speculative nature where the value is dependent on fluctuations in the market (vin en primeur).

product, ***and exercising a right of withdrawal would unfairly disadvantage the trader.*** That is applicable ***in particular to foodstuffs and other hygienically sensitive or perishable goods,*** for example to wine supplied a long time after the conclusion of the contract of a speculative nature where the value is dependent on fluctuations in the market (vin en primeur). ***Certain other goods or services whose price is dependent on market fluctuations, for instance commodities, should also be exempt from the right of withdrawal.***

Amendment 28

Proposal for a directive Recital 34

Text proposed by the Commission

(34) Furthermore, in case of distance contracts for the provision of services, for which the performance begins during the withdrawal period (*e.g.* data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express agreement.

Amendment

(34) Furthermore, in case of distance ***and off-premises*** contracts for the provision of services, for which the performance begins during the withdrawal period (***for instance*** data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express agreement, ***provided that it is a case of informed consent, that is to say that the consumer has been informed of the consequences of this decision in terms of losing his right of withdrawal.***

Amendment 29

Proposal for a directive Recital 37

Text proposed by the Commission

(37) For the purpose of simplification and

Amendment

(37) For the purpose of simplification and

legal certainty, the right of withdrawal should apply to all types of off-premises contracts, except under strictly defined circumstances which can easily be proved. *Therefore, no right of withdrawal should apply for urgent repairs at the consumer's home for which such a right of withdrawal would be incompatible with the emergency situation as well as for supermarket home-delivery schemes which allow consumers to select food, drinks and other goods intended for current consumption in the household through the supermarket's website and have them delivered at their home. These are goods, which are inexpensive and bought regularly by consumers for their every day's consumption or everyday use in the household and should therefore not be subject to a right of withdrawal. The main difficulties encountered by consumers and the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to clarify and harmonise the national rules on delivery and passing of risk.*

Amendment 30

Proposal for a directive Recital 37 a (new)

Text proposed by the Commission

legal certainty, the right of withdrawal should apply to all types of *distance and* off-premises contracts, except under strictly defined circumstances which can easily be proved.

Amendment

(37a) The main difficulties encountered by consumers and the main source of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery. Therefore it is appropriate to harmonise the national rules on delivery and passing of risk.

Amendment 31

Proposal for a directive Recital 37 b (new)

Text proposed by the Commission

Amendment

(37b) Where the trader has failed to fulfil his obligations to deliver, the consumer should call upon him, on a durable medium, to make the delivery within no less than seven days and notify him of his intention to withdraw from the contract if delivery does not take place. The consumer should be deemed to have withdrawn from the contract if no action has been taken by the time the deadline expires. Without prejudice to his rights to damages, the consumer should be entitled to a refund within seven days of withdrawal if payment has already been made. It should be possible for Member States to adopt or maintain provisions of national law, in order to ensure a higher level of consumer protection.

Amendment 32

Proposal for a directive Recital 38

Text proposed by the Commission

Amendment

(38) In the context of consumer sales, the delivery of goods can take place in various ways. ***Only a rule which may be freely derogated from will allow the necessary flexibility to take into account those variations.*** The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the trader. The rule introduced on the passing of risk should not apply where the consumer unduly delays taking possession

(38) In the context of consumer sales, the delivery of goods can take place in various ways: ***either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver as soon as possible but in any event not later than thirty days from the day of the conclusion of the contract.*** The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the trader. The rule

of the goods (for example, when the goods are not collected by the consumer from the post-office within the deadline fixed by the latter). In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the trader.

introduced on the passing of risk should not apply where the consumer unduly delays taking possession of the goods (for example, when the goods are not collected by the consumer from the post-office within the deadline fixed by the latter). In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the trader.

Amendment 33

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) In many transactions consumers are provided with insufficient choices of means of payments or they are charged if they refuse to use certain means. This situation should be addressed by means of a provision which ensures that the trader will offer to the consumer different means of payment and, in the case of distance contracts, these should include both electronic and non-electronic means of payment. An example of a non-electronic system of payment would be the printing of an order from the trader's website to be paid in cash at a bank or at any other contact point of the trader.

Amendment 34

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(39) The trader should be liable to the consumer if the goods are not in

(39) The trader should be liable to the consumer if the goods are not in

conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the qualities of the goods. The quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand as well as on the expected life-span of the goods.

conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the qualities of the goods. The quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand as well as on the expected life-span of the goods. *Where goods other than those ordered have been delivered, or in the event of undershipment, the goods should be presumed not to be in conformity with the contract.*

Amendment 35

Proposal for a directive Recital 40

Text proposed by the Commission

(40) If the good is not in conformity with the contract, firstly, the consumer should have the possibility to require the trader to repair the goods or to replace them at the trader's choice unless the trader proves that those remedies are unlawful, impossible or causes the trader disproportionate effort. The trader's effort should be determined objectively considering costs incurred by the trader when remedying the lack of conformity, the value of the goods and the significance of the lack of conformity. The lack of spare parts should not be a valid ground to justify the trader's failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort.

Amendment

(40) The consumer should in the first instance have the option of requiring the trader to repair the goods or to replace them unless those remedies are impossible or disproportionate. Whether or not a remedy is disproportionate should be determined objectively. A remedy should be considered disproportionate if it imposes, in comparison with other remedies, unreasonable costs. In order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of another remedy.

Amendment 36

Proposal for a directive Recital 41

Text proposed by the Commission

(41) The consumer should not bear any costs for remedying the lack of conformity, particularly the cost of postage, labour and materials. Furthermore, the consumer should not compensate the trader for the use of the defective goods.

Amendment

(41) The consumer should not bear any costs for remedying the lack of conformity, particularly the cost of postage, labour and materials. Furthermore, the consumer should not compensate the trader for the use of the defective goods. ***The consumer should be entitled to claim damages, in accordance with provisions of applicable national law, for any loss resulting from lack of conformity with the sales contract and not remedied by the trader. It should be possible for such damages to include non-pecuniary damages where applicable national law so provides.***

Amendment 37

Proposal for a directive Recital 42

Text proposed by the Commission

(42) ***When the trader has either refused or has more than once failed to remedy the lack of conformity*** the consumer should be entitled to choose freely any of the available remedies. ***The trader's refusal can be either explicit or implicit, meaning in the latter case that the trader does not respond or ignores the consumer's request to remedy the lack of conformity.***

Amendment

(42) The consumer should be entitled to choose freely any of the available remedies ***if he is not entitled to have the goods repaired or replaced. It should be possible for Member States to adopt or maintain provisions of national law on the free choice of remedies in the event of lack of conformity, in order to ensure a higher level of consumer protection.***

Amendment 38

Proposal for a directive Recital 42 a (new)

Text proposed by the Commission

Amendment

(42a) It should be stipulated that in certain cases the trader may be held liable for a lack of conformity that existed at the time the risk was transferred to the consumer, even if the lack of conformity becomes apparent only subsequently.

Amendment 39

Proposal for a directive Recital 42 b (new)

Text proposed by the Commission

Amendment

(42b) Where the trader, as final seller, is liable to the consumer because of an act or omission by the producer, it should be ensured that the trader, as final seller, can pursue remedies against the person or persons liable in the contractual chain. To this end, Member States' national provisions should determine the person or persons liable, together with the relevant actions and procedure.

Amendment 40

Proposal for a directive Recital 42 c (new)

Text proposed by the Commission

Amendment

(42c) With regard to lack of conformity, the consumer should be entitled to a two-year liability period. There should be a rebuttable presumption in the consumer's favour that any lack of conformity which has become apparent within six months after the risk passed to the consumer already existed when the risk passed. It should be possible for Member States to adopt or maintain provisions of national

law on liability periods, duration for reversal of the burden of proof or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to ensure a higher level of consumer protection.

Amendment 41

Proposal for a directive Recital 43

Text proposed by the Commission

(43) Directive 1999/44/EC allowed the Member States to set a period of at least two months during which the consumer was to inform the trader of any lack of conformity. The diverging transposition laws have created barriers to trade. Therefore, it is necessary to remove this regulatory option and improve legal certainty by obliging consumers to inform the trader of the lack of conformity within two months from the date of detection.

Amendment

deleted

Amendment 42

Proposal for a directive Recital 44

Text proposed by the Commission

(44) Some traders or producers offer consumers commercial guarantees. In order to ensure that consumers are not misled, the commercial guarantees should include certain information, including their duration, territorial scope and a statement that the commercial guarantee does not affect the consumer's legal rights.

Amendment

(44) Some traders or producers offer consumers commercial guarantees. In order to ensure that consumers are not misled, the commercial guarantees should include certain information, including their duration, territorial scope and a statement that the commercial guarantee does not affect the consumer's legal rights *under the national provisions in force and those laid down in this Directive.*

Amendment 43

Proposal for a directive Recital 45 a (new)

Text proposed by the Commission

Amendment

(45a) The harmonised regulatory aspects concern only contracts concluded between businesses and consumers. Therefore, the provisions on unfair contract terms should not affect national law in the area of contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements and bond terms.

Amendment 44

Proposal for a directive Recital 46

Text proposed by the Commission

Amendment

(46) Provisions on unfair contract terms should not apply to contract terms, which directly or indirectly reflect ***mandatory*** statutory or ***regulatory*** provisions of the Member States which comply with ***Community*** law. Similarly terms which reflect the principles or provisions of international conventions to which the ***Community*** or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.

(46) Provisions on unfair contract terms should not apply to contract terms, which directly or indirectly reflect statutory, ***regulatory*** or ***public policy*** provisions of the Member States which comply with ***Union*** law. Similarly, ***contract*** terms ***should reflect the principles and provisions of the Charter of Fundamental Rights of the European Union. Terms*** which reflect the principles or provisions of international conventions to which the ***Union*** or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.

Amendment 45

Proposal for a directive

Recital 47

Text proposed by the Commission

(47) Consumer **contracts** should be drafted in plain, intelligible language and be **legible**. Traders should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the trader's website in respect of distance contracts) or attaching standard terms to the order form (in respect of off-premises contracts). The trader should seek the consumer's express consent to any payment in addition to the remuneration for the trader's main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.

Amendment

(47) **All contract terms should be expressed in a clear and comprehensible manner. If a contract term is in writing, it should always** be drafted in plain, intelligible language. Traders should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the trader's website in respect of distance contracts) or attaching standard terms to the order form (in respect of off-premises contracts). The trader should seek the consumer's express consent to any payment in addition to the remuneration for the trader's main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.

Amendment 46

Proposal for a directive

Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) Traders should be free to choose the way in which contract terms are communicated, for example the font type or size in which the contract terms are drafted. Member States should refrain from imposing any presentational requirements, except for those related to persons with disabilities or where the

goods or services may present a particular risk to the health and safety of the consumer or a third person. Member States may also seek to impose additional requirements where due to complexities inherent in contracts for those goods or services, there is a risk of consumer detriment including issues arising which relate to competition in that sector. This may apply, for example, to contracts relating to financial services, gas, electricity and water, telecoms and immovable property. However, this should not apply to formal national requirements concerning the conclusion of the contract or other formal requirements such as for instance the language of the terms, requirements on the content of the terms or the formulation of certain contract terms for specific sectors. This Directive should not harmonise language requirements applicable to consumer contracts. Therefore, Member States should be able to maintain or introduce in their national law linguistic requirements relating to the contractual terms.

Amendment 47

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability

Amendment

(49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability

should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer.

should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer. ***This exclusion does not apply to the remuneration foreseen for the trader from ancillary or contingent charges set out in the contract, including fees or charges for breaching any of the terms of the contract, which should be fully subject to the fairness test.***

Amendment 48

Proposal for a directive Recital 50

Text proposed by the Commission

(50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the trader proves otherwise. ***These same lists should apply in all Member States.***

Amendment

(50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two ***non-exhaustive*** lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the trader proves otherwise.

Amendment 49

Proposal for a directive Recital 51

Text proposed by the Commission

(51) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Amendment

deleted

Amendment 50

Proposal for a directive

Recital 52

Text proposed by the Commission

Amendment

(52) In particular, the Commission should be empowered to amend Annexes II and III on contract terms to be considered or presumed unfair. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

deleted

Amendment 51

Proposal for a directive

Recital 53

Text proposed by the Commission

Amendment

(53) The Commission's power to amend Annexes II and III should be used to ensure consistent implementation of the rules on unfair terms by supplementing those Annexes with contractual terms, which should be considered unfair in all circumstances or which should be deemed unfair unless the trader has proved otherwise.

deleted

Amendment 52

Proposal for a directive

Recital 55 a (new)

Text proposed by the Commission

Amendment

(55a) The Member States should ensure that their national authorities have the necessary level of cooperation with the

European Consumer Centre (ECC) network, so as to react in cross-border cases, especially on pending requests at ECCs.

Amendment 53

Proposal for a directive Recital 60

Text proposed by the Commission

(60) The **European** Commission will look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.

Amendment

(60) The Commission, *following consultation with the Member States and stakeholders*, will look into the most appropriate way to ensure that all consumers *and traders* are made aware of their rights at the point of sale. *The Commission should avail itself especially of the means provided by information and communication technology tools and public media.*

Amendment 54

Proposal for a directive Recital 61 a (new)

Text proposed by the Commission

Amendment

(61a) Provision should be made for a mutual evaluation process in which, during the transposition period for this Directive, Member States would first have to screen their legislation in order to ascertain what stricter provisions, which are compliant with the Treaty on the Functioning of the European Union, are to be maintained or adopted in their legal system in order to ensure a higher level of protection for the consumer. By the end of the transposition period for this Directive, Member States should draw up a report

on the results of this screening. Each report should be submitted to all other Member States and stakeholders. Member States would then have six months in which to submit their observations on these reports. Not later than one year after the end of the transposition period for this Directive, and every three years thereafter, the Commission should draw up a summary report, accompanied where appropriate by legislative proposals. If necessary, the Commission could assist the Member States in devising a common method.

Amendment 55

**Proposal for a directive
Recital 61 b (new)**

Text proposed by the Commission

Amendment

(61b) To ensure a high level of consumer protection in all Member States, persons and organisations with a legitimate interest in consumer protection should be encouraged to notify the Member States and the Commission about their evaluations and issue non-binding recommendations so that they can be taken into account when this Directive is reviewed.

Amendment 56

**Proposal for a directive
Recital 63**

Text proposed by the Commission

Amendment

(63) It is appropriate to review this Directive if some barriers to the internal market were identified. The review could lead to a Commission proposal to amend this Directive, which may include

deleted

amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the acquis in order to achieve a high, common level of consumer protection.

Amendment 57

Proposal for a directive Article 1

Text proposed by the Commission

The purpose of this Directive is to ***contribute to the proper functioning of the internal market*** and achieve a high level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

Amendment

The purpose of this Directive is to achieve a high level of consumer protection and ***contribute to the proper functioning of the internal market*** by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

Amendment 58

Proposal for a directive Article 1

Text proposed by the Commission

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

Amendment

Does not affect the English version.

Justification

Does not affect the English version.

Amendment 59

Proposal for a directive Article 2 – point 1

Text proposed by the Commission

(1) '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

(1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are **primarily** outside his trade, business, craft or profession.

Member States may maintain or extend the application of the rules of this Directive to legal or natural persons which are not "consumers" within the meaning of the first paragraph of this point;

Amendment 60

Proposal for a directive Article 2 – point 2

Text proposed by the Commission

(2) 'trader' means any natural or legal person who, ***in contracts covered by this Directive***, is acting for purposes relating to his trade, business, craft or profession and anyone acting ***in the name of or*** on behalf of a trader;

Amendment

(2) 'trader' means any natural or legal person who, ***irrespective of whether privately or publicly owned***, is acting for purposes relating to his trade, business, craft or profession and anyone acting on behalf of a trader ***in relation to contracts covered by this Directive***;

Amendment 61

Proposal for a directive Article 2 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'goods' means any tangible movable item, and any intangible item usable in a manner which can be equated with physical possession, with the exception of

goods sold by way of execution or otherwise by authority of law. Water, gas and electricity shall be considered as 'goods' within the meaning of this Directive where they are put up for sale in a limited volume or set quantity;

(See amendment for Article 2 – point 4)

Amendment 62

Proposal for a directive Article 2 – point 2 b (new)

Text proposed by the Commission

Amendment

(2b) 'good made to the customer's specifications' means any non-prefabricated good made on the basis of an individual choice or decision by the customer;

Amendment 63

Proposal for a directive Article 2 – point 3

Text proposed by the Commission

Amendment

(3) 'sales contract' means any contract for the sale of goods by the trader to the consumer including any mixed-purpose contract having as its object both goods and services;

deleted

(See amendment for Article 2 – point 5 a)

Amendment 64

Proposal for a directive
Article 2 – point 4

Text proposed by the Commission

Amendment

(4) 'goods' means any tangible movable item, with the exception of:

deleted

(a) goods sold by way of execution or otherwise by authority of law,

(b) water and gas where they are not put up for sale in a limited volume or set quantity,

(c) electricity;

(See amendment for Article 2 – point 2 a)

Amendment 65

Proposal for a directive
Article 2 – point 5

Text proposed by the Commission

Amendment

(5) 'service *contract*' means any *contract other than a sales contract whereby a service is provided* by the trader to the consumer;

(5) 'service' means any *work or* other service *of any kind provided* by the trader to the consumer *for remuneration*;

Amendment 66

Proposal for a directive
Article 2 – point 5 a (new)

Text proposed by the Commission

Amendment

(5a) '*sales contract*' means any contract whereby a trader grants ownership of goods to a consumer in accordance with the applicable national law, or undertakes to grant such ownership, and whereby the consumer undertakes to pay the agreed

price. Contracts for the supply of goods to be manufactured or produced shall also be defined as sales contracts for the purposes of this Directive;

(See amendment for Article 2 – point 3)

Amendment 67

Proposal for a directive Article 2 – point 5 b (new)

Text proposed by the Commission

Amendment

(5b) 'mixed-purpose contract' means any contract that includes both aspects relating to the provision of services and aspects relating to the supply of goods;

Amendment 68

Proposal for a directive Article 2 – point 6

Text proposed by the Commission

Amendment

(6) 'distance contract' means any *sales or service* contract *where the trader, for the conclusion of the contract, makes* exclusive use of one or more means of distance communication;

(6) 'distance contract' means any contract *for the supply of a good or the provision of a service concluded between a trader and a consumer under an organised distance sales or service-provision scheme where the trader and the consumer are not simultaneously physically present for the conclusion of the contract, but, rather, make* exclusive use of one or more means of distance communication;

Amendment 69

Proposal for a directive
Article 2 – point 7

Text proposed by the Commission

Amendment

(7) 'means of distance communication'
means any means which, without the simultaneous physical presence of the trader and the consumer, may be used for the conclusion of a contract between those parties;

deleted

Amendment 70

Proposal for a directive
Article 2 – point 8

Text proposed by the Commission

Amendment

(8) 'off-premises contract' means:

(8) 'off-premises contract' means *any contract between a trader and a consumer for the supply of a good or the provision of a service:*

(a) *any sales or service contract* concluded away from business premises with the simultaneous physical presence of the trader and the consumer *or any sales or service contract for which an offer was made by the consumer in the same circumstances, or*

(a) *which is* concluded away from business premises with the simultaneous physical presence of the trader and the consumer, or

(b) *any sales or service contract concluded on business premises but negotiated* away from business premises, with the simultaneous physical presence of the trader and the consumer.

(aa) *for which an offer was made by the consumer with the simultaneous physical presence of the trader and the consumer away from business premises, or*

(b) *whose main components have been determined in the course of an excursion, a leisure event or a sales demonstration organised by the trader or by a third party on behalf of the trader* away from business premises, with the simultaneous physical presence of the trader and the consumer, *the aim of such excursion, leisure event*

or demonstration being to conclude a contract subsequently on business premises;

Amendment 71

Proposal for a directive Article 2 – point 9 – point b

Text proposed by the Commission

(b) market stalls *and fair stands* where the trader carries on his activity on a regular or temporary basis;

Amendment

(b) market stalls where the trader carries on his activity on a regular or temporary basis;

Amendment 72

Proposal for a directive Article 2 – point 12

Text proposed by the Commission

(12) 'product' means any good or service including immoveable property, rights and obligations;

Amendment

deleted

Amendment 73

Proposal for a directive Article 2 – point 14

Text proposed by the Commission

(14) 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;

Amendment

deleted

Amendment 74

Proposal for a directive

Article 2 – point 15

Text proposed by the Commission

(15) 'auction' means a method of sale where goods or services are offered by the trader through a competitive bidding procedure which may include the use of means of distance communication and where the highest bidder is bound to purchase the goods or the services. A transaction concluded on the basis of a fixed-price offer, despite the option given to the consumer to conclude it through a bidding procedure is not an auction;

Amendment

deleted

Amendment 75

Proposal for a directive

Article 2 – point 16

Text proposed by the Commission

(16) 'public auction' means a method of sale where goods are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a competitive bidding procedure run by an auctioneer and where the highest bidder is bound to purchase the goods;

Amendment

(16) 'public auction' means a method of sale where a good or a service is offered by the trader to consumers, during an event which is physically accessible to the public, through a transparent, competitive bidding procedure run by a third party (the auctioneer), who, for pecuniary consideration, acts as the trader's agent. In an ascending price auction, the good or service is sold to the consumer or a person acting on his behalf making the highest bid. In a descending price auction, the good or service is sold to the consumer or a person acting on his behalf who is first to agree immediately to purchase the good or service for the asking price;

Amendment 76

Proposal for a directive Article 2 – point 17

Text proposed by the Commission

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

Amendment

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

Amendment 77

Proposal for a directive Article 2 – point 18

Text proposed by the Commission

(18) 'commercial guarantee' means any undertaking by the trader or producer (the 'guarantor') to the consumer to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

Amendment

(18) 'commercial guarantee' means any undertaking by the trader or producer (the 'guarantor') to the consumer, ***in addition to his legal obligations 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 requirement 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 78

Proposal for a directive Article 2 – point 19

Text proposed by the Commission

(19) ***'intermediary' means a trader who concludes the contract in the name of or on behalf of the consumer;***

Amendment

deleted

Amendment 79

Proposal for a directive Article 2 – point 20

Text proposed by the Commission

(20) '**ancillary** contract' means a contract **by which the consumer acquires goods or services related to a distance contract or an off-premises contract and these goods or services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.**

Amendment

(20) '**linked** contract' means **any** contract **for the supply of a good or the provision of a service:**

(a) which forms, from an objective point of view, a commercial unit with a distance contract or an off-premises contract; and

(b) where the goods are supplied or the services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.

A commercial unit shall be deemed to exist where the goods or services provided under the linked contract are related to the performance of the distance contract or of the off-premises contract, as the case may be, or to the use of the goods supplied or the services provided under such distance or off-premises contract.

Amendment 80 Proposal for a directive Article 3

Text proposed by the Commission

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to **sales and service** contracts concluded between the trader and the consumer.

Amendment

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to contracts concluded between the trader and the consumer **for the supply of a good or the provision of a service and to mixed-purpose contracts.**

2. This Directive shall *only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.*

2. This Directive shall *be without prejudice to sector-specific Union legislation governing contracts concluded between a trader and a consumer.*

2a. This Directive shall not apply to contracts relating to:

(a) social services;

(b) healthcare, that is to say health services provided by health professionals to patients to assess, maintain or restore their health;

(c) gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions.

2b. Articles 5 to 19 and 23 a shall not apply to contracts:

(a) relating to financial services;

(b) falling within the scope of Directive 2002/65/EC.

3. Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on full harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council and of Council Directive 90/314/EEC.

3. Subject to paragraphs 4 to 7 of this Article, Articles 9 to 19 shall apply to distance and off-premises contracts.

4. Articles 5, 7, 9 and 11 shall be without prejudice to the provisions concerning information requirements contained in Directive 2006/123/EC of the European Parliament and of the Council and Directive 2000/31/EC of the European

4. Articles 9 to 19 shall not apply to distance and off-premises contracts:

(a) relating to the formation, acquisition or conveyance of rights in immovable property or guarantees in immovable property, or relating to the construction or major modification of a building or the renting of a building or an apartment;

(b) falling within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours¹ or Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts²;

(c) which, in accordance with the provisions of the Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful consideration and with knowledge of its legal scope.

5. Articles 9 to 19 shall not apply to off-premises contracts for which the trader and the consumer immediately perform their contractual obligations and the payment to be made by the consumer does not exceed EUR 40, if such contracts, due to their nature, are usually concluded away from business premises. Member States may define a lower value in their national legislation.

6. Articles 9 to 19 shall not apply to distance contracts:

(a) concluded by means of automatic vending machines or automated commercial premises;

(b) concluded with telecommunications operators through public payphones for the use thereof, or relating to single telephone, Internet or fax connections established by the consumer.

7. Articles 12 to 19 shall not apply to distance contracts for the provision of accommodation, transport, motor vehicle rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.

8. Subject to paragraphs 9, 10 and 11 of this Article, Articles 22 to 29 shall apply to sales contracts. Without prejudice to Article 24(5), where the contract is a mixed-purpose contract, Articles 22 to 29 shall only apply to the goods.

9. Article 22a and 23a shall also apply to service contracts and mixed-purpose contracts

10. Articles 22 to 29 shall not apply to:

a) electricity;

b) water and gas, where they are not put up for sale in a limited volume or set quantity.

11. Articles 22 to 29 shall not apply to the sale of second-hand goods at public auctions.

¹ OJ L 158, 23.6.1990, p. 59.

² OJ L 33, 3.2.2009, p. 10.

Proposal for a directive
Article 4 – title

Text proposed by the Commission

Amendment

Full harmonisation

Degree of harmonisation

Amendment 82

Proposal for a directive
Article 4

Text proposed by the Commission

Amendment

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

1. Except where provided for in paragraph 1 a and 1 b, Member States may maintain or introduce, in their national law, ***more stringent*** provisions, ***compatible with the Treaty on the Functioning of the European Union, in order to ensure a higher level*** of consumer protection, ***under the conditions and to the extent specified in Article 5, Article 9(3b) and 9(3c), Articles 22 to 29, Article 31(4) and Articles 34 and 35***

1a. Member States may maintain in force, in their national law, more stringent provisions, which are compatible with the Treaty on the Functioning of the European Union, in order to ensure a higher level of consumer protection, as laid down in Article 12(4) and Article 13(2).

1b. Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in Article 2, Article 9(1) to (3a) and Article 9(3e), Articles 10 and 11, Article 12(1) to (3), Article 13(1), Articles 14 to 19, Articles 30 to 33 and Articles 36 including more stringent provisions to ensure a different level of consumer protection.

Amendment 83

Proposal for a directive Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Periods, dates and time limits

Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits¹ shall apply to the calculation of the periods contained in this Directive.

¹ OJ L 124, 8.6.1971, p. 1.

Amendment 84

Proposal for a directive Chapter II – title

Text proposed by the Commission

Amendment

Consumer information

Consumer information *for on-premises contracts*

Amendment 85

Proposal for a directive Article 5 – title

Text proposed by the Commission

Amendment

General information requirements

Information requirements *for on-premises contracts*

Amendment 86

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. ***Prior to the conclusion of any sales or service*** contract, the trader shall provide the consumer with the following information, if not already apparent from the context:

Amendment

1. ***On concluding an on-premises*** contract, the trader ***or the person acting on his behalf*** shall provide the consumer with the following information ***in a clear and intelligible manner***, if not already apparent from the context:

Amendment 87

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) the main characteristics of the ***product***, to an extent appropriate to the ***medium and the product***;

Amendment

(a) the main characteristics of the ***good or service***, to an extent appropriate to the ***good or service***;

Amendment 88

Proposal for a directive

Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) ***the geographical address and*** the identity of the trader, such as his trading name ***and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting***;

Amendment

(b) the identity of the trader, such as his trading name;

Amendment 89

Proposal for a directive
Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the trader's business address, telephone, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and to communicate with him efficiently;

Amendment 90

Proposal for a directive
Article 5 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the price inclusive of taxes, or where the nature of the **product** means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

(c) the **total** price inclusive of taxes, or where the nature of the **good or service** means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges **and any other cost** or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; ***In the case of an open-ended contract, the total price shall mean the total monthly costs;***

Amendment 91

Proposal for a directive
Article 5 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the arrangements for payment, delivery, performance and the complaint handling policy, ***if they depart from the requirements of professional diligence;***

(d) ***when appropriate***, the arrangements for payment, delivery, performance, ***the date by which the trader undertakes to deliver the goods or to provide the service*** and the trader's complaint handling policy;

Amendment 92

Proposal for a directive

Article 5 – paragraph 1 – points f and f a (new)

Text proposed by the Commission

(f) the existence and the conditions of after-sales services and commercial guarantees, where applicable;

Amendment

(f) ***in addition to a reminder of the existence of a legal guarantee of conformity for goods***, the existence and the conditions of after-sales services and commercial guarantees, where applicable;

(fa) the existence of codes of conduct and how they can be obtained, where applicable;

Amendment 93

Proposal for a directive

Article 5 – paragraph 1 – point g

Text proposed by the Commission

(g) the duration of the contract where applicable or if the contract is open-ended, the conditions for terminating the contract;

Amendment

(g) the duration of the contract where applicable or if the contract is open-ended ***or is to be extended automatically***, the conditions for terminating the contract;

Amendment 94

Proposal for a directive

Article 5 – paragraph 1 – point i

Text proposed by the Commission

(i) the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader.

Amendment

(i) ***where applicable***, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;

Amendment 95

Proposal for a directive

Article 5 – paragraph 1 – points i a, i b and i c (new)

Text proposed by the Commission

Amendment

(ia) the application of technical protection measures for digital content, where applicable;

(ib) any interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of, including any lack of interoperability, where applicable;

(ic) the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it, where applicable.

Amendment 96

Proposal for a directive

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case of a public auction, the information in paragraph 1(b) may be replaced by the geographical address and the identity of the auctioneer.

2. Paragraph 1 shall not be applicable to contracts for the delivery of a good or the provision of a service, which involve day-to-day transactions and in which the trader has to deliver the good or provide the service immediately when the contract is concluded.

Amendment 97

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. The information referred to in paragraph 1 shall form an integral part of the sales or service contract.

3. Member States may adopt or maintain additional pre-contractual information requirements.

Amendment 98

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. Without prejudice to *Articles 7(2), 13 and 42*, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective *contract law* remedies for any breach of Article 5.

2. Without prejudice to *Articles 13 and 42*, the consequences of any breach of Article 5 shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective *and proportionate* remedies for any breach of Article 5.

Amendment 99

Proposal for a directive
Article 7

Text proposed by the Commission

Amendment

Article 7

deleted

Specific information requirements for intermediaries

1. Prior to the conclusion of the contract, the intermediary shall disclose to the consumer, that he is acting in the name of or on behalf of another consumer and that the contract concluded, shall not be regarded as a contract between the consumer and the trader but rather as a contract between two consumers and as such falling outside the scope of this

Directive.

2. The intermediary, who does not fulfil the obligation under paragraph 1, shall be deemed to have concluded the contract in his own name.

3. This Article shall not apply to public auctions.

Amendment 100

Proposal for a directive Article 8

Text proposed by the Commission

Amendment

Article 8

deleted

Scope

This Chapter shall apply to distance and off-premises contracts.

Amendment 101

Proposal for a directive Article 9

Text proposed by the Commission

Amendment

Article 9

Information requirements for distance and off-premises contracts

As regards distance or off-premises contracts, the trader shall provide the following information which shall form an integral part of the contract:

Pre-contractual information requirements for distance and off-premises contracts

1. In good time before the consumer is bound by any distance or off-premises contract or any corresponding offer, the trader or the person acting on his behalf shall provide the consumer with the following information in a clear and intelligible manner:

(a) the information referred to in Articles 5 and 7 and, by way of derogation from Article 5(1)(d), the arrangements for payment, delivery and performance in all cases;

(b) where a right of withdrawal applies, the conditions and procedures for exercising that right in accordance with Annex I;

(c) if different from his geographical address, the geographical address of the place of business of the trader (and where applicable that of the trader on whose behalf he is acting) where the consumer can address any complaints;

(d) the existence of codes of conduct and how they can be obtained, where applicable;

(e) the possibility of having recourse to an amicable dispute settlement, where applicable;

(a) the main characteristics of the good or service, to the extent appropriate to the medium and the good or service;

(b) the identity of the trader, such as his trading name;

(ba) the trader's business address, telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and to communicate with him efficiently;

(c) the total price inclusive of taxes, or, where the nature of the good or service means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges and any other cost or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; in the case of an open-ended contract, the total price shall mean the total monthly costs;

(d) the arrangements for payment, delivery, performance, the date by which the trader undertakes to deliver the goods or to perform the service and the trader's complaint handling policy;

(e) in so far as a right of withdrawal exists, the conditions, period and procedure for exercising that right including the eventual costs of return of the goods for the consumer; for this purpose, the trader may use the model instructions on withdrawal set out in Annex I(A) and the model withdrawal form set out in Annex I(B), or any other

clearly worded statement; if the trader informs the consumer using the model instructions on withdrawal in Annex I(A), he shall be deemed to have satisfied the information requirements laid down in this Article concerning the right of withdrawal;

(ea) where a right of withdrawal does not apply in accordance with Article 19(1), the information that the consumer cannot exercise a right of withdrawal;

(f) that the contract will be concluded with a trader and as a result that the consumer will benefit from the protection afforded by this Directive.

(f) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;

(fa) the existence of codes of conduct and how they can be obtained, where applicable;

(fb) the duration of the contract where applicable, or, if the contract is open-ended or is to be extended automatically, the conditions for terminating the contract;

(fc) the minimum duration of the consumer's obligations under the contract, where applicable;

(fd) the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;

(fe) the application of technical protection measures for digital content, where applicable;

(ff) any interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of, including any lack of interoperability, where

applicable;

(fg) the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it, where applicable.

2. In the case of a public auction, the information referred to in points (b), (ba) and (c) of paragraph 1 may be replaced by the equivalent details for the auctioneer.

3. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract.

3a. Member States shall not impose any other requirements on the content of the model instructions on withdrawal set out in Annex I(A).

3b. For distance and off-premises contracts relating to transport services or health and safety requirements, Member States may adopt or maintain provisions of national law laying down additional pre-contractual information requirements provided that they are compatible with the Treaty on the Functioning of European Union and that such requirements are appropriate for the proper information of the consumer.

3c. Member States may adopt or maintain additional pre-contractual information requirements for all distance and off-premises contracts for the provision of services for which, pursuant to Article 22(5) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market¹, they impose additional information requirements applicable to providers established in their territory.

3d. Article 5 shall be without prejudice to Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market².

3e. As regards compliance with the information requirements referred to in this Chapter, the burden of proof shall be upon the trader.

¹ OJ L 376, 27.12.2006, p. 36.

² OJ L 178, 17.7.2000, p. 1.

Amendment 102

Proposal for a directive Article 10 – Title

Text proposed by the Commission

Formal requirements for off-premises contracts

Amendment

Formal ***pre-contractual information*** requirements for off-premises contracts

Amendment 103

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

1. With respect to off-premises contracts, the information provided for in Article 9 shall be given ***in the order form*** in plain ***and*** intelligible language and be legible. ***The order form shall include the standard withdrawal form set out in Annex I(B).***

Amendment

1. With respect to off-premises contracts, the information provided for in Article 9 shall be given ***to the consumer on a durable medium, in so far as this appears appropriate in view of the nature of the contract,*** in plain, intelligible language and shall be legible. ***The consumer may in any event request that the information be provided on paper.***

Amendment 104

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. An off-premises contract shall only **be** valid if the consumer ***signs an order form and in cases where the order form is not on paper, receives a copy of the order form on another durable medium.***

Amendment

2. An off-premises contract shall only **become** valid if the consumer ***has signed*** an order form.

Amendment 105

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall not impose any formal requirements .

Amendment

3. Member States shall not impose any ***further formal pre-contractual information*** requirements ***for the fulfilment of the information obligations referred to in Article 9(1).***

Amendment 106

Proposal for a directive Article 11 – Title

Text proposed by the Commission

Formal requirements for distance contracts

Amendment

Formal ***pre-contractual information*** requirements for distance contracts

Amendment 107

Proposal for a directive

Article 11 – paragraphs 1 and 1 a (new)

Text proposed by the Commission

1. With respect to distance contracts, the information provided for in **Article 9(a)** shall be given or made available to the consumer ***prior to the conclusion of the contract***, in plain and intelligible language and be legible, in a way appropriate to the means of distance communication used.

Amendment

1. With respect to distance contracts, the information provided for in **Article 9** shall be given or made available to the consumer ***on a durable medium***, in plain and intelligible language, and ***shall*** be legible, in a way appropriate to the means of distance communication used.

1a. If a distance contract for the provision of services places the consumer under an obligation to make a payment, the consumer shall be bound by the contract only if:

(a) the trader has made the consumer aware in a clear and prominent manner of the total price, including all related price components; and

(b) for contracts concluded on the Internet, the trader has designed his website in such a way that a binding order cannot be placed until the consumer has confirmed that he has read and understood the information required under point (a); or

(c) for contracts concluded on the telephone, the trader has sent the consumer a confirmation of his offer on a durable medium and the consumer has confirmed the conclusion of the contract on a durable medium.

Amendment 108

Proposal for a directive

Article 11 – paragraphs 2 and 2 a (new)

Text proposed by the Commission

2. If the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and the commercial purpose of the call at the beginning of the conversation with the consumer.

Amendment

2. If the trader ***or an intermediary acting on behalf of the trader*** makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and the commercial purpose of the call at the beginning of the conversation with the consumer.

2a. Trading websites shall indicate clearly and legibly on their homepage whether there are restrictions of any kind – including on means of payment – regarding delivery to certain Member States.

Amendment 109

**Proposal for a directive
Article 11 – paragraph 3**

Text proposed by the Commission

3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least the information regarding the main characteristics of the ***product and*** the total price referred to in ***Articles 5(1)(a) and (c) on that particular medium prior to the conclusion of such a contract***. The other information referred to in ***Articles 5 and 7*** shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.

Amendment

3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least, ***on that particular medium prior to the conclusion of such a contract***, the ***pre-contractual*** information regarding the main characteristics of the ***good or service***, the total price, ***the duration of the contract and, if the contract is open-ended, the conditions for terminating the contract*** referred to in ***Article 9(1)(a), (b), (c), (e) and (g)***. The other information referred to in ***Article 9*** shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.

Amendment 110

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. The consumer shall receive confirmation of all the information referred to in Article 9(a) to (f), on a durable medium, in reasonable time after the conclusion of any distance contract, and at the latest at the time of the delivery of the goods or when the performance of the service has begun, unless the information has already been given to the consumer prior to the conclusion of any distance contract on a durable medium.

deleted

Amendment 111

Proposal for a directive
Article 11 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall not impose any formal requirements other than those provided for in paragraphs 1 to 4.

4. Member States shall not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations referred to in paragraph 9(1).

Amendment 112

Proposal for a directive
Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In the case of a distance or off-premises contract, the withdrawal period referred to in paragraph 1 shall begin from the day of the conclusion of the contract or on the day on which the consumer receives a copy of the signed

contract document on a durable medium, if different from the day of conclusion of the contract.

Amendment 113

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

2. In the case of an off-premises contract, the withdrawal period shall begin from the day *when* the consumer *signs the order form or in cases where the order form is not on paper, when the consumer receives a copy of the order form on another durable medium.*

In the case of a distance contract for the sale of goods, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered.

In the case of a distance contract for the provision of services, the withdrawal period shall begin from the day of the conclusion of the contract.

Amendment

2. *Notwithstanding paragraph 1*, in the case of a *distance or* off-premises contract *for the delivery of goods*, the withdrawal period shall begin from the day *on which* the consumer *or a third party other than the carrier and indicated by the consumer acquires material possession of the goods ordered or:*

(a) in the case of multiple goods ordered by the consumer in one order and delivered separately, of the last good delivered;

(b) in the case of a good consisting of multiple lots or pieces, of the last lot or piece;

(c) in the case of the recurring delivery of goods of the same kind during a defined period of time, of the first good delivered.

Amendment 114

Proposal for a directive Article 12 – paragraph 3

Text proposed by the Commission

3. The deadline referred to in paragraph 1 is met if the communication concerning the exercise of the right of withdrawal is sent by the consumer before the end of that **deadline**.

Amendment

3. The deadline referred to in paragraph 1 is met if the communication concerning the exercise of the right of withdrawal is sent by the consumer before the end of that **period**.

Amendment 115

Proposal for a directive Article 12 – paragraph 4

Text proposed by the Commission

4. The Member States shall not prohibit the parties from performing their obligations **under the contract** during the withdrawal period.

Amendment

4. The Member States shall not prohibit the parties from performing their **contractual** obligations during the withdrawal period. **Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment during a given period after the conclusion of the contract.**

Amendment 116

Proposal for a directive Article 13

Text proposed by the Commission

If the trader has not provided the consumer with the information on the right of

Amendment

1. If the trader has not provided the consumer with the information on the right

withdrawal in breach of **Articles 9(b), 10(1) and 11(4)**, the withdrawal period shall expire **three months after the trader has fully performed his other contractual obligations**.

of withdrawal in breach of **point (e) of Article 9(1)**, the withdrawal period shall expire **one year from the end of the initial withdrawal period, as determined in accordance with Article 12(1a) and (2)**.

1a. Nevertheless, Member States may maintain existing national legislation providing for a longer period of expiration of the withdrawal period.

Amendment 117

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. The consumer shall inform the trader of his decision to withdraw **on a durable medium either in a statement addressed to the trader drafted in his own words or using the standard withdrawal form as set out in Annex I(B)**.

Member States shall not provide for any **other** formal requirements applicable to **this standard** withdrawal form.

Amendment 118

Amendment

1. **Before expiry of the withdrawal period**, the consumer shall inform the trader of his decision to withdraw. **For this purpose, the consumer may either:**

(a) use the model withdrawal form as set out in Annex I(B) or make any other clearly worded statement on a durable medium; or

(b) return the goods to the trader, accompanied by a clearly worded statement by the consumer setting out his decision to withdraw.

Member States shall not provide for any formal requirements applicable to **the model** withdrawal form **other than those set out in Annex I(B)**

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

2. ***For distance contracts concluded on the Internet***, the trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit the ***standard*** withdrawal form on the trader's website. In ***that case*** the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal ***by email*** without delay.

Amendment

2. The trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit ***either the model*** withdrawal form ***set out in Annex I(B) or any other clearly worded statement on*** the trader's website. ***The trader may also give the option to the consumer of withdrawing from the contract by telephone.*** In ***these cases*** the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal ***on a durable medium*** without delay.

Amendment 119

Proposal for a directive
Article 15 – points a and b

Text proposed by the Commission

- (a) to perform the distance or off-premises contract, or
- (b) to conclude ***an*** off-premises contract, in cases where an offer was made by the consumer.

Amendment

Does not affect the English version

- (b) to conclude ***the distance or*** off-premises contract, in cases where an offer was made by the consumer.

Amendment 120

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

1. The trader shall reimburse any payment received from the consumer ***within thirty*** days from the day on which he ***receives the***

Amendment

1. The trader shall reimburse any payment received from the consumer, ***including, if applicable, the costs of delivery, without***

communication of withdrawal.

undue delay, and in any event not later than fourteen days from the day on which he is informed of the consumer's decision to withdraw in accordance with Article 14. The trader may carry out such reimbursement by any means of payment, which is legal tender in the country where the consumer receives it and provided that the consumer does not incur any fees as a result of the reimbursement.

Amendment 121

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

2. For sales contracts, the trader may withhold the reimbursement until he has received or collected the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

Amendment

2. Notwithstanding paragraph 1, the trader shall not be required to reimburse additional delivery costs, if the consumer has expressly opted for a type of delivery other than a standard delivery.

Amendment 122

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

1. For sales contracts for which the material possession of the goods has been transferred to the consumer or at his request, to a third party before the expiration of the withdrawal period, the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive them, within fourteen days from the day on which he communicates his withdrawal to the trader, unless the trader has offered to collect the goods himself.

Amendment

1. For distance or off-premises contracts for the supply of goods the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive them, without undue delay and in any event not later than fourteen days from the day on which he communicates his decision to withdraw to the trader in accordance with Article 14, unless the trader has offered to collect the goods himself.

The consumer shall only be charged for the direct cost of returning the goods *unless* the trader has agreed to bear *that cost*.

The consumer shall only be charged for the direct cost of returning the goods. ***He shall not be charged for that cost if*** the trader has agreed ***in the contract*** to bear ***it or the price of the goods to be returned is more than EUR 40***.

Amendment 123

Proposal for a directive Article 17 – paragraphs 2 and 2 a (new)

Text proposed by the Commission

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ***ascertain*** the nature and functioning of the goods. ***He*** shall not be liable for diminished value where the trader has failed to provide notice of the withdrawal ***right*** in accordance with ***Article 9(b)***. ***For service contracts subject to a right of withdrawal, the consumer shall bear no cost for services performed, in full or in part, during the withdrawal period.***

Amendment

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ***establish*** the nature, ***qualities*** and functioning of the goods. ***The consumer*** shall ***in any event*** not be liable for ***any*** diminished value ***of the goods*** where the trader has failed to provide notice of the ***right of*** withdrawal in accordance with ***point (e) of Article 9(1)***.

2a. Except as provided for in this Article, the consumer shall not incur any liability through the exercise of the right of withdrawal.

Amendment 124

Proposal for a directive Article 18 – title

Text proposed by the Commission

Effects of the exercise of the right of withdrawal on ***ancillary*** contracts

Amendment

Effects of the exercise of the right of withdrawal on ***linked*** contracts

Amendment 125 **Proposal for a directive**
Article 18 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 15 of Directive 2008/48/EC, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 12 to 17, any **ancillary** contracts shall be automatically terminated, without any costs for the consumer.

Amendment

1. Without prejudice to Article 15 of Directive 2008/48/EC, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 12 to 17, any **linked** contracts shall be automatically terminated, without any costs for the consumer **that are not provided for in this Directive**.

Amendment 126

Proposal for a directive
Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

1. In respect of distance contracts, the right of withdrawal shall not apply as regards the following:

Amendment

1. In respect of distance **and off-premises** contracts, the right of withdrawal shall not apply as regards the following:

Amendment 127

Proposal for a directive
Article 19 – paragraph 1 – point a

Text proposed by the Commission

(a) services where performance has begun, with the consumer's prior express consent, before the end of the fourteen day period referred to in Article 12;

Amendment

(a) services where performance has begun, with the consumer's prior express consent **on a durable medium**, before the end of the fourteen day period referred to in Article 12; **in such cases, the consent should also extend to waiving the consumer's right of withdrawal;**

Amendment 128

Proposal for a directive
Article 19 – paragraph 1 – point b

Text proposed by the Commission

(b) the supply of goods or services for which the price is dependent on fluctuations in the *financial* market which cannot be controlled by the trader;

Amendment

(b) the supply of goods or services for which the price is dependent on fluctuations in the market which cannot be controlled by the trader *and which may occur within the withdrawal period*;

Amendment 129

Proposal for a directive
Article 19 – paragraph 1 – point c

Text proposed by the Commission

(c) the supply of goods made to the consumer's specifications or clearly personalized or which are liable to deteriorate or expire rapidly;

Amendment

(c) the supply of goods made *or services provided* to the consumer's specifications or clearly personalized, *requiring the trader to make individual arrangements which he can make no other use of*, or which are liable to deteriorate or expire rapidly;

Amendment 130

Proposal for a directive
Article 19 – paragraph 1 – points d, d a (new) and d b (new)

Text proposed by the Commission

(d) the supply *of wine, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place beyond the time-limit referred to in Article 22(1) and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader*;

Amendment

(d) the supply of
- *foodstuffs,*
- *beverages,*
- *pharmaceuticals, or*
- *other hygienically sensitive goods, whose packaging or sealing has already been opened by the consumer, after having been previously informed about the*

exclusion of the right of withdrawal;

(da) contracts in respect of which the consumer, in order to respond to an immediate emergency, has requested immediate performance by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional goods or services;

(db) contracts for which the consumer has specifically requested the trader to visit him at home for the purpose of carrying out repairs or maintenance; if on the occasion of such a visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;

Amendment 131

Proposal for a directive

Article 19 – paragraph 1 – point e

Text proposed by the Commission

(e) the supply of sealed audio or video recordings or computer software which were unsealed by the consumer;

Amendment

(e) the supply of sealed audio or *sealed* video recordings or computer software which were unsealed by the consumer;

Amendment 132

Proposal for a directive

Article 19 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) the supply of newspapers, periodicals and magazines;

(f) the supply of newspapers, periodicals and magazines ***with the exception of subscription contracts for the supply of such publications;***

Amendment 133

Proposal for a directive

Article 19 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) ***gaming and lottery services;***

deleted

Amendment 134

Proposal for a directive

Article 19 – paragraph 1 – points h and h a (new)

Text proposed by the Commission

Amendment

(h) contracts concluded at ***an*** auction.

(h) contracts concluded at ***a public*** auction.

(ha) the supply of digital content once the consumer has started to download that digital content.

Amendment 135

Proposal for a directive

Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. In respect of off-premises contracts, the right of withdrawal shall not apply as regards the following:

deleted

(a) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, selected in advance by the consumer by means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;

(b) contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;

(c) contracts for which the consumer has specifically requested the trader, by means of distance communication, to visit his home for the purpose of repairing or performing maintenance upon his property; if on this occasion, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods.

Amendment 136

Proposal for a directive Article 19 – paragraph 3

Text proposed by the Commission

3. The *parties* may agree not to apply *paragraphs 1 and 2*.

Amendment

2. The *trader and the consumer* may agree not to apply *paragraph 1*.

Amendment 137

Proposal for a directive Article 20

Text proposed by the Commission

Article 20

Excluded distance and off-premises contracts

***1. Articles 8 to 19 shall not apply to
distance and off-premises contracts:***

***(a) for the sale of immovable property or
relating to other immovable property
rights, except for rental and works
relating to immovable property;***

***(b) concluded by means of automatic
vending machines or automated
commercial premises;***

***(c) concluded with telecommunications
operators through public payphones for
their use;***

***(d) for the supply of foodstuffs or
beverages by a trader on frequent and
regular rounds in the neighbourhood of
his business premises.***

***2. Articles 8 to 19 shall not apply to off-
premises contracts relating to:***

(a) insurance,

***(b) financial services whose price depends
on fluctuations in the financial market
outside the trader's control, which may
occur during the withdrawal period, as
defined in Article 6(2)(a) of Directive
2002/65/EC¹⁶ and***

***(c) credit which falls within the scope of
Directive 2008/48/EC.***

***3. Articles 8 to 19 shall not apply to
distance contracts for the provision of
accommodation, transport, car rental
services, catering or leisure services as***

Amendment

deleted

regards contracts providing for a specific date or period of performance.

¹⁶ OJ L 271, 09.10.2002, p. 16.

Amendment 138

Proposal for a directive Article 21

Text proposed by the Commission

Amendment

Article 21

deleted

Scope

1. This Chapter shall apply to sales contracts. Without prejudice to Article 24(5), where the contract is a mixed-purpose contract having as its object both goods and services, this Chapter shall only apply to the goods

2. This Chapter shall also apply to contracts for the supply of goods to be manufactured or produced.

3. This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the goods by repair under Article 26.

4. Member States may decide not to apply this Chapter to the sale of second-hand goods at public auctions

Amendment 139

Proposal for a directive Article 22 – paragraph 1

Text proposed by the Commission

Amendment

1. Unless the parties have agreed otherwise, the trader shall deliver the

1. In the event that the parties have *not* agreed on the time of delivery, the trader

goods by transferring the material possession of the goods to the consumer or to a third party, other than the carrier ***and indicated by the consumer, within a maximum of*** thirty days from the day of the conclusion of the contract.

shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, ***indicated by the consumer and*** other than the carrier, ***as soon as possible but not later than*** thirty days from the day of the conclusion of the contract.

Amendment 140

Proposal for a directive

Article 22 – paragraphs 2, 2 a (new) and 2 b (new)

Text proposed by the Commission

2. Where the trader has failed to fulfil his obligations to deliver, the consumer shall be entitled to ***a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1.***

Amendment

2. Where the trader has failed to fulfil his obligations to deliver ***the goods at the time agreed on with the consumer, or in accordance with paragraph 1,*** the consumer shall be entitled to ***terminate the contract unless the goods are delivered within a new period to be determined by the consumer, which shall not exceed seven days. To that end, the consumer shall give prior notice in writing to the trader, specifying the new delivery period and stating his intention to terminate the contract in the event that the delivery does not take place by the end of that new delivery period. If, upon expiry of that period, no action has been taken, the consumer shall be deemed to have withdrawn from the sales contract.***

Notwithstanding the first subparagraph, the consumer shall be entitled to terminate the contract with immediate effect where the trader has implicitly or explicitly refused to deliver the goods, or where compliance with the agreed time of delivery is regarded as an essential element of the contract, taking into account the circumstances attending the conclusion of the contract.

2a. Upon termination of the contract, the trader shall immediately, and in any event not later than seven days after the termination of the contract, reimburse all sums paid under the contract.

2b. This Article shall be without prejudice to the right of the consumer to claim damages.

Amendment 141

Proposal for a directive Article 22 a (new)

Text proposed by the Commission

Amendment

Article 22a

Right to delivery of goods to or supply of services in another Member State

In the case of a distance contract, the consumer shall be entitled to require the trader to supply the goods to or deliver the service in another Member State. The trader shall meet the consumer's request if this is technically feasible and if the consumer agrees to bear all the related costs. The trader shall in any event state those costs in advance.

Amendment 142

Proposal for a directive Article 22 b (new)

Text proposed by the Commission

Amendment

Article 22b

Means of payment

1. The trader and consumer may agree on a advance payment or a deposit on delivery.

2. In accordance with Article 52 (3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market¹, Member States may prohibit or limit traders' right to request charges from consumers taking into account the need to encourage competition and promote the use of efficient payment instruments.

3. Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

¹ OJ L 319, 5.12.2007, p. 1

Amendment 143

Proposal for a directive Article 23 – paragraph 1

Text proposed by the Commission

1. The risk of loss of or damage to the goods shall pass to the consumer when he or a third party, other than the carrier **and indicated by the consumer** has acquired the material possession of the goods.

Amendment

1. The risk of loss of or damage to the goods shall pass to the consumer when he or a third party, **indicated by the consumer and** other than the carrier, has acquired the material possession of the goods. **The risk shall pass to the consumer upon delivery to the carrier, if the carrier was commissioned to carry the goods by the consumer and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.**

Amendment 144

Proposal for a directive Article 23 – paragraph 2

Text proposed by the Commission

2. The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if the consumer or a third party, other than the carrier and indicated by the consumer has failed to take reasonable steps to acquire the material possession of the goods.

Amendment

2. The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if the consumer or a third party, other than the carrier and indicated by the consumer has ***manifestly*** failed to take reasonable steps to acquire the material possession of the goods.

Amendment 145

Proposal for a directive Article 23 a (new)

Text proposed by the Commission

Amendment

Article 23a

Duration of contracts

1. Without prejudice of the provisions of this Directive on unfair terms, contracts concluded between consumers and traders shall not stipulate an initial commitment period of more than 12 months.

2. At the end of the initial 12 months commitment period, consumers shall be entitled to terminate the contract at any time. Termination of the contract shall be subject to a period of prior notice, which shall not exceed two months. Consumers shall be entitled to give such prior notice before the end of the initial commitment period in order to terminate the contract with effect from the end of that period.

Amendment 146

Proposal for a directive
Article 24 – paragraph 1

Text proposed by the Commission

1. The trader shall deliver the goods in conformity with the sales contract.

Amendment

1. The trader shall deliver the goods in conformity with the sales contract, ***in particular as regards quality and quantity, that were jointly agreed upon by the parties.***

Amendment 147

Proposal for a directive
Article 24 – paragraph 2 – point a

Text proposed by the Commission

(a) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model;

Amendment

(a) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model, ***and***

Amendment 148

Proposal for a directive
Article 24 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) they are fit, ***in the absence of an agreement on their characteristics,*** for the purpose for which the ***parties to the contract intended them*** at the time of the conclusion of the contract, ***and***

Amendment 149

Proposal for a directive
Article 24 – paragraph 2 – points c and d

Text proposed by the Commission

(c) they are fit for the purposes for which goods of the same type **are** normally used
or

(d) *they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.*

Amendment

(c) they are fit for the purposes for which goods of the same type **would** normally **be** used **and they show the quality and performance which are normal in goods of the same type, taking into account inter alia the purpose, the appearance, the durability and the finish, and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.**

Amendment 150

**Proposal for a directive
Article 24 – paragraph 3**

Text proposed by the Commission

3. There shall be no lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or **should** reasonably have been **aware** of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.

Amendment

3. There shall be no lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or **could not** reasonably have been **unaware** of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.

Amendment 151

Proposal for a directive Article 24 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

(b) by the time of conclusion of the contract the statement had been corrected ***in due time and in a manner equivalent to that in which it was made or at least prominently in the contract document;***

Amendment 152

Proposal for a directive Article 24 – paragraph 5

Text proposed by the Commission

5. Any lack of conformity resulting from the incorrect installation ***of the goods shall be considered as a lack of conformity of the goods*** where the installation forms part of the sales contract and the goods were installed by the trader or under his responsibility. The same shall apply equally if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Amendment

5. ***The trader shall be liable for any*** lack of conformity ***arising as a result of the packaging or*** resulting from the incorrect installation where the installation forms part of the sales contract ***for the goods***, and the goods were installed by the trader or under his responsibility. The same shall apply equally if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Amendment 153

Proposal for a directive Article 26 – paragraph 1

Text proposed by the Commission

1. ***As provided for in paragraphs 2 to 5,*** where the goods do not conform to the contract, the consumer is entitled to:
(a) have the lack of conformity remedied

Amendment

1. Where the goods do not conform to the contract, the consumer is entitled ***either*** to:
(a) have the lack of conformity remedied

by repair or replacement,

(b) *have the price reduced,*

(c) *have the contract rescinded.*

by repair or replacement *in accordance with paragraphs 2, 3 and 5, or to*

(b) *a reasonable reduction in price or rescission of the contract in accordance with paragraphs 4, 5 and 5a.*

Amendment 154

Proposal for a directive Article 26 – paragraph 2

Text proposed by the Commission

2. The trader *shall remedy the lack of conformity by either* repair or *replacement according to his choice.*

Amendment

2. The *consumer may first require the* trader *to* repair *the goods* or *to replace them if such a remedy is not impossible or disproportionate.*

Amendment 155

Proposal for a directive Article 26 – paragraph 3

Text proposed by the Commission

3. *Where the trader has proved that remedying the lack of conformity by repair or replacement is unlawful, impossible or would cause the trader a disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded. A trader's effort is disproportionate if it imposes costs on him which, in comparison with the price reduction or the rescission of the contract, are excessive, taking into account the value of the goods if there was no lack of conformity and the significance of the lack of conformity.*

The consumer may only rescind the contract if the lack of conformity is not minor.

Amendment

3. *Either of the remedies provided for in paragraph 2 shall be deemed disproportionate if it would impose costs on the trader, which*

(a) *in the light of what would be the value of the goods if there were no lack of conformity,*

(b) taking into account the significance of the lack of conformity,

(c) upon consideration of the question as to whether use could be made of other remedies (repair or replacement) without significance inconvenience for the consumer, would be unreasonable by comparison with the alternative remedy (repair or replacement).

Repair or replacement shall take place within a reasonable time and without significant inconvenience for the consumer.

Amendment 156

Proposal for a directive Article 26 – paragraph 4

Text proposed by the Commission

4. The consumer may ***resort to any remedy available under paragraph 1***, where one of the following situations exists:

(a) the trader has implicitly or explicitly refused to remedy the lack of conformity;

(b) the trader has failed to remedy the lack of conformity within a reasonable time;

(c) the trader has ***tried to remedy the lack of conformity, causing significant inconvenience to the consumer;***

(d) the same defect has reappeared more than once within a short period of time.

Amendment 157

Amendment

4. ***Without prejudice to paragraph 5b***, the consumer may ***insist on a reasonable reduction in price or rescission of the contract***, where one of the following situations exists:

(a) the consumer is entitled neither to repair nor replacement;

(aa) the trader has refused explicitly or by his conduct to remedy the lack of conformity;

(b) the trader has failed to remedy the lack of conformity within a reasonable time;

(c) the trader has ***remedied the lack of conformity, causing significant inconvenience to the consumer.***

Proposal for a directive
Article 26 – paragraph 5

Text proposed by the Commission

5. The significant inconvenience for the consumer and the reasonable time needed for the trader to remedy the lack of conformity shall be assessed taking into account the nature of the goods ***or*** the purpose for which the consumer ***acquired the goods as provided for by*** Article 24(2)(b).

Amendment 158

Proposal for a directive
Article 26 – paragraph 5 a (new)

Text proposed by the Commission

Amendment 159

Proposal for a directive
Article 26 – paragraph 5 b (new)

Text proposed by the Commission

Amendment 160

Amendment

5. The significant inconvenience for the consumer and the reasonable time needed for the trader to remedy the lack of conformity shall be assessed taking into account the nature of the goods ***and*** the purpose for which the consumer ***requires them within the meaning of*** Article 24(2)(b).

Amendment

5a. The consumer shall not be entitled to have the sales contract rescinded if the lack of conformity is minor.

Amendment

5b. Member States may adopt or maintain provisions of national law giving consumers, in the event of lack of conformity, the right for a short period to terminate the contract and receive a full refund or a free choice from among the remedies referred to in paragraph 1, in order to ensure a higher level of consumer protection.

Proposal for a directive
Article 27 – paragraph 2

Text proposed by the Commission

2. Without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

Amendment

2. *In accordance with the provisions of applicable national law, and* without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

Amendment 161

Proposal for a directive
Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

Right of recourse

Where the trader, as final seller, is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the trader, as final seller, may pursue remedies against the person or persons liable in the contractual chain. The person or persons liable against whom the trader, as final seller, may pursue remedies, together with the relevant actions and procedure, shall be determined by national law, ., in such a way as to ensure the effectiveness of that right.

A person established as being liable within the meaning of the first paragraph shall have the burden of proving an absence of responsibility for the lack of conformity, or that the remedy made by the final seller for the consumer was not in fact required.

Amendment 162

Proposal for a directive Article 28 – paragraph 2

Text proposed by the Commission

Amendment

2. When the trader has remedied the lack of conformity by replacement, he shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has acquired the material possession of the replaced goods.

deleted

Amendment 163

Proposal for a directive Article 28 – paragraph 4

Text proposed by the Commission

Amendment

4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within two months from the date on which he detected the lack of conformity.

deleted

Amendment 164

Proposal for a directive Article 28 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States may adopt or maintain provisions of national law providing for a longer liability period, a longer period for reversal of the burden of proof in the consumer's favour or specific rules on significant lack of conformity which becomes apparent after the liability

period, in order to ensure a higher level of consumer protection.

Amendment 165

Proposal for a directive Article 28 a (new)

Text proposed by the Commission

Amendment

Article 28 a

Communication and contactability

The trader shall ensure that throughout the duration of a service contract, or, following the conclusion of a contract of sale, until the time limit referred to in Article 28(1) for formal offers, notifications and questions by the consumer relating to rights and obligations under the service contract or contract of sale has expired, he can be contacted under reasonable conditions. In particular, he shall ensure that formal offers by the consumer in respect of the contract reach him without delay and that the consumer is notified of their receipt immediately. The cost of receiving and dealing with formal offers, notifications and questions concerning the service contract or the contract of sale by telephone may not be charged to the consumer; the right of the telecommunications service provider to charge for such calls shall not be affected.

Amendment 166

Proposal for a directive Article 29 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The guarantee statement shall be drafted

2. The guarantee statement shall be drafted

in plain intelligible language **and** be legible. It shall include the following:

in plain intelligible language, be legible **and in the same font size**. It shall **be written in the same language as the contract**. **The guarantee statement shall** include the following:

Amendment 167

Proposal for a directive

Article 29 – paragraph 2 – points a, b and c

Text proposed by the Commission

(a) legal rights of the consumer, **as provided for in Article 26** and a clear statement that those rights are not affected by the commercial guarantee,

(b) set the contents of the commercial guarantee and the conditions for making claims, notably the duration, territorial scope and the name and address of the guarantor,

(c) **without prejudice to Articles 32 and 35 and Annex III(1)(j), set out, where applicable**, that the commercial guarantee **cannot** be transferred to a subsequent buyer.

Amendment

(a) legal rights of the consumer **under Articles 26 and 28**, and **the provisions of applicable national law, as well as** a clear statement that those rights are not affected by the commercial guarantee,

(b) set the contents of the commercial guarantee and the conditions for making claims, notably the duration, territorial scope and the name and address of the guarantor,

(c) **the information** that the commercial guarantee **can** be transferred to a subsequent buyer.

Amendment 168

Proposal for a directive

Article 29 – paragraph 3

Text proposed by the Commission

3. **If the consumer so requests**, the trader shall make the guarantee statement available in a durable medium.

Amendment

3. The trader shall make the guarantee statement available in a durable medium **and, if so requested by the consumer, also on paper**.

Amendment 169

Proposal for a directive Article 30 – paragraph 1

Text proposed by the Commission

1. This Chapter shall apply to contract terms drafted in advance by the trader or a third party, which the consumer ***agreed to without having the possibility of influencing their content***, in particular where such contract ***terms are*** part of a pre-formulated standard contract.

Amendment

1. This Chapter shall apply to contract terms drafted in advance by the trader or a third party, which ***have not been individually negotiated. A term shall always be regarded as not individually negotiated where it has been drafted in advance and*** the consumer ***has therefore not been able to influence the substance of the term***, in particular where such contract ***term is*** part of a pre-formulated standard contract.

Amendment 170

Proposal for a directive Article 30 – paragraph 2

Text proposed by the Commission

2. The fact that ***the consumer had the possibility of influencing*** the content of certain aspects of a contract term or one specific term, shall not exclude the application of this Chapter to other contract terms which form part of the contract.

Amendment

2. The fact that the content of certain aspects of a contract term or one specific term ***have been individually negotiated***, shall not exclude the application of this Chapter to other contract terms which form part of the contract.

Amendment 171

Proposal for a directive Article 30 – paragraph 3

Text proposed by the Commission

3. This Chapter shall not apply to contract terms reflecting ***mandatory*** statutory or ***regulatory*** provisions, which comply with ***Community*** law and the provisions or principles of international conventions to

Amendment

3. This Chapter shall not apply to contract terms reflecting statutory, ***regulatory*** or ***public policy*** provisions, which comply with ***Union*** law and the provisions or principles of international conventions to

which the *Community* or the Member States are party.

which the *Union* or the Member States are party.

Amendment 172

Proposal for a directive Article 30 a (new)

Text proposed by the Commission

Amendment

Article 30a

Degree of harmonisation

Unless otherwise provided, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, including more or less stringent provisions to ensure a different level of consumer protection.

Amendment 173

Proposal for a directive Article 31 – paragraph 1

Text proposed by the Commission

Amendment

1. Contract terms shall be expressed in plain, intelligible language and be legible.

1. ***All*** contract terms shall be expressed in ***a clear and comprehensible manner. If a contract term is in writing, it shall always be drafted*** in plain, intelligible language and be legible.

Amendment 174

Proposal for a directive Article 31 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall refrain from imposing any ***presentational*** requirements

4. Member States shall refrain from imposing any requirements ***on*** the

as to the way the contract terms are expressed or made available to the consumer.

presentation of contract terms, except for presentational requirements in relation to persons with disabilities, or where the goods or services may present a particular risk to the health and safety of the consumer or a third person, or in respect of specific goods or services where there is evidence that demonstrates consumer detriment.

Amendment 175

Proposal for a directive Article 32 – paragraph 2

Text proposed by the Commission

2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent. ***When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the trader in accordance with Article 31.***

Amendment

2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent.

Amendment 176

Proposal for a directive Article 32 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the

trader in accordance with Article 31(1) and (2). A term which has been supplied by the trader in breach of the duty of transparency imposed by Article 31(1) and 31(2) may on that ground alone be considered unfair.

Amendment 177

Proposal for a directive Article 32 – paragraph 3

Text proposed by the Commission

3. Paragraphs **1 and 2** shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the trader's main contractual obligation, provided that the trader fully complies with Article **31**.

Amendment

3. Paragraphs **1, 2, and 2(a) of this Article** shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the trader's main contractual obligation, provided that the trader fully complies with Article **31(1), (2) and (3)**.

Amendment 178

Proposal for a directive Article 33

Text proposed by the Commission

Where the trader claims that a contract term has been individually negotiated, the burden of proof shall be incumbent on him.

Amendment

Where the trader claims that a contract term has been individually negotiated, **or that a contract term is compliant with the transparency requirement laid down in Article 31(1) and 31(2)**, the burden of proof shall be incumbent on him.

Amendment 179

Proposal for a directive Article 34

Text proposed by the Commission

Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances.

That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.

Amendment

1. Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances.

2. Member States may provide in their national legislation for additional contract terms considered unfair in all circumstances. Member States shall notify to the Commission the contract terms referred to in paragraph 1.

The Commission shall make that information public in an easily accessible way.

Amendment 180

Proposal for a directive Article 35

Text proposed by the Commission

Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. ***That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.***

Amendment

1. Member States shall ensure that contract terms, as set out in the list point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32.

2. Member States may provide in their national legislation for additional contract terms presumed to be unfair. Member States shall notify to the Commission the contract terms referred to

in paragraph 1.

The Commission shall make that information public in an easily accessible way.

Amendment 181

Proposal for a directive Article 37

Text proposed by the Commission

Contract terms which are unfair shall not be binding on the consumer. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

Amendment

Contract terms which are unfair ***under this Directive*** shall not be binding on the consumer ***in accordance with national law***. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

Amendment 182

Proposal for a directive Article 38 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the ***continued*** use of unfair terms in contracts concluded with consumers by traders.

Amendment

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the use of unfair terms in contracts concluded with consumers by traders.

Amendment 183

Proposal for a directive Article 38 – paragraph 3

Text proposed by the Commission

3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent traders from ***continuing to*** use terms which

Amendment

3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent traders from ***the*** use ***of*** terms which have

have been found unfair.

been found unfair.

Amendment 184

Proposal for a directive Article 39

Text proposed by the Commission

Amendment

Article 39

deleted

Review of the terms in Annexes 2 and 3

1. Member States shall notify to the Commission the terms which have been found unfair by the competent national authorities and which they deem to be relevant for the purpose of amending this Directive as provided for by paragraph 2.

2. In the light of the notifications received under paragraph 1, the Commission shall amend Annex II and III. Those measures designed to amend non essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 40(2).

Amendment 185

Proposal for a directive Article 40

Text proposed by the Commission

Amendment

Article 40

deleted

The Committee

1. The Commission shall be assisted by the Committee on unfair terms in consumer contracts (hereinafter referred to as "the Committee").

2. Where reference is made to this paragraph, Article 5a(1) to (4), and

Article 7 of Decision 1999/468/EC¹ shall apply, having regard to the provisions of Article 8 thereof.

Amendment 186

Proposal for a directive Article 41 – 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 ***and the Commission*** shall ensure that adequate and effective means exist to ensure compliance with ***consumer rights as ensured in*** this Directive.

Amendment 187

Proposal for a directive Article 44

Text proposed by the Commission

Member States shall take appropriate measures to inform consumers of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

Amendment

Member States ***and the Commission*** shall take appropriate measures to inform consumers ***and traders, especially via information and communication technology tools and public media,*** of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

Amendment 188

Proposal for a directive Article 45

Text proposed by the Commission

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of ***a product as*** prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. ***The*** absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

Amendment

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of ***goods or provision of a service*** prohibited ***pursuant to*** Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. ***In such cases, the*** absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

Amendment 189

Proposal for a directive Article 46 – paragraph 2

Text proposed by the Commission

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Amendment

deleted

Amendment 190

Proposal for a directive Article 46 a (new)

Text proposed by the Commission

Amendment

Article 46a

Reporting requirement and mutual evaluation

1. By [the end of the transposition period], and every three years thereafter, Member

States shall draw up a report containing the following information:

(a) the text of any additional pre-contractual information requirements which Member States adopt or maintain pursuant to Article 9(3b) and (3c);

(b) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 12(4) and Article 13(2);

(c) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 22(2a);

(d) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 26(5b) and Article 28(5a);

(e) the text of any additional contract terms designated by Member States, pursuant to Article 34(1a), as unfair in all circumstances;

(e) the text of any additional contract terms designated by Member States, pursuant to Article 35(1a), as terms presumed to be unfair;

(f) the text of any decisions of fundamental importance – together with the grounds for them – taken by Member States' courts, arbitration bodies or competent administrative authorities in the field covered by this Directive.

2. The report referred to in paragraph 1 shall be submitted to the Commission. With regard to the information referred to in points (a) to (e) of paragraph 1, Member States shall explain why diverging provisions of national law are appropriate and proportionate with a view to attaining the purpose of the Directive.

3. The Commission shall ensure that the information referred to in points (d) and (e) of paragraph 1 is easily accessible to consumers and traders, inter alia on a dedicated website set up and maintained by the Commission.

4. The Commission shall forward the reports provided for in paragraph 1 to the other Member States and the European Parliament, which shall submit their observations on each of the reports within six months of receipt. Within the same period, the Commission shall consult stakeholders on those reports.

Amendment 191

Proposal for a directive Article 46 b (new)

Text proposed by the Commission

Amendment

Article 46b

Reporting by consumer protection agents

Persons or organisations having a legitimate interest under national law in protecting consumers, within the meaning of Article 38(2), shall notify the Commission of the conclusions they have reached from the assessment of the application and impact of this Directive on consumer rights and the functioning of the internal market.

Amendment 192

Proposal for a directive
Article 46 c (new)

Text proposed by the Commission

Amendment

Article 46c

Review

By [one year after transposition], and every three years thereafter, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, taking account of the information gathered pursuant to Article 46a(4) and Article 46b. If necessary, it shall make legislative proposals, accompanying the report, to adapt this Directive to developments in the field of consumer rights.

Amendment 193

Proposal for a directive
Article - 47 (new)
Directive 2002/65/EC

Text proposed by the Commission

Amendment

Article -47

Amendment of Directive 2002/65/EC

Article 2(a) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services¹ shall be replaced by the following:

“(a) 'distance contract' means any contract for the supply of a good or the provision of a service concluded between a trader and a consumer under an organised distance sales or service-provision scheme where the trader and

the consumer are not simultaneously physically present for the conclusion of the contract, but, rather, make exclusive use of one or more means of distance communication;.”

¹ OJ L 271, 9.10.2002, p. 16.

Amendment 194

Proposal for a directive Article 47 – paragraph 1

Text proposed by the Commission

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed.

Amendment

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed *as of [date of transposition]*.

Amendment 195

Proposal for a directive Article 48

Text proposed by the Commission

Article 48

Review

The Commission shall review this Directive and report to the European Parliament and the Council no later than [insert same date as in the second subparagraph of Article 46(1) +five years].

If necessary, it shall make proposals to adapt it to developments in the area. The Commission may request information from the Member States.

Amendment

deleted

(See amendment for Article 46 c)

Amendment 196

Proposal for a directive Article 48 a (new)

Text proposed by the Commission

Amendment

Article 48 a

The Commission shall consider adopting a proposal for a Regulation on distance and off-premises contracts, from which transport, and health services will be exempted.

Amendment 197

Proposal for a directive Annex I – part A

Text proposed by the Commission

Amendment

A. Information to be provided with the withdrawal form

A. Model instructions on withdrawal

1. The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.

Right of withdrawal

2. A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending the withdrawal form below on a durable medium to the trader referred to in paragraph 1:

You may withdraw on a durable medium from this contract within a period of 14 days without giving any reason [or – if the goods are delivered to you before the expiry of this period – by returning the goods].

(a) for off-premises contracts, within a period of fourteen days following his signature of the order form;

The period for withdrawal shall begin [on receipt of the goods ordered] (1). The day [on which the goods are received] (2) shall not be counted as part of the period for withdrawal. If the last day of the period for withdrawal falls on a public holiday, a Saturday or a Sunday, the

period shall end on the first working day thereafter.

The period for withdrawal shall be deemed to have been observed if your notice of withdrawal is sent, or the goods are sent, before its expiry. The sending of either the notice of withdrawal or the goods before the expiry of the withdrawal period must be provable (for example in the form of a postal receipt).

(b) for distance sales contracts, within a period of fourteen days following the material possession of the goods by the consumer or a third party, other than the carrier and indicated by the consumer;

Notice of withdrawal should be sent on a durable medium (for example in the form of a posted letter)(3) to: (4). The consumer may use the form below, but it is not obligatory.

(c) for distance service contracts:

Effects of withdrawal

- within a period of fourteen days following the conclusion of the contract, where the consumer has not given his prior express consent for the performance of the contract to begin before the end of this fourteen day period;

For withdrawal to be valid you must send the goods back, at [our expense](5), within a period of 14 days of sending your notice of withdrawal. The period for reimbursement shall begin when we receive your notice of withdrawal or the goods. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.

- within a period ending when the performance of the contract begins, where the consumer has given his prior express consent for the performance of the contract to begin before the end of the fourteen day period.

If you are unable to return the goods in their original condition, you shall be liable for any diminished value of the goods. This provision shall apply only if the deterioration in value is attributable to the goods having been handled in a manner other than that necessary for ascertaining their nature and how they function. You can prevent deterioration by refraining from using the goods as you would your own property and by avoiding any form of handling liable to reduce their value.

3. For all sales contracts, a statement informing the consumer about the time-limits and modalities to send back the goods to the trader and the conditions for the reimbursement in accordance with Articles 16 and 17(2).

4. For distance contracts concluded on the Internet, a statement that the consumer can electronically fill in and submit the standard withdrawal form on the trader's website and that he will receive an acknowledgement of receipt of such a withdrawal from the trader by email without delay.

5. A statement that the consumer can use the withdrawal form set out in Part B.

In the case of valid withdrawal, we must reimburse within a period of 14 days any payment you have made to us. The period for reimbursement shall begin when we receive your notice of withdrawal. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.

We may make reimbursement subject to the condition that we have received the returned goods.

Advice on alternative wording:

(1) In the following specific cases, the text in parentheses should read as indicated:

in the case of distance or off-premises contracts for the supply of services: 'from the day of the conclusion of the contract or on the day on which you received

a copy of the signed contract on a durable medium if this is not the day of conclusion of the contract'.

(2) In the following specific cases, the text in parentheses should read as indicated:

in the case of distance or off-premises contracts for the supply of services: 'the conclusion of the contract or on the day on which you received a copy of the signed contract on a durable medium, if this is not the day of conclusion of the contract'.

(3) In the case of distance contracts, additional text should be inserted as follows:

(a) if the trader allows the consumer to withdraw from the contract by e-mail: 'or by e-mail';

(b) if the trader allows the consumer to fill in a model form electronically on a website: 'or via our website'.

(4) To be inserted: the trader's name and business address. In the case of distance contracts, the following must also be indicated: the e-mail and/or web address of the trader which the consumer can use to withdraw from the contract.

(5) If the price of the goods to be returned is not more than EUR 40, the text in parentheses should read as follows: 'at your own expense'.

Amendment 198

Proposal for a directive Annex I – part B

Text proposed by the Commission

Amendment

(complete and return this form only if you wish to withdraw from the contract)

To:

To: (trader's name, business address and, where appropriate, e-mail address)(*)

I/We* hereby give notice that I/We* withdraw from my/our* contract of sale of the following goods*/provision of the following service*

I/We** hereby give notice that I/We** withdraw from my/our** contract of sale of the following goods**/provision of the following service**

Ordered on*/***received on****

Ordered on (***):

Name of consumer(s)

Address of consumer(s)

Signature of consumer(s) (only if this form is notified in writing)

Date

**Delete as appropriate.*

*Name(s) of consumer(s) (***):*

*Address(es) of consumer(s) (***):*

*Consumer(s)' signature(s) (required only if the form is sent on paper) (***):*

Date (***):

() To be filled in by the trader before providing the form to the consumer*

*(**) Delete where non-applicable.*

*(***) To be filled in by the consumer(s).*

Amendment 199

Proposal for a directive Annex II – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) excluding or limiting the liability of the trader for damage on the property of the consumer caused deliberately or as a result of gross negligence through an act or omission by the trader;

Amendment 200

Proposal for a directive Annex II – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) limiting the trader's obligation to respect commitments undertaken by *his* agents or making *his* commitments subject to compliance with a particular condition which depends exclusively on the trader;

(b) limiting the trader's obligation to respect commitments undertaken by *its* agents or making *its* commitments subject to compliance with a particular condition, *the fulfilment of* which depends exclusively on the trader;

Amendment 201

Proposal for a directive
Annex II – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) conferring exclusive jurisdiction for all disputes arising under the contract to the place where the trader is domiciled unless the chosen court is also the court for the place where the consumer is domiciled;

Amendment 202

Proposal for a directive
Annex III – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) makes binding on the consumer an obligation which is subject to a condition the fulfilment of which depends solely on the intention of the trader;

Amendment 203

Proposal for a directive
Annex III – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) requiring a consumer to purchase ancillary goods or services not advertised in the price of the main contract;

Amendment 204

Proposal for a directive
Annex III – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) applying contingent charges, such as penalties for breaching the contract

terms, that are clearly disproportionate to the costs incurred by the trader due to the breach of terms;

Amendment 205

Proposal for a directive Annex III – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) excluding or hindering the consumer's right to instruct and authorise a third party to conclude a contract between the consumer and the trader and/or to take steps which are meant to lead to, or facilitate, the conclusion of a contract between the consumer and the trader.

Justification

Any consumer has the right to instruct and authorise a third party to conclude a contract between this consumer and a trader and/or to take steps which are meant to lead to, or facilitate, the conclusion of such a contract. Any term preventing or hindering that right must be considered unfair in all circumstances.

Amendment 206

Proposal for a directive Annex III – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) enabling the trader to terminate *an open-ended contract* without reasonable notice except where *the consumer has committed a serious breach of contract*;

(e) enabling the trader to terminate *a contractual relationship of indeterminate duration* without reasonable notice, except where *there are serious grounds for doing so; this does not affect terms in financial services contracts where there is a valid reason, provided the supplier is required to inform the other contracting party thereof immediately*;

Amendment 207

Proposal for a directive
Annex III – paragraph 1 – point g

Text proposed by the Commission

(g) allowing the trader to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract;

Amendment

(g) ***providing that the price of goods or other assets is to be determined at the time of delivery or supply or*** allowing the trader to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract ***if the increased price is too high in relation to the price agreed at the conclusion of the contract; this does not affect price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described;***

Amendment 208

Proposal for a directive
Annex III – paragraph 1 – point k

Text proposed by the Commission

(k) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service;

Amendment

(k) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service ***without a valid reason which is specified in the contract; this does not affect terms under which a supplier of financial services reserves the right to change the rate of interest to be paid by, or to, the consumer, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the consumer at the earliest opportunity and that the consumer is free to terminate the contractual relationship with immediate effect; neither does it affect terms under which a trader reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the trader is required to inform the consumer***

with reasonable notice, and that the consumer is free to terminate the contractual relationship;

Amendment 209

Proposal for a directive Annex III – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) allowing a trader, where what has been ordered is unavailable, to supply an equivalent without having expressly informed the consumer of this possibility and of the fact that the trader must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to withdraw.

Amendment 210

Proposal for a directive Annex III – paragraph 2

Text proposed by the Commission

Amendment

2. Point 1(e) shall not apply to terms by which a supplier of financial service reserves the right to terminate unilaterally an open-ended contract without notice, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

deleted

Amendment 211

Proposal for a directive Annex III – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) package travel contracts regulated by Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and

package tours.

Amendment 212

Proposal for a directive

Annex III – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. Point 1(k) shall not apply to

4. Point 1(*e*), (*g*) **and** (k) shall not apply to

Amendment 213

Proposal for a directive

Annex III – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately;

deleted

Amendment 214

Proposal for a directive

Annex III – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;

deleted

Amendment 215

Proposal for a directive Annex III – paragraph 4 – point d

Text proposed by the Commission

Amendment

(d) terms under which the trader reserves the right to alter unilaterally the conditions of an open-ended contract, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to terminate the contract.

deleted

EXPLANATORY STATEMENT

The Commission proposal and its aims

The Commission proposal for a directive on consumer rights merges four existing Community directives¹ in a single legal instrument. The proposal is the result of a review of the consumer *acquis* begun in 2004 with the aim of simplifying and completing the existing regulatory framework in the area of consumer protection. It was presented on 8 October 2008, following a consultation process and an impact assessment, and applies the 'full harmonisation' approach.

The twin aims of the proposal are to guarantee that consumers in all 27 EU Member States can rely on a high level of consumer protection and that undertakings of all sizes are in a position to provide their goods and services to consumers in all 27 EU Member States without facing unnecessary legal obstacles. In its resolution on the Green Paper on the Review of the Consumer *Acquis*² Parliament confirmed that the purpose of the review should be to increase consumer confidence and the willingness of undertakings to engage in cross-border trade.

The fragmentary nature of the existing legal provisions deters consumers and undertakings alike from participating in cross-border trade. Consumers often complain that they are unable to take full advantage of the benefits of the single market (in particular in connection with on-line purchases), since traders operating from another Member State are often not prepared, when entering a new market³, to comply with the diverging provisions applicable in that market and are, moreover, reluctant to lay themselves open to possible legal action in another Member State. This problem could be exacerbated by the implementation of the Brussels I and Rome I regulations and the ensuing rulings handed down by the Court of Justice of the European Union⁴ in connection with those regulations, since they are likely to tighten up even further the terms and conditions applicable to cross-border sales of goods in the EU.

Although most of the members of the Committee on the Internal Market and Consumer Protection acknowledge that the problem of legal fragmentation must be addressed, the general feeling is that, in view of the nature and scope of the proposal, the full harmonisation approach advocated by the Commission is not workable at present. In accordance with

¹ Directive 93/13/EEC on unfair terms in consumer contracts, Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees, Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises.

² Report on the Green Paper on the Review of the Consumer *Acquis*, A6-0281/2007, rapporteur: Béatrice Patrie.

³ An IMCO committee hearing revealed that the costs for undertakings are disproportionately high: the costs of complying with the law alone amount to EUR 20 000 per year and national market.

⁴ Case C-144/09: requests for preliminary rulings, submitted on 24 April 2009 – Alpenhof v Heller, hearing before the CJEU on 16 March 2010, and Case C-585/08: requests for preliminary rulings, submitted on 24 December 2008 – Pammer v Reederei Karl Schlüter.

Parliament's resolution on the Green Paper on the Review of the Consumer *Acquis*, and as already noted in the working document drawn up by the Committee on the Internal Market and Consumer Protection in 2009¹, the members of the committee regard what could be termed targeted full harmonisation, i.e. full harmonisation restricted to certain aspects of certain contracts, and whilst maintaining a high level of consumer protection, as more appropriate.

The draft report

Accordingly, your rapporteur is proposing a change to the scope of the proposal for a directive: in addition to the introduction of a series of sectoral derogations, the scope of the directive would be largely restricted to contracts concluded away from business premises, which make up the bulk of cross-border transactions.

This has also necessitated structural changes. In addition to the definitions in Chapter I, the provisions on consumer information and the withdrawal right for distance and off-premises contracts should be covered by the targeted full harmonisation approach in Chapter III. By contrast, the minimum harmonisation approach applies to the provisions on consumer information for contracts concluded on business premises. The targeted full harmonisation approach also applies to the provisions of Chapter V, while Chapter IV would remain under minimum harmonisation. However, your rapporteur has taken account of the reservations expressed by many Members by incorporating in a series of articles 'flexibility clauses' designed to enable national legislators to retain higher national levels of consumer protection, where these apply.

The definitions in Article 2 establish the scope of the proposal for a directive as a whole and of its individual chapters and provisions. Whether or not a contract is covered by harmonised provisions depends largely on the wording of the definitions. Some definitions are unsatisfactory in legal terms. Your rapporteur is therefore proposing revised definitions, which are, moreover, consistent with those contained in the Draft Common Frame of Reference. In addition, definitions of the terms 'mixed purpose contract' and 'linked contract' have been added. For the sake of greater consistency among the existing directives, the definition of 'distance contract' laid down in Directive 2002/65/EC also needs to be revised. The opaque description of the scope of the proposal for a directive set out in Article 3 has been clarified. The targeted full harmonisation has been introduced in Article 4, combined with a requirement in Article 46a that Member States should inform the Commission of diverging national legal provisions.

Chapter III deals with consumer information and the withdrawal right for distance and off-premises contracts only. Article 9(1) introduces a provision requiring traders to provide consumers with information in good time before the consumer is bound by any distance or off-premises contract in a clear and intelligible manner. This seems appropriate on the grounds that setting aside the binding list of items of information given in paragraph 1, in individual cases the provision of specific warnings or details may be necessary in order to protect consumers. In addition, your rapporteur is proposing the introduction of a new

¹ Working document on the proposal for a directive on consumer rights – IMCO/6/68476, rapporteur: Arlene McCarthy.

requirement to provide information, concerning a trader's business address and telephone number, along with his or her fax number and e-mail address, so that consumers can contact traders quickly and communicate with them efficiently. As regards the right of withdrawal, traders should be able to use the model instructions on withdrawal and the model withdrawal form as proposed by your rapporteur in Annex I(A) and I(B). As regards Article 9, it should be pointed out that the burden of proof concerning compliance with the information requirements would rest with the trader. Pursuant to Article 10(1), the items of information stipulated in Article 9 should be given to the consumer on a durable medium, in so far as seems appropriate in view of the nature of the off-premises contract. The consumer shall have the possibility to request in any event that the information be provided to him on paper. Article 11 then also stipulates clearer rules for defining under which circumstances consumers should be bound by a distance contract for the provision of services, especially for contracts concluded on the internet or on the telephone. Pursuant to Article 13(1), the withdrawal period following a failure to inform the consumer of the right of withdrawal would be extended to one year, while at the same time allowing, in Article 13(2), Member States to maintain existing national legislation providing for a longer period of expiration of the withdrawal period.

Articles 16 and 17 contain further changes designed to strengthen consumer protection. Pursuant to Article 16(1), traders would be required to reimburse any payment received from consumers within 14 days from the date of receipt of the communication of withdrawal. In addition, in Article 17(1) your rapporteur proposes that consumers should also not be charged for the direct cost of returning goods if the price of the goods to be returned is more than EUR 40.

In your rapporteur's view, Chapters IV and V, which stick closely to the wording of the earlier directives, should also be covered by the principle of targeted full harmonisation. However, in the case of certain provisions he is proposing the introduction of 'flexibility clauses' designed to provide for the retention of more flexible arrangements at Member State level.

Article 22, which deals with supplies and delivery, your rapporteur proposes that the trader, in the event that the parties had not agreed on the time of delivery, would have to deliver as soon as possible but not later than thirty days after the conclusion of the contract. If the trader has failed to fulfil his obligations to deliver, the consumer shall be entitled to terminate the contract unless the goods are delivered within a new period to be determined by the consumer, which shall not exceed seven days. This period should be communicated to the trader by the consumer in writing, specifying both the new delivery period and his intention to terminate the contract in the event that the delivery does not take place by the end of that new delivery period.

The key provision of this chapter is Article 26, on remedies for lack of conformity: in principle, your rapporteur is proposing a hierarchy of remedies, although the Member States would retain the option of taking alternative measures, should they be both necessary and consistent with the principles of proportionality and effectiveness. On this basis, for example, the United Kingdom would be able to retain its rules on the 'right to reject' in their current form. In keeping with the hierarchy, consumers would first be entitled to have the lack of conformity of the goods remedied by repair or replacement. Secondly, they would be entitled to have the price reduced appropriately or the sales contract rescinded. In addition, your rapporteur is proposing to restore certain provisions from the existing directives. These

include Article 26(5a), which stipulates, with a view to ruling out abuses, that consumers will not be entitled to have a sales contract rescinded if the lack of conformity is minor, and Article 27a, which governs the right of recourse. In Article 28, which governs time limits and the burden of proof, the requirement to inform traders of the lack of conformity would be deleted, thereby making this provision more consumer-friendly. In addition, in this area as well the Member States would have the option of enacting or maintaining legal provisions which offer consumers a higher level of protection. As a result of this additional provision, in France, for example, the rules governing 'vices cachés' could be retained in their current form.

As regards the scope of Chapter V, in Article 30 your rapporteur proposes that this chapter should apply to contract terms in contracts which have not been individually negotiated. In connection with Article 32, it should be emphasised that it is regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract. The key provisions of this chapter are Articles 34 and 35, which must be read in conjunction with Annexes II and III respectively. Your rapporteur has followed the Commission's lead in stipulating that the contract terms listed in Annex II should be regarded as unfair in all Member States, while contract terms listed in Annex III identifies contract terms which are considered in all circumstances to be unfair throughout the European Union and on whose interpretation the CJEU can hand down final rulings. However, the Member States may provide provisions designating additional terms as terms presumed to be unfair.

Finally, in Chapter VI your rapporteur outlines a procedure designed to take the simplification process started by means of this proposal for a directive further. It makes provision, first of all, for a reporting requirement on the part of Member States vis-à-vis the Commission and a mutual evaluation system based on similar provisions contained in the Services Directive. Central to the system is a stipulation that Member States must detail why diverging provisions of national law are essential and in what way they are proportionate and effective. The criteria used to assess effectiveness would be the impact on business transactions in the internal market and the actual significance of the provisions as regards the enforcement of consumer rights. In addition, persons or organisations having an interest in protecting consumers would notify the Commission of the conclusions they have reached concerning the application and impact of the directive. On that basis, the Commission would draw up a report to be submitted to Parliament and the Council along with proposals for any revisions which might be required.

24.1.2011

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS(*)

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on consumer rights

(COM(2008)0614 – C6-0349/2008 – 2008/0196(COD))

Rapporteur(*): Diana Wallis

(*) Procedure with associated committees – Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

Degree of harmonisation

The intention of the Commission to increase cross-border transactions by eliminating legal fragmentation has to be highly welcomed. However, this aim is almost certainly impossible to achieve given the current circumstances surrounding the consumer acquis; there is a certain sense that we would not have started from where we are now if this was the aim we had in view, it having become abundantly clear that the proposed rules cannot function in isolation from national systems of private law. Furthermore, as the proposal is not a comprehensive harmonisation of contract law, it inevitably would have unintended repercussions on national law. Even more, the full harmonisation as proposed would lead in many cases to paradoxical effects, where the fully harmonised provisions of consumer contract law would contrast with other not fully harmonised provisions of b2c and b2b contract law at Member State level¹. As a result, the goal of a “single set of rules” is highly unlikely to be achievable, and endless litigation around delineation issues is predictable².

Therefore, your rapporteur proposes minimum harmonisation at a high level of consumer protection as a rule - coupled with full harmonisation of some specific, technical rules as set out as an exception of the general rule in a new paragraph 2 of Article 4. By this new

¹ Schulte-Nölke, "The potential impact of the consumer rights directive on Member states' contract law", study requested by the Committee on Legal Affairs, PE 419.606.

² Peter Rott; Evelyn Terryn, Proposal for a Directive on Consumer Rights: No Single Set of Rules, In: European Review of Private Law, 2009, Vol. 17, No. 3, p. 456-488.

paragraph, your rapporteur proposes full harmonisation only for the provisions in Chapter III on exercise and effects of the right of withdrawal. Full harmonisation is not appropriate for general information duties and a number of specific information duties. As regards unfair terms, your rapporteur proposes not to use full harmonisation and to make clear that the black and grey lists are not exhaustive. Your rapporteur also opts for minimum harmonisation as regards consumer sales of goods and remedies for non-performance.

Level of consumer protection

The proposal as it stands would result, as a consequence of the full harmonisation approach, in a lowering of the level of consumer protection in many Member States. It would lead to the paradoxical situation where consumers would be less protected than businesses when acting in the areas of contract law covered by the proposal. In order to avoid this result, Member States should have as much as possible room to decide how to integrate consumer protection legislation in the field of contract law into their legal systems.

Consistency with the DCFR

Even though the main purpose of the Common Frame of Reference was that it could serve as a toolbox for the Commission when revising the *acquis* in the area of contract law, the proposal does not contain any single reference to the DCFR. Based on the study on the comparison between the provisions of the DCFR and the proposal for a CRD¹ your rapporteur proposes a number of amendments, inspired by the DCFR, in order to improve consistency with national contract law as well as with other EU legislation in the field of consumer law and at the same time provide for a higher level of consumer protection.

A possible optional instrument for contract law as an alternative to full harmonisation and its relationship with the CRD

The proposed Consumer Rights Directive has a number of characteristics that could further distance EU consumer contract law from general contract law and make it fit into a scenario that could lead to a European Consumer Code. Such a scenario would shift consumer law almost entirely from the national to the European level and it would also effectively lead to a sharper distinction between b2c and b2b (and c2c) contracts. Your rapporteur has political and process-related reservations about such an approach unless carried out in complete transparency by the Commission first putting forward and consulting on a proposal making it clear that such a separate European Code was a longer term policy goal.

However, the question remains of whether a less troublesome solution (and less intrusive on national law) can be found through the introduction of an "Optional Instrument", which would allow businesses to offer consumers the opportunity to have their purchase governed by European contract and sales law, and therefore covered by the relevant consumer protection measures. The consumer could make this choice through simply clicking on a 'blue button'.

¹ De Booy, Mak, Hesselink, "A comparison between the provisions of the draft Common Frame of Reference and the European Commission's proposal for a Consumer Rights Directive", study requested by the Committee on Legal Affairs, PE 419.608.

If, as it is being discussed, the DCFR will be used as model for an optional European code of contracts, consistency between the provisions of the CRD and the DCFR is of utmost importance. However, the text of the CFR in the area of contract law, which could possibly serve for an optional instrument, is not yet available. Therefore, further amendments might be necessary at a later stage to clarify the relationship between a possible optional instrument and the provisions of the CRD.

Some specific amendments:

Amendments are proposed to the definitions of consumer and trader in accordance with the definitions of the DCFR. Some amendments are proposed in order to complete the provisions on general information requirements. A maximum one-year period for the exercise of the right of withdrawal is being proposed for the cases where the business has not provided the consumer with the information on the right to withdraw. Article 26 on remedies has been deleted to a great extent. Article 29 on commercial guarantees has been redrafted, and your rapporteur would like to invite further discussion in the Committee on the possibility of introducing an optional European Guarantee. It has been made clear that the black and grey lists on unfair terms are non-exhaustive. The provisions referring to comitology have been deleted.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Citation 1

Text proposed by the Commission

Having regard to the Treaty *establishing* the European *Community*, and in particular *Article 95* thereof,

Amendment

Having regard to the Treaty *on the Functioning of* the European *Union*, and in particular *Article 114* thereof,

Amendment 2

Proposal for a directive Citation 4

Text proposed by the Commission

Acting in accordance with the procedure
laid down in Article 251 of the Treaty,

Amendment

Acting in accordance with the **ordinary**
legislative procedure,

Amendment 3

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects and move away from the minimum harmonisation approach in the former Directives ***under*** which ***Member States could maintain or adopt stricter national rules.***

Amendment

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects and move away from the minimum harmonisation approach in the former Directives ***towards targeted full harmonisation.***

Amendment 4

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) Article ***153(1)*** and (3)(a) of the Treaty provides that the ***Community*** is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to ***Article 95*** thereof.

Amendment

(3) Article ***169(1)*** and (2)(a) of the Treaty ***on the Functioning of the European Union*** provides that the ***Union*** is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to ***Article 114*** thereof.

Amendment 5

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) In accordance with **Article 14(2)** of the **Treaty**, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer contract law is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring the respect of the principle of subsidiarity.

Amendment

(4) In accordance with **Article 26** of the **Treaty on the Functioning of the European Union**, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer contract law is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring the respect of the principle of subsidiarity.

Amendment 6

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited by consumers. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over

Amendment

(5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited by consumers. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over

the last few years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium size enterprises (including individual entrepreneurs) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts **will** contribute to the better functioning of the business to consumer internal market.

the last few years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium size enterprises (including individual entrepreneurs) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the full harmonisation of **certain aspects of** consumer information and **of** the right of withdrawal in distance and off-premises contracts **can** contribute to the better functioning of the business to consumer internal market.

Amendment 7

Proposal for a directive Recital 6

Text proposed by the Commission

(6) The laws of the Member States on consumer contracts show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. The existing **Community** legislation in the field of consumer contracts concluded at a distance or away from business premises, consumer goods and guarantees as well as unfair contract terms establishes minimum standards for harmonising legislation allowing the Member States the possibility to maintain or introduce more stringent measures which ensure a higher level of consumer protection in their territories. Furthermore, many issues are regulated inconsistently between directives or have been left open. These issues have been addressed differently by the Member States. As a result, the national provisions implementing directives on consumer

Amendment

(6) The laws of the Member States on consumer contracts show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. The existing **Union** legislation in the field of consumer contracts concluded at a distance or away from business premises, consumer goods and guarantees as well as unfair contract terms establishes minimum standards for harmonising legislation allowing the Member States the possibility to maintain or introduce more stringent measures which ensure a higher level of consumer protection in their territories. Furthermore, many issues are regulated inconsistently between directives or have been left open. These issues have been addressed differently by the Member States. As a result, the national provisions implementing directives on consumer

contract law diverge significantly.

contract law diverge significantly.

Amendment 8

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) These disparities create significant internal market barriers affecting business and consumers. They increase compliance costs to business wishing to engage in cross border sale of goods or provision of services. Fragmentation also undermines consumer confidence in the internal market. The negative effect on consumer confidence is strengthened by an uneven level of consumer protection across the **Community**. This problem is particularly acute in the light of new market developments.

Amendment

(7) These disparities create significant internal market barriers affecting business and consumers. They increase compliance costs to business wishing to engage in cross border sale of goods or provision of services. Fragmentation also undermines consumer confidence in the internal market. The negative effect on consumer confidence is strengthened by an uneven level of consumer protection across the **Union**. This problem is particularly acute in the light of new market developments.

Amendment 9

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and business. Both consumers and business will be able to rely on a single regulatory framework based on **clearly defined legal concepts regulating certain** aspects of business-to-consumer contracts across the **Community**. The effect will be to eliminate **the** barriers stemming from the fragmentation of the rules and to **complete** the internal market in this area. These barriers can only be eliminated by establishing uniform rules at **Community** level. Furthermore consumers will enjoy a **high** common level of protection across the

Amendment

(8) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and business. Both consumers and business will be able to rely on **the harmonisation of certain specific** aspects of business-to-consumer contracts across the **Union**. The effect will be to eliminate **important** barriers stemming from the fragmentation of rules and to **advance** the internal market in this area. These barriers can only be eliminated by establishing uniform rules at **Union** level. Furthermore consumers will enjoy a **higher** common level of protection across the **Union**.

Community.

Amendment 10

Proposal for a directive Recital 9

Text proposed by the Commission

(9) The field harmonised by this Directive should cover certain aspects of business to consumer contracts. These are rules on information to be provided before conclusion and during performance of the contract, the right of withdrawal for distance and off-premises contracts, consumer rights specific to contracts of sale and unfair contract terms in consumer contracts.

Amendment

(9) The field harmonised by this Directive should cover certain aspects of business to consumer contracts. These are rules on information to be provided before conclusion and during performance of the contract, the right of withdrawal for distance and off-premises contracts and unfair contract terms in consumer contracts. ***Member States should remain able to adopt or maintain in force more stringent provisions for consumer rights specific to contracts of sale, unless otherwise provided.***

Amendment 11

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) This Directive should not affect national law in the area of general contract law, in so far as this is not harmonised in this Directive.

Amendment 12

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Digital content, such as computer programs, games or music that is not

burned on a tangible medium, is not considered as a tangible item. It should thus not be considered as a good within the meaning of this Directive. On the contrary, media containing digital content such as CDs and DVDs are tangible items and should thus be considered as goods within the meaning of this Directive. The downloading of digital content by a consumer from the Internet should be regarded, for the purpose of this Directive, as a contract which falls within the scope of this Directive, but without a right of withdrawal where performance of the contract has already begun with consumer's prior consent. The Commission should examine the need for harmonised detailed provisions in this respect and submit, if necessary, a proposal to address this matter.

Amendment 13

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The existing **Community** legislation on consumer financial services contains numerous rules on consumer protection. *For this reason the provisions of this Directive cover contracts relating to financial services only insofar as this is necessary to fill the regulatory gaps.*

Amendment

(11) The existing **Union** legislation on consumer financial services contains numerous rules on consumer protection. *Contracts related to the transfer of rights in immovable property or for the construction of immovable property, including the construction of annexes to immovable property, accommodation and transport services as well as healthcare and social services, are subject to a number of specific requirements in national legislation. For that reason, such contracts should be excluded from the scope of Chapter II.*

Amendment 14

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) The new definition of distance contract should cover all cases where ***sales and service*** contracts are concluded using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). This should create a level playing field for all distance ***traders. It should also improve legal certainty as compared to the current definition requiring the presence of an organised distance selling scheme run by the trader up to the conclusion of the contract.***

Amendment

(12) The new definition of distance contract should cover all cases where contracts ***concerning the provision of a good or supply of a service*** are concluded ***without the simultaneous physical presence of the parties and*** using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). This should create a level playing field for all distance ***businesses.***

(This amendment (from "trader" to "business") applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 15

Proposal for a directive – amending act
Recital 14

Text proposed by the Commission

(14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the ***trader*** and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are ***under psychological pressure*** no matter whether they have solicited the ***trader's*** visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract.

Amendment

(14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the ***business*** and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are ***temporarily in a special situation which is different from the situation in a shop, for instance from a psychological point of view and as regards the scope for comparing goods and prices,*** no matter whether they have solicited the ***business'*** visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from

business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract. ***Member States should, however, be able to establish in their national legislation that the value of a contract not exceeding 60 EUR should be excluded from the scope of Chapter II as the information requirements would be disproportionate to the value of the contract. Contracts which, in accordance with the provisions of the Member States, are established by a public official, do not present a situation where the consumer is put under exceptional psychological pressure. Such contracts should be excluded from the scope of Chapter II.***

Amendment 16

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) Business premises should include premises in whatever form (such as shops or lorries) which serve as a permanent place of business for the ***trader***. ***Market stalls and fair stands should be treated as business premises even though they may be used by the trader on a temporary basis. Other premises*** which are rented for a short time only and where the ***trader*** is not established (such as hotels, restaurants, conference centres, cinemas rented by ***traders*** who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.

Amendment

(15) Business premises should include premises in whatever form (such as shops or lorries) which serve as a permanent place of business for the ***business***. ***Premises*** which are rented for a short time only and where the ***business*** is not established (such as hotels, restaurants, conference centres, cinemas rented by ***businesses*** which are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.

Amendment 17

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

(16) The definition of durable medium should include in particular documents on paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard drive of the computer on which the electronic mail or a pdf file is stored.

Amendment

(16) The definition of durable medium should include in particular documents on paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard drive of the computer on which the electronic mail or a pdf file, ***or other files which allow the unchanged reproduction of the information they contain***, is stored. ***Internet sites as such should not be regarded as durable media unless such sites meet the criterion of allowing the unchanged reproduction of the information stored. Information on a durable medium should be made available upon request in a format that is accessible to consumers with disabilities or visual impairments.***

Amendment 18

Proposal for a directive Recital 17

Text proposed by the Commission

(17) Consumers should be entitled to receive information before the ***conclusion of the*** contract. ***However traders should not have to provide the information when already apparent from the context. For example in an on-premises transaction, the main characteristics of a product, the identity of the trader and the arrangements for delivery may be apparent from the context. In distance and off-premises transactions, the trader should always provide the information on arrangements for payment, delivery, performance and the complaint handling policy, since these might not be apparent from the context.***

Amendment

(17) Consumers should be entitled to receive information ***in good time*** before the ***consumer is bound by any distance or off-premises contract or offer***. ***The business*** should ***always*** provide ***certain*** information, ***such as on*** the main ***characteristic*** of the ***good or service or*** arrangements for payment, delivery, performance and the complaint handling policy.

Amendment 19

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) In order to guarantee a high level of consumer protection in relation to information requirements for distance and off-premises contracts, Member States should be able to introduce stricter requirements than those set out in this Directive for cases where there is a demonstrable risk to consumers' health and safety.

Amendment 20

Proposal for a directive Recital 22

Text proposed by the Commission

Amendment

(22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, ***which allows*** him to ascertain the nature and functioning of the goods.

(22) Since, in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, ***allowing him, until expiry of the withdrawal period,*** to ascertain the nature, ***quality*** and functioning of the goods.

Amendment 21

Proposal for a directive Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) The provisions regarding information and the right of withdrawal for distance sales should, due to the

nature of those services, not apply when a consumer uses a public pay phone, pays to use an Internet connection or chooses a specific provider for one single telephone call, for instance by dialling a prefix, in contrast to what is the case for telephone or Internet subscriptions.

Amendment 22

Proposal for a directive

Recital 26

Text proposed by the Commission

Amendment

(26) When the consumer orders more than one good from the same trader, he should be entitled to exercise the right of withdrawal in respect of each of these goods. If the goods are delivered separately, the withdrawal period should start when the consumer acquires the material possession of each individual good. Where a good is delivered in different lots or pieces, the withdrawal period should start when the consumer or a third party indicated by the consumer acquires the material possession of the last lot or piece.

deleted

Amendment 23

Proposal for a directive

Recital 27

Text proposed by the Commission

Amendment

(27) If the **trader** has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty over time, a **three-month** limitation period should be introduced, *provided that the trader has fully performed his contractual*

(27) If the **business** has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty over time, a **one-year** limitation period should be introduced.

obligations. The trader should be regarded as having fully performed his obligations when he has delivered the goods or has fully provided the services ordered by the consumer.

Amendment 24

Proposal for a directive Recital 28

Text proposed by the Commission

(28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised **standard** withdrawal form to be used by the consumer should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Community-wide** standard form relating for example to the font size.

Amendment

(28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised **model** withdrawal form to be used by the consumer should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Union-wide** standard form relating for example to the font size. ***By using the model instructions on withdrawal set out in Annex I(A) the business will also comply with the information requirements for distance and off-premises contracts.***

Amendment 25

Proposal for a directive Recital 30

Text proposed by the Commission

(30) In case of withdrawal the **trader** should reimburse all payments received from the consumer, including those covering the expenses *born* by the **trader** to deliver goods to the consumer.

Amendment

(30) In case of withdrawal the **business** should reimburse all payments received from the consumer, including those covering the expenses *borne* by the **business** to deliver goods to the consumer, ***with the exception of payments for express deliveries made at the express***

wish of the consumer.

Amendment 26

Proposal for a directive

Recital 33

Text proposed by the Commission

(33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate given the nature of the product. That is applicable for example *to* wine supplied a long time after the conclusion of the contract of a speculative nature *where the value is dependent on fluctuations in the market* (vin en primeur).

Amendment

(33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate given the nature of the product *and exercising a right of withdrawal would unfairly disadvantage the business*. That is applicable *in particular to foodstuffs and other hygienically sensitive or perishable goods which by their nature cannot be re-sold after having been opened*. Exemptions from the right of withdrawal should also exist for certain other goods and services *where the value is dependent on fluctuations in the market*, for example wine supplied a long time after the conclusion of the contract of a speculative nature (vin en primeur) *or commodities*.

Amendment 27

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) *Furthermore, in case of distance contracts for the provision of services, for which the performance begins during the withdrawal period (e.g. data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express*

Amendment

(34) *Considering that the consumer when withdrawing from a service contract is not obliged to pay for the services supplied, certain service providers might prefer not to perform until the withdrawal period has expired to ensure being paid. Therefore a consumer should be able to request the supply of services before the end of the withdrawal period. He should retain the right to withdraw from the contract during the withdrawal period, but should be*

agreement.

prepared to bear the costs for any services provided up to the point of withdrawal from the contract. Before the performance begins the business should inform the consumer of any obligation to pay such costs.

Amendment 28

Proposal for a directive Recital 35

Text proposed by the Commission

(35) The Commission has found some key consumer problems in the home improvement sector where consumers are under high pressure to order expensive renovation works. The scope of the information and withdrawal rules should be clarified and extended in order to cover this kind of contract. Only contracts for the conveyance of interests in real property should be excluded from the scope of the rules on information and withdrawal rights applicable to distance and off-premises contracts.

Amendment

(35) Contracts related to the transfer of rights in immovable property or the creation of such rights (including rights or interests under a trust or similar arrangement), contracts for the construction of new dwellings, for the substantial conversion of existing buildings as well as contracts for rental of accommodation for residential purposes are already subject to a number of specific requirements in national legislation. The provisions of this Directive are not appropriate for those contracts. For that reason, this Directive should not apply to such contracts. A substantial conversion is a conversion comparable to the construction of a new dwelling, for example where only the façade of an old building is retained. Service contracts in particular related to the construction of annexes to buildings (for example a garage or a veranda) and related to repair and renovation of buildings other than substantial conversion are included in the scope of this Directive, as well as contracts related to real estate agency services and contracts related to the rental of accommodation for non- residential purposes.

Amendment 29

Proposal for a directive Recital 36

Text proposed by the Commission

Amendment

(36) The application of a right of withdrawal may be inappropriate for certain services relating to accommodation, transport and leisure. The conclusion of the corresponding contracts implies the setting aside of capacity which, if a right of withdrawal was introduced, the trader may find difficult to fill. Therefore these distance contracts should not be covered by the provisions on consumer information and the right of withdrawal.

deleted

Amendment 30

Proposal for a directive Recital 37

Text proposed by the Commission

Amendment

(37) For the purpose of simplification and legal certainty, the right of withdrawal should apply to all types of off-premises contracts, except under strictly defined circumstances which can easily be proved. Therefore, no right of withdrawal should apply for urgent repairs at the consumer's home for which such a right of withdrawal would be incompatible with the emergency situation *as well as for supermarket home-delivery schemes which allow consumers to select food, drinks and other goods intended for current consumption in the household through the supermarket's website and have them delivered at their home. These are goods, which are inexpensive and bought regularly by consumers for their every day's consumption or everyday use in the household and should therefore not be*

(37) For the purpose of simplification and legal certainty, the right of withdrawal should apply to all types of *distance and* off-premises contracts, except under strictly defined circumstances which can easily be proved. Therefore, no right of withdrawal should apply for urgent repairs at the consumer's home for which such a right of withdrawal would be incompatible with the emergency situation.

subject to a right of withdrawal. The main difficulties encountered by consumers and the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to clarify and harmonise the national rules on delivery and passing of risk.

Amendment 31

Proposal for a directive Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) The main difficulties encountered by consumers and the main source of disputes with businesses concern delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. It is therefore appropriate to harmonise the national rules on delivery and passing of risk. However, the rules concerning the determination of the conditions for and the moment at which the ownership in the goods is transferred remain subject to national law.

Amendment 32

Proposal for a directive Recital 37 b (new)

Text proposed by the Commission

Amendment

(37b) Where the business has failed to fulfil its obligations to deliver, the consumer should call upon it to make the delivery within a period appropriate to the circumstances. The consumer can withdraw from the contract on expiry of that period if no action has been taken.

However, this rule should not apply when the business has refused to deliver the goods or in certain circumstances where time is of the essence, such as, for example, a wedding dress which should be delivered before the wedding or Christmas presents. In those specific cases, if the business fails to deliver the goods on time, the consumer should be entitled to terminate the contract immediately after the expiry of the delivery period initially agreed.

Amendment 33

Proposal for a directive Recital 38

Text proposed by the Commission

(38) In the context of consumer sales, the delivery of goods can take place in various ways. Only a rule which may be freely derogated from will allow the necessary flexibility to take into account those variations. The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the **trader**. The rule introduced on the passing of risk should not apply where the consumer unduly delays taking **possession** of the goods (for example, when the goods are not collected by the consumer from the post-office within the deadline fixed by the latter). In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the **trader**.

Amendment

(38) In the context of consumer sales, the delivery of goods can take place in various ways. Only a rule which may be freely derogated from will allow the necessary flexibility to take into account those variations. The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the **business**. The rule introduced on the passing of risk should not apply where the consumer unduly delays taking **over** of the goods (for example, when the goods are not collected by the consumer from the post-office within the deadline fixed by the latter). In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the **business**.

Amendment 34

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) A single, common concept of conformity which provides a high level of consumer protection will provide businesses and consumers with greater legal certainty and reduce barriers to trade. Member States should, however, remain able to adopt or maintain more stringent rules than those laid down in this Directive for the issues of liability and consequent remedies in cases of non-conformity.

Amendment 35

Proposal for a directive Recital 40

Text proposed by the Commission

Amendment

(40) If the good is not in conformity with the contract, ***firstly***, the consumer should have the possibility to require the ***trader*** to repair the goods or to replace them ***at the trader's choice unless the trader proves that those remedies are unlawful, impossible or causes the trader disproportionate effort. The trader's effort should be determined objectively considering costs incurred by the trader when remedying the lack of conformity, the value of the goods and the significance of the lack of conformity.*** The lack of spare parts should not be a valid ground to justify the ***trader's*** failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort.

(40) If the good is not in conformity with the contract, the consumer should have the possibility to require the ***business*** to repair the goods or to replace them. The lack of spare parts should not be a valid ground to justify the ***business's*** failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort.

Amendment 36

Proposal for a directive Recital 43

Text proposed by the Commission

Amendment

(43) Directive 1999/44/EC allowed the Member States to set a period of at least two months during which the consumer was to inform the trader of any lack of conformity. The diverging transposition laws have created barriers to trade. Therefore, it is necessary to remove this regulatory option and improve legal certainty by obliging consumers to inform the trader of the lack of conformity within two months from the date of detection.

deleted

Amendment 37

Proposal for a directive Recital 45 a (new)

Text proposed by the Commission

Amendment

(45a) The harmonised regulatory aspects concern only contracts concluded between businesses and consumers. Therefore, this Directive should not affect national law in the area of contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements and bond terms.

Amendment 38

Proposal for a directive Recital 46

Text proposed by the Commission

Amendment

(46) Provisions on unfair contract terms

(46) Provisions on unfair contract terms

should not apply to contract terms, which directly or indirectly reflect **mandatory** statutory or **regulatory** provisions of the Member States which comply with **Community** law. Similarly terms which reflect the principles or provisions of international conventions to which the **Community** or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.

should not apply to contract terms, which directly or indirectly reflect statutory, **regulatory** or **public policy** provisions of the Member States which comply with **Union** law. Similarly, **contract** terms **should reflect the principles and provisions of the Charter of Fundamental Rights of the European Union**. Terms which reflect the principles or provisions of international conventions to which the **Union** or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.

Amendment 39

Proposal for a directive Recital 47

Text proposed by the Commission

(47) Consumer **contracts** should be drafted in plain, intelligible language and be **legible**. **Traders** should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the **trader's** website in respect of distance contracts) or attaching standard terms to the order form (in respect of off-premises contracts). The **trader** should seek the consumer's express consent to any payment in addition to the remuneration for the **trader's** main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.

Amendment

(47) **All contract terms should be expressed in a clear and comprehensible manner. If a contract term is in writing, it must always** be drafted in plain, intelligible language. **Businesses** should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the **business's** website in respect of distance contracts) or attaching standard terms to the order form (in respect of off-premises contracts). The **business** should seek the consumer's express consent to any payment in addition to the remuneration for the **business's** main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.

Amendment 40

Proposal for a directive Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) Businesses should be free to choose the way in which contract terms are communicated, for example the font type or size in which the contract terms are drafted. Member States should refrain from imposing any presentational requirements, except for those related to persons with disabilities or where the goods or services may present a particular risk to the health and safety of the consumer or a third person. Member States may also seek to impose additional requirements where due to complexities inherent in contracts for those goods or services, there is a risk of consumer detriment including issues arising which relate to competition in that sector. This may apply, for example, to contracts relating to financial services, gas, electricity and water, telecoms and immovable property. However, this should not apply to formal national requirements concerning the conclusion of the contract or other formal requirements such as for instance the language of the terms, requirements on the content of the terms or the formulation of certain contract terms for specific sectors. This Directive does not harmonise language requirements applicable to consumer contracts. Therefore, Member States should be able to maintain or introduce in their national law linguistic requirements regarding the contractual terms.

Amendment 41

Proposal for a directive
Recital 49

Text proposed by the Commission

(49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer.

Amendment

(49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer. ***This exclusion does not apply to the remuneration foreseen for the business from ancillary or contingent charges set out in the contract, including fees or charges for breaching any of the terms of the contract, which should be fully subject to the fairness test.***

Amendment 42

Proposal for a directive
Recital 50

Text proposed by the Commission

(50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the **trader** proves otherwise. ***These same lists should apply***

Amendment

(50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two ***non-exhaustive*** lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the ***business*** proves otherwise.

in all Member States.

Amendment 43

Proposal for a directive

Recital 51

Text proposed by the Commission

Amendment

(51) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁰. **deleted**

¹⁰ OJ L 184, 17.7.1999, p. 23.

Amendment 44

Proposal for a directive

Recital 52

Text proposed by the Commission

Amendment

(52) In particular, the Commission should be empowered to amend Annexes II and III on contract terms to be considered or presumed unfair. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. **deleted**

Amendment 45

Proposal for a directive

Recital 53

Text proposed by the Commission

Amendment

(53) The Commission's power to amend **deleted**

Annexes II and III should be used to ensure consistent implementation of the rules on unfair terms by supplementing those Annexes with contractual terms, which should be considered unfair in all circumstances or which should be deemed unfair unless the trader has proved otherwise.

Amendment 46

Proposal for a directive Recital 64 a (new)

Text proposed by the Commission

Amendment

(64a) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

¹ OJ C 321, 31.12.2003, p. 1.

Amendment 47

Proposal for a directive Recital 65

Text proposed by the Commission

Amendment

(65) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at **Community** level, the **Community** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is

(65) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore 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. 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

necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.

eliminate the internal market barriers and achieve a high common level of consumer protection.

Amendment 48

Proposal for a directive Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Degree of harmonisation

Unless otherwise provided, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, including more or less stringent provisions to ensure a different level of consumer protection.

Amendment 49

Proposal for a directive Article 2 – point 1

Text proposed by the Commission

Amendment

(1) "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;

(1) "consumer" means any natural person who, in contracts covered by this Directive, is acting ***primarily*** for purposes which are ***not related to*** his trade, business, craft or profession;

Amendment 50

Proposal for a directive Article 2 – point 2

Text proposed by the Commission

Amendment

(2) "***trader***" means any natural or legal person ***who***, in contracts covered by this Directive, is acting for purposes relating to ***his*** trade, business, craft or profession and

(2) "***business***" means any natural or legal person, ***irrespective of whether it is publicly or privately owned, which***, in contracts covered by this Directive, is

anyone acting in the name of or on behalf of a *trader*;

acting for purposes relating to *that person's* trade, business, craft or profession and anyone acting in the name of or on behalf of a *business, even if that person does not intend to make a profit in the course of the activity*;

Amendment 51

Proposal for a directive Article 2 – point 3

Text proposed by the Commission

(3) "sales contract" means any contract *for* the *sale* of goods *by the trader to the* consumer *including any mixed-purpose* contract *having as its object both goods and services*;

Amendment

(3) "sales contract" means any contract *under which a business, in accordance with the applicable national law, transfers ownership of the* goods to a consumer *either immediately upon conclusion of the contract or at some point in the future, and under which the consumer undertakes to pay the price*;

Amendment 52

Proposal for a directive Article 2 – point 4 –point b

Text proposed by the Commission

(b) water and gas where they are not put up for sale in a limited volume or set quantity,

Amendment

deleted

Amendment 53

Proposal for a directive Article 2 – point 4 –point c

Text proposed by the Commission

(c) electricity;

Amendment

deleted

Amendment 54

Proposal for a directive Article 2 – point 4 a (new)

Text proposed by the Commission

Amendment

(4a) 'good made to the customer's specifications' means any non-prefabricated good made on the basis of an individual choice or decision by the consumer;

Amendment 55

Proposal for a directive Article 2 – point 5

Text proposed by the Commission

Amendment

(5) "service contract" means any contract ***other than a sales contract whereby a service is provided by the trader*** to the consumer;

(5) "service contract" means any contract ***under which a business undertakes to supply a service to the consumer in exchange for a price;***

Amendment 56

Proposal for a directive Article 2 – point 5 a (new)

Text proposed by the Commission

Amendment

(5a) 'mixed purpose contract' means any contract concerning both the supply of services and the provision of goods;

Amendment 57

Proposal for a directive Article 2 – point 6

Text proposed by the Commission

(6) "distance contract" means any sales or service contract where the **trader**, for the conclusion of the contract, **makes** exclusive use of one or more means of distance communication;

Amendment

(6) "distance contract" means any sales or service contract where the **business and the consumer**, for the conclusion of the contract, **are not simultaneously physically present, but make** exclusive use of one or more means of distance communication;

Amendment 58

Proposal for a directive Article 2 – point 7

Text proposed by the Commission

(7) **"means of distance communication" means any means which, without the simultaneous physical presence of the trader and the consumer, may be used for the conclusion of a contract between those parties;**

Amendment

deleted

Amendment 59

Proposal for a directive Article 2 – point 8

Text proposed by the Commission

(8) 'off-premises contract' means:

(a) **any sales or service contract** concluded away from business premises with the simultaneous physical presence of the **trader** and the consumer **or any sales or service contract** for which an offer was made by the consumer in the same circumstances, or

Amendment

(8) "off-premises contract" means **any sales or service contract which is** concluded :

(a) away from business premises with the simultaneous physical presence of the **business** and the consumer or for which an offer was made by the consumer in the same circumstances, or

(b) **any sales or service contract** concluded on business premises but **negotiated** away from business premises, with the simultaneous physical presence of the **trader** and the consumer.

(b) on business premises but **where the main components have been determined** away from business premises, with the simultaneous physical presence of the **business** and the consumer.

Member States may decide that contracts for the provision of goods or supply of services which have been concluded or negotiated away from the business premises at the explicit and initial request of the consumer are not to be considered as off-premises contracts.

Amendment 60

Proposal for a directive Article 2 – point 10 a (new)

Text proposed by the Commission

Amendment

(10a) 'textual form' means a text which is expressed in alphabetical or other intelligible characters by means of any support which permits reading, recording of the information contained in the text and its reproduction in tangible form.

Amendment 61

Proposal for a directive Article 2 – point 11

Text proposed by the Commission

Amendment

(11) 'order form' means an instrument setting out the contract terms, to be signed by the consumer with a view to concluding an off-premises contract;

deleted

Amendment 62

Proposal for a directive Article 2 – point 12

Text proposed by the Commission

Amendment

(12) 'product' means any good or service including immoveable property, rights and obligations;

deleted

Amendment 63

Proposal for a directive Article 2 – point 14

Text proposed by the Commission

Amendment

(14) 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;

deleted

Amendment 64

Proposal for a directive Article 2 – point 15

Text proposed by the Commission

Amendment

(15) 'auction' means a method of sale where goods or services are offered by the *trader* through a competitive bidding procedure which may include the use of means of distance communication and where the *highest* bidder is bound to purchase the goods or the services. A transaction concluded on the basis of a fixed-price offer, despite the option given to the consumer to conclude it through a bidding procedure is not an auction;

(15) 'auction' means a method of sale where goods or services are offered by the *business* through a competitive bidding procedure which may include the use of means of distance communication and where the *successful* bidder is bound to purchase the goods or the services. A transaction concluded on the basis of a fixed-price offer, despite the option given to the consumer to conclude it through a bidding procedure is not an auction;

Amendment 65

Proposal for a directive Article 2 – point 16

Text proposed by the Commission

(16) 'public auction' means a method of sale where goods are offered by the **trader** to consumers, who attend or are given the possibility to attend the auction in person, through a competitive bidding procedure run by an auctioneer and where the **highest** bidder is bound to purchase the goods;

Amendment

(16) 'public auction' means a method of sale where goods **or services** are offered by the **business** to consumers, who attend or are given the possibility to attend the auction in person, through a competitive bidding procedure run by an auctioneer and where the **successful** bidder is bound to purchase the goods **or services**;

Amendment 66

Proposal for a directive Article 2 – point 17

Text proposed by the Commission

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

Amendment

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

Amendment 67

Proposal for a directive Article 2 – point 18

Text proposed by the Commission

(18) 'commercial guarantee' means any undertaking by the **trader** or producer (the 'guarantor') to the consumer to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

Amendment

(18) 'commercial guarantee' means any undertaking by the **business** or producer (the 'guarantor') to the consumer, **in addition to discharging its legal obligations**, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising available at the time

of, or before the conclusion of the contract;

Amendment 68

Proposal for a directive Article 2 – point 20

Text proposed by the Commission

(20) '**ancillary** contract' means a contract by which the consumer acquires goods or services **related to** a distance contract or an off-premises contract and these goods or services are provided by the **trader** or a third party on the basis of an arrangement between that third party and the **trader**.

Amendment

(20) '**linked** contract' means a contract by which the consumer acquires goods or services **and which forms a single commercial transaction with a** distance contract or an off-premises contract and these goods or services are provided by the **business** or a third party on the basis of an arrangement between that third party and the **business**. **A single commercial transaction exists where the good or service covered by the linked contract serves to perform the other contract or is intended for use of the good or service covered by the other contract.**

(This amendment (from "ancillary" to "linked") applies throughout the text. Adopting it will necessitate corresponding changes throughout)

Amendment 69

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to **sales and service** contracts concluded between the **trader** and the consumer.

Amendment

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to contracts concluded between the **business** and the consumer.

Amendment 70

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. This Directive shall only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.

deleted

Amendment 71

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

Amendment

3. Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on full harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council¹² and of Council Directive 90/314/EEC¹³.

deleted

¹² OJ L 280, 29.10.1994, p. 83.

¹³ OJ L 158, 23.6.1990, p. 59.

Amendment 72

Proposal for a directive
Article 3 – paragraph 4

Text proposed by the Commission

Amendment

4. Articles 5, 7, 9 and 11 shall be without prejudice to the provisions concerning information requirements contained in Directive 2006/123/EC of the European Parliament and of the Council¹⁴ and

deleted

Directive 2000/31/EC of the European Parliament and of the Council¹⁵ .

¹⁴ OJ L 376, 27.12.2006, p. 36.

¹⁵ OJ L 178, 17.7.2000, p. 1.

Amendment 73

Proposal for a directive Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Full harmonisation

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

Amendment 74

Proposal for a directive Chapter 2 – title

Text proposed by the Commission

Amendment

Consumer information

Consumer information ***and right of withdrawal for distance and off-premises contracts***

Amendment 75

Proposal for a directive Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Scope

1. This Chapter shall apply to distance and off-premises contracts.

2. This Chapter shall not apply to distance and off-premises contracts:

(a) for the creation, transfer or termination of rights or interests in immovable property, and rental of accommodation for residential purposes;

(b) falling within the scope of Council Directive 90/314/EEC or Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts¹;

(c) concluded for the construction of a new dwelling, where the contract, or a linked contract, provides for the sale or transfer of rights in immovable property;

(d) for financial services;

(e) for healthcare services falling within the scope of Directive 2011/./EU of the European Parliament and of the Council of ... on the application of patients rights in cross-border healthcare², whether or not they are provided via healthcare facilities;

(f) for social services.

3. This Chapter shall not apply to off-premises contracts:

(a) concluded by means of automatic vending machines or automated commercial premises;

(b) which, in accordance with the provisions of the Member States, are established by a public official who is bound by the law to be independent and impartial and to guarantee, by providing detailed legal information, that the consumer only concludes the contract after due reflection and in full awareness of its legal scope;

(c) where the value of the contract does not exceed 60 EUR. Member States may choose to apply a threshold lower than 60

EUR, in which case Member States shall notify the adopted threshold to the Commission, which shall make that information publicly available in an easily accessible way.

4. This Chapter shall not apply to distance contracts:

(a) concluded with telecommunications operators through public payphones for their use, in so far as they relate to the use thereof or concluded for the use of a single connection by telephone, Internet or fax established by the consumer;

(b) falling within the scope of Directive 2002/65/EC of the European Parliament and Council.

¹ *Text to be adopted.*

² *OJ L 33, 3.2.2009, p. 10*

Amendment 76

Proposal for a directive

Article 4 b (new)

Text proposed by the Commission

Amendment

Article 4b

Degree of harmonisation

Unless otherwise provided, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, including more or less stringent provisions to ensure a different level of consumer protection.

Amendment 77

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Prior to the conclusion of any sales or

1. In good time before the consumer is

service contract, the trader shall provide the consumer with the following information, if not already apparent from the context:

bound by any distance or off-premises contract or offer, the business or any person acting in his name or on his behalf shall provide the consumer with *such information as the consumer may reasonably expect, taking into account the standards of quality and performance which would be normal under the circumstances. The information shall be clear and precise, and expressed in plain and intelligible language. The information must include, in particular,* the following information, if not already apparent from the context:

Amendment 78

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) the main characteristics of the **product**, to an extent appropriate to the medium and the **product**;

Amendment

(a) the main characteristics of the **goods or services**, to an extent appropriate to the medium and the **goods or services**;

Amendment 79

Proposal for a directive

Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) the geographical address and the identity of the **trader**, such as his trading name and, where applicable, the geographical address and the identity of the **trader** on whose behalf **he** is acting;

Amendment

(b) the geographical address and the identity of the **business**, such as **its** trading name and, where applicable, the geographical address **of the place of business** and the identity of the **business** on whose behalf **it** is acting;

Amendment 80

Proposal for a directive

Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) contact details including the telephone and fax number and e-mail address where available, and any other means of distance communication enabling the consumer to contact and communicate with the business rapidly and directly;

Amendment 81

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

(c) the ***final*** price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

Amendment 82

Proposal for a directive

Article 5 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the arrangements for payment, delivery, performance ***and the complaint handling policy, if they depart from the***

(d) the arrangements for payment, delivery ***and*** performance;

requirements of professional diligence;

Amendment 83

Proposal for a directive

Article 5 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the complaint handling policy and the geographical address to which the consumer can direct any complaints, including where applicable the address of a body dealing with complaints on behalf of the business;

Amendment 84

Proposal for a directive

Article 5 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) the possibility of having recourse to an amicable dispute settlement mechanism, where such a possibility exists;

Amendment 85

Proposal for a directive

Article 5 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) *the existence* of a right of withdrawal, where applicable;

(e) *in so far as* a right of withdrawal, where applicable, *exists, the conditions and procedure for exercising that right; including the withdrawal period and the name and address of the business to which the withdrawal is to be communicated, and the possible costs of returning the goods; the business may use the model instructions on withdrawal and the model withdrawal form set out in*

Annex I(A) and I(B) respectively or any other clearly worded statement;

Amendment 86

Proposal for a directive

Article 5 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) where a right of withdrawal does not apply in accordance with Article 19(1) that the consumer will not benefit from a right of withdrawal;

Amendment 87

Proposal for a directive

Article 5 – paragraph 1 – point e b (new)

Text proposed by the Commission

Amendment

(eb) where applicable, information about the financial guarantees to recover payments made in advance, in the event of withdrawal or cancellation;

Amendment 88

Proposal for a directive

Article 5 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) the minimum duration of the consumer's obligations under the contract, where applicable;

(h) the minimum duration of the consumer's and **business**'s obligations under the contract, where applicable;

Amendment 89

Proposal for a directive

Article 5 – paragraph 1 – point i a (new)

Text proposed by the Commission

Amendment

(ia) that the contract will be concluded with a business and that, as a result, the consumer will benefit from the protection provided for in this Directive;

Amendment 90

Proposal for a directive

Article 5 – paragraph 1 – point i b (new)

Text proposed by the Commission

Amendment

(ib) the obligation of the consumer for payment in accordance with Article 17(3) where performance of services has begun during the withdrawal period with the consumer's prior express consent, where applicable;

Amendment 91

Proposal for a directive

Article 5 – paragraph 1 – point i c (new)

Text proposed by the Commission

Amendment

(ic) the period of time within which the offer will remain available, where applicable;

Amendment 92

Proposal for a directive

Article 5 – paragraph 1 – point i d (new)

Text proposed by the Commission

Amendment

(id) the application of technical protection measures for digital products, where applicable;

Amendment 93

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case of a public auction, the information in ***paragraph 1(b)*** may be replaced by ***the geographical address and the identity of the auctioneer.***

2. In the case of a public auction, the information in ***points (b) and (ba) of paragraph 1*** may be replaced by the ***equivalent details for the auctioneer.***

Amendment 94

Proposal for a directive Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall not provide for any other formal requirements applicable to the model instructions on withdrawal set out in Annex I(A).

Amendment 95

Proposal for a directive Article 5 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. If the business uses the model instructions on withdrawal set out in Annex I(A) it will comply with the information requirements for distance and off-premises contracts set out in

paragraph 1(e).

Amendment 96

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

3. The information referred to in paragraph 1 shall form an integral part of the sales or service contract.

Amendment

3. The information referred to in paragraph 1 shall form an integral part of the sales or service *distance or off-premises* contract.

Amendment 97

Proposal for a directive Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The business shall bear the burden of proving that it has provided the information required under this Article.

Amendment 98

Proposal for a directive Article 5 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Should the provisions of this Article run counter to other legislative provisions of the Union which regulate special contracts, the latter provisions shall take precedence and shall govern those special contracts.

Amendment 99

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

2. Without prejudice to Articles 7(2), 13 and 42, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective **contract law** remedies for any breach of Article 5.

Amendment

2. Without prejudice to Articles 7(2), 13 and 42, the consequences of any breach of Article 5 shall be determined in accordance with the applicable national law, ***save those breaches of a de minimis, technical nature where the effects of the breach under the applicable national law would be disproportionate to the harm actually incurred.*** Member States shall provide in their national laws for effective remedies for any breach of Article 5.

Amendment 100

**Proposal for a directive
Article 7 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. This Article shall be without prejudice to national legislation under which certain contracts concluded through an intermediary are considered to be business-to-consumer contracts.

Amendment 101

**Proposal for a directive
Chapter III – title**

Text proposed by the Commission

Amendment

Consumer information and withdrawal right for distance and off-premises contracts

deleted

Amendment 102

**Proposal for a directive
Article 8**

Text proposed by the Commission

Amendment

Article 8

deleted

Scope

This Chapter shall apply to distance and off-premises contracts.

Amendment 103

Proposal for a directive

Article 9

Text proposed by the Commission

Amendment

Information requirements for distance and off-premises contracts

deleted

As regards distance or off-premises contracts, the trader shall provide the following information which shall form an integral part of the contract:

(a) the information referred to in Articles 5 and 7 and, by way of derogation from Article 5(1)(d), the arrangements for payment, delivery and performance in all cases;

(b) where a right of withdrawal applies, the conditions and procedures for exercising that right in accordance with Annex I;

(c) if different from his geographical address, the geographical address of the place of business of the trader (and where applicable that of the trader on whose behalf he is acting) where the consumer can address any complaints;

(d) the existence of codes of conduct and how they can be obtained, where applicable;

(e) the possibility of having recourse to an amicable dispute settlement, where applicable;

(f) that the contract will be concluded with

a trader and as a result that the consumer will benefit from the protection afforded by this Directive.

Amendment 104

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

1. With respect to off-premises contracts, the information provided for in Article 9 shall be given *in the order form* in plain and intelligible language and be legible. *The order form shall include the standard withdrawal form set out in Annex I(B).*

Amendment

1. With respect to off-premises contracts, the information provided for in Article 5 shall be given in *good time before the consumer is bound by any contract or offer, in so far as this appears appropriate in view of the nature of the contract, in the contract document or on another durable medium in* plain and intelligible language and be legible in *textual form*. *At the consumer's request, the business shall provide the information on paper.*

Amendment 105

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. An off-premises contract shall only be valid if the consumer signs an order form and in cases where the order form is not on paper, receives a copy of the order form on another durable medium.

Amendment

deleted

Amendment 106

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall not impose any formal requirements other than those provided for *in paragraphs 1 and 2*.

Amendment

3. Member States shall not impose any formal ***or information*** requirements other than those provided for in ***Article 5(1)***. ***This shall be without prejudice to objectively justified requirements which are unrelated to off-premises contracts, in particular regarding health and safety risks.***

Amendment 107

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. With respect to distance contracts, the information provided for in Article ***9(a)*** shall be given or made available ***to*** the consumer ***prior to the conclusion of the*** contract, in plain and intelligible language and be legible, in a way appropriate to the means of distance communication used.

Amendment

1. With respect to distance contracts, the information provided for in ***Article 5*** shall be given or made available ***in good time before*** the consumer ***is bound by any*** contract ***or offer***, in plain and intelligible language and be legible, in a way appropriate to the means of distance communication used.

Amendment 108

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. If the ***trader*** makes a telephone call to the consumer with a view to concluding a distance contract, ***he*** shall disclose ***his*** identity and the commercial purpose of the call at the beginning of the conversation with the consumer.

Amendment

2. If the ***business*** makes a telephone call to the consumer with a view to concluding a distance contract ***by telephone, the business*** shall disclose ***its*** identity and, ***where applicable, the identity of the person on whose behalf it makes the call and the*** commercial purpose of the call at

the beginning of the conversation with the consumer.

Amendment 109

Proposal for a directive Article 11 – paragraph 3

Text proposed by the Commission

3. If the contract is concluded through a medium which allows limited space or time to display the information, the **trader** shall provide at least the information regarding the main characteristics of the product and the **total** price referred to in Articles 5(1)(a) and (c) on that particular medium prior to the conclusion of such a contract. The other information referred to in Articles 5 and 7 shall be provided by the **trader** to the consumer in an appropriate way in accordance with paragraph 1.

Amendment

3. If the contract is concluded through a medium which allows limited space or time to display the information, the **business** shall provide at least the information regarding the main characteristics of the product and the **final** price referred to in Articles 5(1)(a) and (c) on that particular medium prior to the conclusion of such a contract. The other information referred to in Article 5 shall be provided by the **business** to the consumer in an appropriate way in accordance with paragraph 1.

Amendment 110

Proposal for a directive Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. If a distance contract concluded on the internet places the consumer under an obligation to make a payment, the consumer shall only be bound by the contract if the business:

(a) indicates clearly and prominently the total price including all price components; and

(b) designs its Internet presentation in such a manner that a binding order is only possible after the consumer has confirmed recognition of the indication

required in point (a).

Amendment 111

Proposal for a directive Article 11 – paragraph 4

Text proposed by the Commission

4. The consumer shall receive confirmation of all the information referred to in **Article 9(a) to (f)**, on a durable medium, in reasonable time after the conclusion of any distance contract, and at the latest at the time of the delivery of the goods or when the performance of the service has begun, unless the information has already been given to the consumer prior to the conclusion of any distance contract on a durable medium.

Amendment

4. The consumer shall receive confirmation of all the information referred to in **Article 5 in textual form** on a durable medium, in reasonable time after the conclusion of any distance contract, and at the latest at the time of the delivery of the goods or when the performance of the service has begun, unless the information has already been given to the consumer prior to the conclusion of any distance contract on a durable medium.

Amendment 112

Proposal for a directive Article 11 – paragraph 5

Text proposed by the Commission

5. Member States shall not impose any formal requirements other than those provided for in **paragraphs 1 to 4**.

Amendment

5. Member States shall not impose any formal **or information** requirements other than those provided for in **Article 5(1)**. ***This shall be without prejudice to objectively justified requirements which are unrelated to distance contracts, in particular regarding health and safety risks.***

Amendment 113

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

2. In the case of an off-premises contract, the withdrawal period shall begin from the day when the consumer signs the order form or in cases where the order form is not on paper, when the consumer receives a copy of the order form on another durable medium.

In the case of a distance contract for the sale of goods, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered.

In the case of a distance contract for the provision of services, the withdrawal period shall begin from the day of the conclusion of the contract.

Amendment

The withdrawal period ends 14 days after the latest of the following times:

(a) the time of conclusion of the contract;

(b) if the subject matter of the contract is the delivery of goods, the time when the goods are taken over;

(c) in the case of a mixed-purpose contract, the delivery of goods or the supply of services, whichever is later;

(d) if the subject matter of the contract is the delivery of multiple goods which are to be delivered separately, the time when the last of the goods is taken over;

(e) if the subject matter of the contract is the delivery of a good consisting of multiple lots or pieces, the time when the last lot or piece is taken over;

(f) if the subject matter of the contract is the recurring delivery of goods of the same kind during a defined period of time, the time when the first good is taken over;

Amendment 114

Proposal for a directive Article 12 – paragraph 4

Text proposed by the Commission

4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period.

Amendment

4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period. ***In the case of off-premises contracts, Member States may maintain provisions in their national legislation that prohibit payment within the withdrawal period.***

Amendment 115

Proposal for a directive Article 13

Text proposed by the Commission

If the ***trader*** has not provided the consumer with the information on the right of withdrawal in breach of ***Articles 9(b)***, 10(1) and 11(4), the withdrawal period shall expire three months after the trader has fully performed his other contractual obligations.

Amendment

If the ***business*** has not provided the consumer with the information on the right of withdrawal in breach of ***point (e) of Article 5(1) and*** Articles 10(1) and 11(4), the withdrawal period shall expire ***one year from the day referred to in Article 12(2).***

If the business has provided the consumer with the information on the right of withdrawal within one year from the day referred to in Article 12(2) and the withdrawal period shall expire 14 days from the day on which the consumer receives the information.

Amendment 116

Proposal for a directive Article 14

Text proposed by the Commission

1. The consumer shall inform the **trader** of his decision to withdraw on a durable medium ***either in a statement addressed to the trader drafted in his own words or using the standard withdrawal form as set out in Annex I(B).***

Member States shall not provide for any other formal requirements applicable to ***this standard withdrawal form.***

2. ***For distance contracts concluded on the Internet, the trader*** may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer ***to electronically fill in and submit the standard withdrawal form on the trader's website. In that case the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.***

Amendment

1. ***Before expiry of the withdrawal period, the*** consumer shall inform the ***business*** of his decision to withdraw on a durable medium. ***For this purpose, the consumer may either use the model withdrawal form set out in Annex I(B) or make any other clearly worded statement .***

Member States shall not provide for any formal requirements applicable to ***the communication of withdrawal.***

2. ***The business*** may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to ***submit the model withdrawal form set out in Annex I(B) or any other withdrawal statement, or to electronically fill in and submit the form on a website. The business shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.***

Amendment 117

Proposal for a directive Article 15 – paragraph 1 – point b

Text proposed by the Commission

(b) to conclude ***an*** off-premises contract, in cases where an offer was made by the consumer.

Amendment

(b) to conclude ***a distance or*** off-premises contract, in cases where an offer was made by the consumer.

Amendment 118

Proposal for a directive Article 16 – title

Text proposed by the Commission

Obligations of the *trader* in case of withdrawal

Amendment

Reimbursement by the *business* in case of withdrawal

Amendment 119

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

1. The ***trader*** shall reimburse any payment received from the consumer within ***thirty days*** from the day on which he receives the communication of withdrawal.

Amendment

1. The ***business*** shall reimburse any payment received from the consumer within ***14 days*** from the day on which he receives the communication of withdrawal.

Amendment 120

Proposal for a directive Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. If the consumer has expressly opted for a type of delivery other than a standard delivery, the business shall not be required to reimburse the resulting additional costs.

Amendment 121

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

2. For ***sales*** contracts, the ***trader*** may withhold the reimbursement until ***he*** has received or collected the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the

Amendment

2. For ***distance and off-premises*** contracts ***for the supply of goods***, the ***business*** may withhold reimbursement until ***it*** has received or collected the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the

earliest.

earliest.

Amendment 122

Proposal for a directive

Article 17 – paragraph 1 – subparagraph 1

Text proposed by the Commission

For *sales* contracts for ***which*** the ***material possession of the*** goods ***has been transferred to the*** consumer or at his request, to a third party before the expiration of the withdrawal period, the consumer shall send back the goods or hand them over to the ***trader*** or to a person authorised by the ***trader*** to receive them, within fourteen days from the day on which he communicates his withdrawal to the ***trader***, unless the ***trader*** has offered to collect the goods ***himself***.

Amendment

For ***distance and off-premises*** contracts for the ***supply*** of goods ***where*** consumer or at his request, to a third party ***has taken over the goods*** before the expiration of the withdrawal period, the consumer shall send back the goods or hand them over to the ***business*** or to a person authorised by the ***business*** to receive them, within 14 days from the day on which he communicates his withdrawal to the ***business***, unless the ***business*** has offered to collect the goods ***itself***.

Amendment 123

Proposal for a directive

Article 17 – paragraph 2

Text proposed by the Commission

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods. He shall not be liable for diminished value where the ***trader*** has failed to provide notice of the withdrawal right in accordance with ***Article 9(b)***. ***For service contracts subject to a right of withdrawal, the consumer shall bear no cost for services performed, in full or in part, during the withdrawal period.***

Amendment

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods. He shall not be liable for diminished value where the ***business*** has failed to provide notice of the withdrawal right in accordance with ***point (e) of Article (5)(1)***.

Amendment 124

Proposal for a directive

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. For service contracts, the consumer shall bear the costs for services supplied, in full or in part, during the withdrawal period where the business provided the information in accordance with Article 5(1)(ib) and where performance of services has begun during the withdrawal period with the consumer's prior express consent.

Amendment 125

Proposal for a directive

Article 17 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Except as provided for in this Article, the consumer shall not incur any liability through the exercise of the right of withdrawal.

Amendment 126

Proposal for a directive

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. In respect of distance contracts, the right of withdrawal shall not apply as regards the following:

1. In respect of distance ***and off-premises*** contracts, the right of withdrawal shall not apply as regards the following:

Amendment 127

Proposal for a directive

Article 19 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) services where performance has begun, with the consumer's prior express consent, before the end of the fourteen day period referred to in Article 12;

deleted

Amendment 128

Proposal for a directive

Article 19 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the supply of goods or services for which the price is dependent on fluctuations in the ***financial*** market which cannot be controlled by the ***trader***;

(b) the supply of goods or services for which the price is dependent on fluctuations in the market which cannot be controlled by the ***business and which may occur within the withdrawal period***;

Amendment 129

Proposal for a directive

Article 19 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the supply of goods made to the consumer's specifications or clearly personalized or which are liable to deteriorate or expire rapidly;

(c) the supply of goods ***or services*** made ***or tailored*** to the consumer's specifications or clearly personalized, or ***goods*** which are liable to deteriorate or expire rapidly;

Amendment 130

Proposal for a directive

Article 19 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the supply of foodstuffs, beverages or other hygienically sensitive goods whose packaging or sealing has already been

opened by the consumer;

Amendment 131

Proposal for a directive

Article 19 – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the business; if, on this occasion, the business supplies or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;

Amendment 132

Proposal for a directive

Article 19 – paragraph 1 – point c c (new)

Text proposed by the Commission

Amendment

(cc) contracts for which the consumer has specifically requested the business to visit him at home for the purpose of carrying out repairs or maintenance; if on this occasion, the business supplies services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;

Amendment 133

Proposal for a directive

Article 19 – paragraph 1 – point c d (new)

Text proposed by the Commission

Amendment

(cd) for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance;

Amendment 134

Proposal for a directive

Article 19 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the supply of wine, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place beyond the time-limit referred to in Article 22(1) and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the **trader**;

(d) the supply of wine **and other beverages**, the price of which has been agreed upon at the time of the conclusion of the contract, the delivery of which can only take place beyond the time-limit referred to in Article 22(1) and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the **business**;

Amendment 135

Proposal for a directive

Article 19 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the supply of sealed audio or video recordings or computer software which were unsealed by the consumer;

(e) the supply of sealed audio or video recordings or **sealed** computer software which were unsealed by the consumer;

Amendment 136

Proposal for a directive
Article 19 – paragraph 1 – point f

Text proposed by the Commission

(f) the supply of newspapers, periodicals and magazines;

Amendment

(f) the supply of newspapers, periodicals and magazines ***with the exception of subscription contracts;***

Justification

One of the objectives of the revision of the Consumer Acquis under civil law within the EU, the development and strengthening of consumer protection, also requires the critical analysis and reduction of the myriad of exceptions from the right of withdrawal as well as the clarification of some definition of exceptions. It is their objective justification to question and to take up on the promises of other sectors. Apart from that, these exceptions are always cited in practice as an argument against a right of withdrawal of the consumer and are therefore to their disadvantage.

Amendment 137

Proposal for a directive
Article 19 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) contracts concluded by electronic means and performed immediately and fully through the same means of distance communication such as downloading from the Internet, where the performance has begun with the consumer's prior express consent.

Amendment 138

Proposal for a directive
Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. In respect of off-premises contracts, the right of withdrawal shall not apply as regards the following:

deleted

(a) contracts for the supply of foodstuffs, beverages or other goods intended for

current consumption in the household, selected in advance by the consumer by means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;

(b) contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;

(c) contracts for which the consumer has specifically requested the trader, by means of distance communication, to visit his home for the purpose of repairing or performing maintenance upon his property; if on this occasion, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods.

Amendment 139

Proposal for a directive Article 19 – paragraph 3

Text proposed by the Commission

3. The parties may agree not to apply *paragraphs 1 and 2.*

Amendment

3. The parties may agree not to apply *paragraph 1.*

Amendment 140

Proposal for a directive
Article 20

Text proposed by the Commission

Amendment

Excluded distance and off-premises contracts **deleted**

1. Articles 8 to 19 shall not apply to distance and off-premises contracts:

(a) for the sale of immovable property or relating to other immovable property rights, except for rental and works relating to immovable property;

(b) concluded by means of automatic vending machines or automated commercial premises;

(c) concluded with telecommunications operators through public payphones for their use;

(d) for the supply of foodstuffs or beverages by a trader on frequent and regular rounds in the neighbourhood of his business premises.

2. Articles 8 to 19 shall not apply to off-premises contracts relating to:

(a) insurance,

(b) financial services whose price depends on fluctuations in the financial market outside the trader's control, which may occur during the withdrawal period, as defined in Article 6(2)(a) of Directive 2002/65/EC¹⁶ and

(c) credit which falls within the scope of Directive 2008/48/EC.

3. Articles 8 to 19 shall not apply to distance contracts for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.

¹⁶ OJ L 271, 09.10.2002, p. 16.

Amendment 141

Proposal for a directive Article 21 – paragraph 3

Text proposed by the Commission

Amendment

3. This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the goods by repair under Article 26.

deleted

Amendment 142

Proposal for a directive Article 21 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States may decide not to apply this Chapter to the sale of second-hand goods at public auctions.

deleted

Amendment 143

Proposal for a directive Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21a

Degree of harmonisation

Unless otherwise provided, Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty on the Functioning of the European Union, in the field covered by this Chapter, to ensure a higher level of consumer protection. Member States shall notify those provisions to the Commission which shall make that information public in an easily accessible way.

Amendment 144

Proposal for a directive Article 22 – paragraph 1

Text proposed by the Commission

1. Unless the parties have agreed otherwise, the **trader** shall deliver the goods by **transferring** the **material possession of the** goods to the consumer or to a third party, other than the carrier and indicated by the consumer, within a **maximum of** thirty days from the day of the conclusion of the contract.

Amendment

1. Unless the parties have agreed otherwise, the **business** shall deliver the goods by **making** the goods **available** to the consumer or to a third party, other than the carrier and indicated by the consumer, within a **reasonable time which in any event shall not be more than** 30 days from the day of the conclusion of the contract.

Amendment 145

Proposal for a directive Article 22 – paragraph 2

Text proposed by the Commission

2. Where the **trader** has failed to fulfil his obligations to deliver, the consumer shall be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1.

Amendment

2. Where the **business** has failed to fulfil **its** obligations to deliver **in time in accordance with paragraph 1**, the consumer shall be entitled **call upon him to make the** delivery within a **period appropriate to the circumstances. If the business fails to deliver the goods within the appropriate time, the consumer shall be entitled to terminate the contract.**

Amendment 146

Proposal for a directive Article 22 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The consumer shall be entitled to terminate the contract where the business has failed to fulfil its obligation to deliver on time in accordance with paragraph 1, where:

*(a) the business has refused to deliver the goods; or
(b) the delivery period is essential taking into account all the circumstances attending the conclusion of the contract; or
(c) the consumer informs the business, prior to the conclusion of the contract, that delivery by or on a specified date is essential.*

Amendment 147

**Proposal for a directive
Article 22 – paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. In addition to the termination of the contract in accordance with paragraphs 2 and 2a, the consumer may have recourse to other remedies provided by national law.

Amendment 148

**Proposal for a directive
Article 22 – paragraph 2 c (new)**

Text proposed by the Commission

Amendment

2c. Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Article.

Amendment 149

**Proposal for a directive
Article 23 – paragraph 1**

Text proposed by the Commission

1. The risk of loss of or damage to the goods shall pass to the consumer when he or a third party, ***other than the carrier and indicated by the consumer has acquired the material possession of the goods.***

Amendment

1. The risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer has ***taken over*** the goods.

Amendment 150

**Proposal for a directive
Article 23 – paragraph 2**

Text proposed by the Commission

2. The risk referred to in paragraph 1 shall pass to the consumer ***at the time of delivery as agreed by the parties,*** if the consumer or a third party, ***other than the carrier and indicated by the consumer has failed to take reasonable steps to acquire the material possession of the goods.***

Amendment

2. The risk referred to in paragraph 1 shall pass to the consumer ***from the time when the goods should have been taken over*** if the consumer or a third party indicated by the consumer has failed to ***perform the obligation to take over the goods and such non-performance is not excused due to an impediment.***

Amendment 151

**Proposal for a directive
Article 23 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. The parties shall not, to the detriment of the consumer, exclude the application of this Article, derogate from it or vary its effects.

Amendment 152

Proposal for a directive Article 23 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Article.

Amendment 153

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

Amendment

1. The **trader** shall deliver the goods in conformity with the sales contract.

1. The **business** shall deliver the goods **to the consumer** in conformity with the sales contract.

Amendment 154

Proposal for a directive Article 24 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Delivered goods shall be presumed to be in conformity with the contract if they satisfy the following conditions:

2. Delivered goods shall be presumed to be in conformity with the **sales** contract if they satisfy the following conditions:

Amendment 155

Proposal for a directive Article 24 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) they are fit for the purposes for which goods of the same type are normally used

(c) they are fit for the purposes for which goods of the same type are normally used;

or

and

Justification

Regarding the principle of conformity with the contract, the list of criteria of non-conformity should be strengthened and improved.

Amendment 156

**Proposal for a directive
Article 24 – paragraph 3**

Text proposed by the Commission

3. There shall be no lack of conformity for the purposes of this Article *if*, at the time the contract was concluded, the consumer was aware, or should reasonably have been aware of, the lack of conformity, or *if* the lack of conformity has its origin in materials supplied by the consumer.

Amendment

3. There shall be no lack of conformity for the purposes of this Article *where*, at the time the contract was concluded, the consumer was aware, or should reasonably have been aware of, the lack of conformity, or *where* the lack of conformity has its origin in materials supplied by the consumer.

Amendment 157

**Proposal for a directive
Article 24 – paragraph 4 – introductory part**

Text proposed by the Commission

4. The *trader* shall not be bound by public statements, as referred to in paragraph 2(d) *if he shows that* one of the following situations existed:

Amendment

4. The *business* shall not be bound by public statements, as referred to in paragraph 2(d) *where* one of the following situations existed:

Amendment 158

**Proposal for a directive
Article 24 – paragraph 4 – point b**

Text proposed by the Commission

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

Amendment

(b) by the time of conclusion of the contract the statement had been corrected *and the consumer can reasonably be*

expected to have become aware of the correction;

Amendment 159

Proposal for a directive Article 24 – paragraph 5

Text proposed by the Commission

5. Any lack of conformity resulting from the incorrect installation of the goods shall be considered as a lack of conformity of the goods where *the installation forms part of the sales contract and* the goods were installed by the *trader* or under his responsibility. The same shall apply equally if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Amendment

5. Any lack of conformity resulting from the incorrect installation of the goods shall be considered as a lack of conformity of the goods where the goods were installed by the *business* or under *its* responsibility. The same shall apply equally if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Amendment 160

Proposal for a directive Article 24 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Article.

Amendment 161

Proposal for a directive Article 26 – paragraph 1 – introductory part

Text proposed by the Commission

1. *As* provided for in paragraphs 2 to 5, where the goods do not conform to the

Amendment

1. *Under the conditions* provided for in paragraphs 2 to 5, where the goods do not

contract, the consumer *is* entitled to:

conform to the contract, the consumer *shall be* entitled to:

Amendment 162

Proposal for a directive

Article 26 – paragraph 1 – point b

Text proposed by the Commission

(b) have the price reduced,

Amendment

(b) have the price reduced, *or*

Amendment 163

Proposal for a directive

Article 26 – paragraph 2

Text proposed by the Commission

2. The *trader* shall remedy the lack of conformity by either repair or replacement according to *his* choice.

Amendment

2. The *business* shall remedy the lack of conformity by either repair or replacement according to *the consumer's* choice.

Amendment 164

Proposal for a directive

Article 26 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Where the *trader* has proved that remedying the lack of conformity by repair *or* replacement is unlawful, impossible or would cause the *trader* a disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded. A *trader's* effort is disproportionate *if* it imposes costs on *him* which, in comparison with the price reduction or the rescission of the contract, are excessive, taking into account the value of the goods *if* there was no lack of conformity and the significance of the lack of conformity.

Amendment

3. Where the *business* has proved that remedying the lack of conformity by *both* repair *and* replacement is unlawful, impossible or would cause the *business* a disproportionate effort, the consumer choose to have the price reduced or the contract rescinded. A *business's* effort is disproportionate *where* it imposes costs on *it* which, in comparison with the price reduction or the rescission of the contract, are excessive, taking into account the value of the goods *where* there was no lack of conformity and the significance of the lack

of conformity.

Amendment 165

Proposal for a directive

Article 26 – paragraph 4 – point d

Text proposed by the Commission

(d) the same defect has reappeared more than once within a short period of time.

Amendment

(d) ***after repair or replacement*** the same defect has reappeared more than once within a short period of time.

Amendment 166

Proposal for a directive

Article 26 – paragraph 5

Text proposed by the Commission

5. The significant inconvenience for the consumer and the reasonable time needed for the ***trader*** to remedy the lack of conformity shall be assessed taking into account the nature of the goods ***or*** the purpose for which the consumer acquired the goods as provided for by Article 24(2)(b).

Amendment

5. The significant inconvenience for the consumer and the reasonable time needed for the ***business*** to remedy the lack of conformity shall be assessed taking into account the nature of the goods ***and*** the purpose for which the consumer acquired the goods as provided for by Article 24(2)(b).

Amendment 167

Proposal for a directive

Article 27 – paragraph 2

Text proposed by the Commission

2. Without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

Amendment

2. Without prejudice to the provisions of this Chapter, the consumer may claim damages ***provided for by national law for*** any loss not remedied in accordance with Article 26.

Amendment 168

Proposal for a directive Article 28 – paragraph 2

Text proposed by the Commission

2. When the **trader** has remedied the lack of conformity by replacement, **he** shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has **acquired the material possession of** the replaced goods.

Amendment

2. When the **business** has remedied the lack of conformity by replacement, **it** shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has **taken over** the replaced goods.

Amendment 169

Proposal for a directive Article 28 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. When the business has remedied the lack of conformity by repair, the business shall be held liable for the lack of conformity of any spare parts replaced by the business during the remaining duration of its liability for the main good, and always at least six months after the repair.

Amendment 170

Proposal for a directive Article 28 – paragraph 4

Text proposed by the Commission

Amendment

4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within two months from the date on which he detected the lack of conformity.

deleted

Amendment 171

Proposal for a directive Article 28 – paragraph 5

Text proposed by the Commission

5. Unless proved otherwise, any lack of conformity which becomes apparent within **six months** of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods **and** the nature of the lack of conformity.

Amendment

5. Unless proved otherwise, any lack of conformity which becomes apparent within **one year** of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods **or** the nature of the lack of conformity

Amendment 172

Proposal for a directive Article 29 – paragraph 2 – introductory part

Text proposed by the Commission

2. The guarantee statement shall be drafted in plain intelligible language and be legible. It shall include the following:

(a) **legal** rights of the consumer, as provided for in Article 26 and a clear statement that those rights are not affected by the commercial guarantee,

(b) **set the contents** of the commercial guarantee **and the conditions for making claims, notably the** duration, territorial scope and the name and address of the guarantor,

Amendment

2. The guarantee statement shall be drafted in plain intelligible language and be legible. It shall **also be drafted in the same languages as those in which the goods were offered and shall** include the following:

(a) **the** rights of the consumer, as provided for in Article 26 and **Article 28 and** a clear statement that those rights are not affected by the commercial guarantee, **and**

(b) **the terms** of the commercial guarantee, **in particular those relating to its** duration, **transferability** and territorial scope, the name and address of the guarantor **and, if different from the guarantor, the person to whom any claim is to be made and the procedure by which the claim is to be made,**

(c) without prejudice to Articles 32 and 35 and Annex III(1)(j), set out, where applicable, that the commercial guarantee cannot be transferred to a subsequent buyer.

3. *If the consumer so requests, the trader shall make the guarantee statement available in a durable medium.*

4. Non compliance with paragraph 2 or 3 *shall* not affect the validity of *the* guarantee.

2a. The consumer may transfer the guarantee to a subsequent buyer. The guarantee statement may provide otherwise, unless such an exclusion would be unfair under Articles 32 and 35 and point (j) of paragraph 1 of Annex III.

3. *At the consumer's request, the business shall provide the guarantee statement in textual form on a durable medium.*

4. Non compliance with paragraph 2, *2 a* or 3 *shall* not affect the validity of *a commercial* guarantee.

Amendment 173

Proposal for a directive Article 30 – paragraph 1

Text proposed by the Commission

1. This Chapter shall apply to contract terms drafted in advance by the *trader* or a third party, which the consumer *agreed* to *without having the possibility of influencing their content*, in particular where such contract *terms are* part of a pre-formulated standard contract.

Amendment

1. This Chapter shall apply to contract terms drafted in advance by the *business* or a third party, which *have not been individually negotiated. A term shall always be regarded as not individually negotiated where it has been drafted in advance and* the consumer *has therefore not been able to influence the substance of the term*, in particular where such contract *term is* part of a pre-formulated standard contract.

Amendment 174

Proposal for a directive Article 30 – paragraph 2

Text proposed by the Commission

2. The fact that ***the consumer had the possibility of influencing*** the content of certain aspects of a contract term or one specific term, shall not exclude the application of this Chapter to other contract terms which form part of the contract.

Amendment

2. The fact that the content of certain aspects of a contract term or one specific term ***have been individually negotiated***, shall not exclude the application of this Chapter to other contract terms which form part of the contract.

Amendment 175

**Proposal for a directive
Article 30 – paragraph 3**

Text proposed by the Commission

3. This Chapter shall not apply to contract terms reflecting ***mandatory*** statutory or ***regulatory*** provisions, which comply with ***Community*** law and the provisions or principles of international conventions to which the ***Community*** or the Member States are party.

Amendment

3. This Chapter shall not apply to contract terms reflecting statutory, ***regulatory*** or ***public policy*** provisions, which comply with ***Union*** law and the provisions or principles of international conventions to which the ***Union*** or the Member States are party.

Amendment 176

**Proposal for a directive
Article 30 a (new)**

Text proposed by the Commission

Amendment

Article 30a

Degree of harmonisation

Unless otherwise provided, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, including more or less stringent provisions to ensure a different level of consumer protection.

Amendment 177

Proposal for a directive Article 31 – paragraph 1

Text proposed by the Commission

1. Contract terms shall be expressed in plain, intelligible language and be legible.

Amendment

1. ***All*** contract terms shall be expressed in ***a clear and comprehensible manner. If a contract term is in writing, it shall always be drafted*** in plain, intelligible language and be legible.

Amendment 178

Proposal for a directive Article 31 – paragraph 4

Text proposed by the Commission

4. Member States shall refrain from imposing any ***presentational*** requirements ***as to the way*** the contract terms ***are expressed or made available to the consumer.***

Amendment

4. Member States shall refrain from imposing any requirements ***on the presentation of*** contract terms, ***except for presentational requirements in relation to persons with disabilities or where the goods or services may present a particular risk to the health and safety of the consumer or a third person or in respect of specific goods or services where there is evidence that demonstrates consumer detriment.***

Amendment 179

Proposal for a directive Article 32 – paragraph 2

Text proposed by the Commission

2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of

Amendment

2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of

the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent. ***When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the trader in accordance with Article 31.***

Amendment 180

Proposal for a directive

Article 32 – paragraph 2 a (new)

Text proposed by the Commission

the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent.

Amendment

2a. When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the business in accordance with Article 31(1) and (2). A term which has been supplied by the business in breach of the duty of transparency imposed by Article 31(1) and 31(2) may on that ground alone be considered unfair.

Amendment 181

Proposal for a directive

Article 32 – paragraph 3

Text proposed by the Commission

3. Paragraphs ***1 and 2*** shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the ***trader's*** main contractual obligation, provided that the ***trader*** fully complies with Article 31.

Amendment

3. Paragraphs ***1, 2, and 2(a) of this Article*** shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the ***business's*** main contractual obligation, provided that the ***business*** fully

complies with Article 31(1), (2) and (3).

Amendment 182

Proposal for a directive Article 33

Text proposed by the Commission

Where the **trader** claims that a contract term has been individually negotiated, the burden of proof shall be incumbent on him.

Amendment

Where the **business** claims that a contract term has been individually negotiated, **or that a contract term is compliant with the transparency requirement of Article 31(1) and 31(2)**, the burden of proof shall be incumbent on him.

Amendment 183

Proposal for a directive Article 34

Text proposed by the Commission

Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances.
That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.

Amendment

1. Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances.

2. Member States may provide in their national legislation for additional contract terms considered unfair in all circumstances. Member States shall notify to the Commission the contract terms referred to in paragraph 1.

The Commission shall make that information public in an easily accessible way.

Amendment 184

Proposal for a directive Article 35

Text proposed by the Commission

Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the **trader** has proved that such contract terms are fair in accordance with Article 32. ***That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.***

Amendment

1. Member States shall ensure that contract terms, as set out in the list point 1 of Annex III, are considered unfair, unless the **business** has proved that such contract terms are fair in accordance with Article 32.

2. *Member States may provide in their national legislation for additional contract terms considered unfair in all circumstances. Member States shall notify to the Commission the contract terms referred to in paragraph 1.*

The Commission shall make that information public in an easily accessible way.

Amendment 185

Proposal for a directive Article 37

Text proposed by the Commission

Contract terms which are unfair shall not be binding on the consumer. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

Amendment

Contract terms which are unfair ***under this Directive*** shall not be binding on the consumer ***in accordance with national law***. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

Amendment 186

Proposal for a directive Article 38 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the ***continued*** use of unfair terms in contracts concluded with consumers by ***traders***.

Amendment

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the use of unfair terms in contracts concluded with consumers by ***businesses***.

Amendment 187

**Proposal for a directive
Article 38 – paragraph 3**

Text proposed by the Commission

3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent ***traders*** from ***continuing to*** use terms which have been found unfair.

Amendment

3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent ***businesses*** from ***the*** use ***of*** terms which have been found unfair.

Amendment 188

**Proposal for a directive
Article 39**

Text proposed by the Commission

Article 39

Review of the terms in Annexes 2 and 3

1. Member States shall notify to the Commission the terms which have been found unfair by the competent national authorities and which they deem to be relevant for the purpose of amending this Directive as provided for by paragraph 2.

2. In the light of the notifications received under paragraph 1, the Commission shall amend Annex II and III. Those measures designed to amend non essential elements of this Directive shall be adopted in accordance with the regulatory procedure

Amendment

deleted

with scrutiny referred to in Article 40(2).

Amendment 189

Proposal for a directive Article 40

Text proposed by the Commission

Amendment

Article 40

deleted

The Committee

1. The Commission shall be assisted by the Committee on unfair terms in consumer contracts (hereinafter referred to as "the Committee").

2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC¹⁷ shall apply, having regard to the provisions of Article 8 thereof.

¹⁷ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Amendment 190

Proposal for a directive Article 45

Text proposed by the Commission

Amendment

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of a **product** as prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. The absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of a **good or service** as prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. The absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

Amendment 191

Proposal for a directive
Article 47 – paragraph 1

Text proposed by the Commission

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed.

Amendment

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed *as of [date of transposition]*.

Amendment 192

Proposal for a directive
Annex I – part A

Text proposed by the Commission

A. Information to be provided with the withdrawal form

1. The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.

2. A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending the withdrawal form below on a durable medium to the trader referred to in paragraph 1:

(a) for off-premises contracts, within a period of fourteen days following his signature of the order form;

(b) for distance sales contracts, within a period of fourteen days following the material possession of the goods by the consumer or a third party, other than the carrier and indicated by the consumer;

Amendment

A. Model instructions on withdrawal

Right of withdrawal

You may withdraw on a durable medium from this contract within a period of 14 days without giving any reason.

The period for withdrawal shall begin [on receipt of the goods ordered]]*¹. . The day [on which the goods are received]]*² shall not be counted as part of the period for withdrawal. If the last 14th day of the period for withdrawal falls on a public holiday, a Saturday or a Sunday, the right of withdrawal period shall end with the expiry of the last hour of the following working day.

Notice of withdrawal may be sent at any point before the expiry of the withdrawal period, in which case the period for withdrawal shall be deemed to have been observed if notice of withdrawal is sent

(c) for distance service contracts:

- within a period of fourteen days following the conclusion of the contract, where the consumer has not given his prior express consent for the performance of the contract to begin before the end of this fourteen day period;

- within a period ending when the performance of the contract begins, where the consumer has given his prior express consent for the performance of the contract to begin before the end of the fourteen day period.

3. For all sales contracts, a statement informing the consumer about the time-limits and modalities to send back the goods to the trader and the conditions for the reimbursement in accordance with Articles 16 and 17(2).

before its expiry.

*Notice of withdrawal should be sent on a durable medium (for example in the form of a posted letter or an email^{*3}). You may use the model withdrawal form below, although you are not required to do so.*

Notice of withdrawal should be sent to the following address:

*[Name and address of business to which the withdrawal is to be communicated]
[where applicable, the email and/or web address of the business which the consumer can use to withdraw from the contract.]*

Effects of withdrawal

*For withdrawal to be valid you must send the goods back or hand them over [name of business] or a person authorised by [name of business] to receive the goods within a period of 14 days of sending your notice of withdrawal, at [our expense]^{*4}. , Where the 14th day falls on a public holiday, a Saturday or a Sunday, this period shall end with the expiry of the last hour of the following working day. The day on which you send the notice of withdrawal shall not be counted as part of the period for return of the goods. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter^{*5}.*

If you are unable to return the goods in their original condition, you shall be liable for any deterioration in their value. This provision shall apply only if the deterioration in value is attributable to the goods having been handled in a manner other than that necessary for ascertaining

4. For distance contracts concluded on the Internet, a statement that the consumer can electronically fill in and submit the standard withdrawal form on the trader's website and that he will receive an acknowledgement of receipt of such a withdrawal from the trader by email without delay.

5. A statement that the consumer can use the withdrawal form set out in Part B.

their nature, qualities and functioning. You can prevent deterioration by refraining from using the goods as you would your own property and by avoiding any form of handling liable to reduce their value.

In the case of valid withdrawal, we must reimburse within a period of 14 days any payment you have made to us. The period for reimbursement shall begin when we receive your notice of withdrawal. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. Where the 14th day falls on a public holiday, a Saturday or a Sunday, this period shall end with the expiry of the last hour of the following working day.

*We may refuse to reimburse you until we have [received the returned goods]*⁶*

**⁷*

Advice on alternative wording:

**¹. In the following specific cases, the text in parentheses should read as indicated:*

For distance or off-premises contracts solely for the supply of services: 'from the day of the conclusion of the contract'

For distance or off-premises contracts concerning both the supply of services and the provision of goods: 'on receipt of the goods or from the day when the service is supplied, whichever is later.'

For distance or off-premises contracts concerning the delivery of multiple goods which are to be delivered separately: 'at the time when the last of the goods is taken over'

For distance or off-premises contracts concerning the delivery of a good consisting of multiple lots or pieces: 'at the time when the last lot or piece is taken over'

For distance or off-premises contracts

concerning the recurring delivery of goods of the same kind during a defined period of time: 'at the time when the first good is taken over'.

**² In the following specific cases, the text in parentheses should read as indicated:*

Unless provided otherwise for distance or off-premises contracts for the supply of services: 'from the day of the conclusion of the contract or on the day on which the consumer receives a copy of the signed contract on a durable medium, if this is not the day of conclusion of the contract'.

**³ In the case of distance and off-premises contracts, where the business allows the consumer to fill in a withdrawal form electronically on a website, additional text should be inserted as follows: : 'or via our website'.*

**⁴ If the business has not agreed to bear the cost of returning the goods, the text in parentheses should read as follows: 'at your own expense'.*

**⁵ If the business offers to collect the goods, the following sentence should be added: 'Should you choose to withdraw from this contract [name of business] offers to collect the goods.'*

**⁶. If the business offers to collect the goods from the consumer, the text in parentheses should read as follows: 'collected the goods from you'.*

**⁷ In the case of distance or off-premises contracts concerning the supply of services, the following should be added: 'You will have to bear the costs for services supplied, in full or in part, if performance of services begins during the withdrawal period prior to your express consent'.*

Proposal for a directive
Annex I – part B

Text proposed by the Commission

B. Model withdrawal form

(complete and return this form only if you wish to withdraw from the contract)

– To

– I/We* hereby give notice that I/We* withdraw from my/our* contract *of sale of the following goods*/provision of the following service**

– *Ordered on*/received on**

– Name of consumer(s)

– Address of consumer(s)

– *Signature of consumer(s) (only if this form is notified in writing)*

– Date

**Delete as appropriate.*

Amendment

B. Model withdrawal form

complete and return this form only if you wish to withdraw from the contract)

– To: *(Name of business, business address and, where appropriate, e-mail address)(*)*

– I/We(**)hereby give notice that I/We* withdraw from my/our* contract of *with you for the sale of the following goods(**)/or supply of the following services(**):*

– *Date contract concluded (***)*

– *Name of consumer(s) (***)*

– *Address of consumer(s) (***)*

– *Consumer('s)Signature of (required only if the form is sent on paper) (***)*

– Date(***)

() To be filled in by the business before providing the form to the consumer.*

*(**) Delete where non-applicable.*

*(***) To be filled in by the consumer(s) if this form is used for withdrawal from the contract*

Amendment 194

Proposal for a directive
Annex II – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) excluding or limiting the liability of the business for damage on the property of the consumer caused deliberately or as a result of gross negligence through an act or omission by the business;

Amendment 195

Proposal for a directive Annex II – paragraph 1 – point b

Text proposed by the Commission

(b) limiting the **trader's** obligation to respect commitments undertaken by **his** agents or **making his** commitments subject to compliance with a particular condition which depends exclusively on the **trader**;

Amendment

(b) limiting the **business'** obligation to respect commitments undertaken by **its** agents or **making its** commitments subject to compliance with a particular condition, **the fulfilment of** which depends exclusively on the **business**;

Amendment 196

Proposal for a directive Annex II – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) conferring exclusive jurisdiction for all disputes arising under the contract to the place where the business is domiciled unless the chosen court is also the court for the place where the consumer is domiciled;

Amendment 197

Proposal for a directive Annex III – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) makes binding on the consumer an obligation which is subject to a condition the fulfilment of which depends solely on the intention of the business;

Amendment 198

Proposal for a directive Annex III – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) requiring a consumer to purchase ancillary goods or services not advertised in the price of the main contract;

Amendment 199

Proposal for a directive

Annex III – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) applying contingent charges, such as penalties for breaching the contract terms, that are clearly disproportionate to the costs incurred by the business due to the breach of terms;

Amendment 200

Proposal for a directive

Annex III – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) excluding or hindering the consumer's right to instruct and authorise a third party to conclude a contract between the consumer and the business and/or to take steps which are meant to lead to, or facilitate, the conclusion of a contract between the consumer and the business.

Justification

Any consumer has the right to instruct and authorise a third party to conclude a contract between this consumer and a trader and/or to take steps which are meant to lead to, or facilitate, the conclusion of such a contract. Any term preventing or hindering that right must be considered unfair in all circumstances.

Amendment 201

Proposal for a directive
Annex III – paragraph 1 – point e

Text proposed by the Commission

(e) enabling the **trader** to terminate **an open-ended contract** without reasonable notice except where **the consumer has committed a serious breach of contract**;

Amendment

(e) enabling the **business** to terminate **a contractual relationship of indeterminate duration** without reasonable notice, except where **there are serious grounds for doing so; this does not affect terms in financial services contracts where there is a valid reason, provided the supplier is required to inform the other contracting party thereof immediately**;

Amendment 202

Proposal for a directive
Annex III – paragraph 1 – point g

Text proposed by the Commission

(g) allowing the **trader** to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract;

Amendment

(g) **providing that the price of goods or other assets is to be determined at the time of delivery or supply or** allowing the **business** to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract **if the increased price is too high in relation to the price agreed at the conclusion of the contract; this does not affect price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described**;

Amendment 203

Proposal for a directive
Annex III – paragraph 1 – point k

Text proposed by the Commission

(k) enabling the **trader** to unilaterally alter the terms of the contract including the

Amendment

(k) enabling the **business** to unilaterally alter the terms of the contract including the

characteristics of the product or service;

characteristics of the product or service *without a valid reason which is specified in the contract; this does not affect terms under which a supplier of financial services reserves the right to change the rate of interest to be paid by, or to, the consumer, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the consumer at the earliest opportunity and that the consumer is free to terminate the contractual relationship with immediate effect; neither does it affect terms under which a business reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the business is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contractual relationship;*

Amendment 204

Proposal for a directive Annex III – paragraph 1 – point l a (new)

Text proposed by the Commission

Amendment

(la) allowing a business, where what has been ordered is unavailable, to supply an equivalent without having expressly informed the consumer of this possibility and of the fact that the business must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to withdraw.

Amendment 205

Proposal for a directive Annex III – paragraph 2

Text proposed by the Commission

Amendment

2. Point 1(e) shall not apply to terms by which a supplier of financial service reserves the right to terminate unilaterally an open-ended contract without notice, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

deleted

Amendment 206

**Proposal for a directive
Annex III – paragraph 4 – point b**

Text proposed by the Commission

Amendment

(b) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;

deleted

Amendment 207

**Proposal for a directive
Annex III – paragraph 3 – point c a (new)**

Text proposed by the Commission

Amendment

(ca) package travel contracts regulated by Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.

Amendment 208

**Proposal for a directive
Annex III – paragraph 4 – point d**

Text proposed by the Commission

Amendment

(d) terms under which the trader reserves the right to alter unilaterally the conditions of an open-ended contract, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to terminate the contract. **deleted**

Amendment 209

Proposal for a directive Annex III – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. Point 1(k) shall not apply to

4. Point 1(e), (g) **and** (k) shall not apply to

Amendment 210

Proposal for a directive Annex III – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately; **deleted**

Amendment 211

Proposal for a directive Annex III – paragraph 4 – point d

Text proposed by the Commission

Amendment

(d) terms under which the trader reserves the right to alter unilaterally the conditions of an open-ended contract, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to terminate the contract.

deleted

PROCEDURE

Title	Consumer rights			
References	COM(2008)0614 – C6-0349/2008 – 2008/0196(COD)			
Committee responsible	IMCO			
Opinion by Date announced in plenary	JURI 19.10.2009			
Rapporteur Date appointed	Diana Wallis 2.9.2009			
Discussed in committee	6.10.2009	10.11.2009	29.4.2010	2.9.2010
	27.10.2010			
Date adopted	20.1.2011			
Result of final vote	+: –: 0:	17 0 5		
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka			
Substitute(s) present for the final vote	Piotr Borys, Sajjad Karim, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Toine Manders			
Substitute(s) under Rule 187(2) present for the final vote	Pablo Arias Echeverría, Lorenzo Fontana, Karin Kadenbach			

1.10.2010

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on the proposal for a Directive of the European Parliament and of the Council on Consumer Rights
(COM(2008)0614 – C6-0349/2008 – 2008/0196(COD))

Rapporteur: Sirpa Pietikäinen

SHORT JUSTIFICATION

Your rapporteur considers that the Commission proposal, the purpose of which is to amend:

- Directive 85/577/EEC on contracts negotiated away from business premises,
- Directive 93/13/EEC on unfair terms in consumer contracts,
- Directive 97/7/EC on distance contracts, and
- Directive 1999/44/EC on consumer sales and guarantees,

is welcome as regards its objective, in that it promotes the action of the single market by reducing obstacles to cross-border trade, but notes that the proposal presents problems both for consumers and for businesses.

The attempt to make the internal market more effective and promote cross-border trade by combining these four directives is to be commended. The proposal's relationship to the Treaty on European Union and on the Charter of Fundamental Rights of the European Union is, however, problematic. There is also reason to doubt whether the proposal implements the requirement set out in the Charter of Fundamental Rights that Union policies shall ensure a high level of consumer protection¹.

Full harmonisation; effects on consumers and on businesses

¹ Charter of Fundamental Rights of the European Union, Article 38.

According to the EU 2020 Strategy ¹, high-quality and environmentally sustainable production is one of Europe's competitive advantages. A high level of consumer protection guarantees high-quality products and improves consumer confidence, thereby promoting the effectiveness of the internal market. The conditions for harmonisation exist (Chapter I of the proposal); however harmonisation in accordance with Chapter IV would weaken the level of consumer protection in several Member States. Limiting the guarantee period to two years as set out in the proposal would lead to a shortening of the longer period of liability for lack of conformity observed in many Member States, and would send a message to producers that products do not need to last more than two years, thus reducing consumer confidence.

In the explanatory memorandum to its proposal the Commission states correctly that the level of consumer confidence in cross-border shopping is low. From the consumers' point of view, obstacles include language problems, lack of confidence in payment systems and in product delivery services, and the refusal of businesses to trade across borders.

The sections of Chapter V of the proposal concerning unfair contract terms are problematic in the light of many Member States' national contract law systems, where national legislation is highly developed thanks to the traditions of contract law and the very small degree of EU legislation. As regards consumer rights, the current minimum regulation has allowed the Member States a discretion to adapt EU regulations to national principles, and this approach should continue to be taken.

Your rapporteur regrets that the proposal for a directive does not take account of new products arising as a result of changing product development and innovation, such as digital products. More and more often a product, particularly in the field of entertainment or consumer electronics, contains in addition to the physical product a combination of programs or other intangible products and services. Where a matter is not covered by this directive, there is a fear that it will be necessary to legislate separately on that matter later, which would cause an excessive administrative burden for purchasers.

Financial markets

The EU legislation concerning the financial markets² already covers consumers' rights as regards many financial services such as investment services, several kinds of consumer credit, and insurance. These should continue to be regulated separately. Likewise gambling should be regulated by other directives.

Chapter III of this proposal for a directive, relating to consumer information and withdrawal rights, and Chapter V on unfair business practices, should be extended in this proposal to

¹ Communication from the Commission: EUROPE 2020 A strategy for smart, sustainable and inclusive growth; Brussels, 3 March 2010 (COM 2010 (2020)).

² The Consumer Credit Directive (2008/48/EC); the Payment Services Directive (2007/64/EC); the Unfair Business Practices Directive (2005/29/EC); Directive 2002/65/EC on the distance marketing of financial services; the Life Assurance Directive (2002/83/EC); the Insurance Mediation Directive (2002/92/EC); Directive 2004/39/EC on the markets in financial instruments.

cover financial products falling below the EUR 200 lower limit set out in the existing legislation. Attention should also be paid to the development on the market of products in which a financial service amounting to less than EUR 200, such as insurance, an investment or a loan, becomes a substantial part of the product itself: the information requirement for such products should also be brought within the scope of this directive.

Conclusions

Your rapporteur considers that the objective is a high level of consumer protection. The European Union's attempt to combine the harmonisation of the internal market with a high level of consumer protection can best be achieved by trying to raise the current minimum level of harmonisation in the direction of the best existing national practices. In future the European system of liability for lack of conformity should be developed in such a way that it improves consumer protection and confidence in the markets: this is fair to businesses and supports an increase in the useful life of products. Putting this into practice requires the creation of a European model for resolving consumer disputes.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. ***This Directive should accordingly lay down standard rules for the common aspects and move away from the minimum harmonisation approach in the former Directives under which Member States could maintain or adopt stricter national rules.***

Amendment

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive.

Amendment 2

Proposal for a directive Recital 8

Text proposed by the Commission

(8) **Full** harmonisation of some key regulatory aspects **will** considerably increase legal certainty for both consumers and business. **Both** consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the **Community**. The effect **will** be to **eliminate** the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. **These barriers can only be eliminated by establishing uniform rules at Community level. Furthermore consumers will enjoy a high common level of protection across the Community.**

Amendment

(8) **Unless otherwise specified and in accordance with Article 169 of the Treaty on the Functioning of the European Union (TFEU), the measures set out in this Directive should not prevent Member States from maintaining or introducing measures providing for a higher level of consumer protection. However, full harmonisation of some key regulatory aspects is justified to ensure a consistent framework of consumer protection across the Union and to** considerably increase legal certainty for both consumers and business **in cross-border transactions. In the case of such full harmonisation, both** consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the **Union**. The effect **should be that consumers enjoy a high common level of protection across the Union, contributing to elimination of** the barriers stemming from the **inadequate** fragmentation of the rules and to complete the internal market in this area.

Amendment 3

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The existing Community legislation on consumer financial services contains numerous rules on consumer protection.

Amendment

(11) The existing Community legislation on consumer financial services contains numerous rules on consumer protection.

For this reason the provisions of this Directive cover contracts relating to financial services *only* insofar as *this is necessary to fill the regulatory gaps*.

The provisions of this Directive *should* cover contracts relating to financial services insofar as *they are not covered by other Union or national legislation*.

Amendment 4

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) New financial products that fall below the EUR 200 lower limit, set out in the existing legislation, should be taken into account when renewing the current financial legislation or in future amendments of this Directive in relation to consumer information and unfair business practices.

Amendment 5

Proposal for a directive Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) The Commission should strive to ensure adequate, early information for consumers and a high level of consumer protection, taking a comprehensive horizontal approach covering all sectors of financial services for consumers. Step by step, the Union should aim to establish a European charter of consumer rights in the field of financial services.

Amendment 6

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The importance of European markets for online digital content is increasing and therefore it should be clear that goods referred to in this Directive also include digital products, such as downloads and software.

Amendment 7

Proposal for a directive
Recital 39

Text proposed by the Commission

Amendment

(39) The trader should be liable to the consumer if the goods are not in conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the qualities of the goods. The quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand as well as on the expected life-span of the goods.

(39) The trader should be liable to the consumer if the goods are not in conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the qualities of the goods. The quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand as well as on the expected life-span of the goods. ***An extended warranty period is required for goods in cases where it is particularly difficult to detect a lack of conformity with specifications and when the expected usage time of a good is significantly longer than two years..***

Amendment 8

Proposal for a directive
Recital 57 a (new)

Text proposed by the Commission

Amendment

(57a) The Commission should seek to develop the European consumer centre network to enable it to have legal authority in the area of solving consumer disputes.

Amendment 9

Proposal for a directive Recital 60 a (new)

Text proposed by the Commission

Amendment

(60a) The Commission should ensure that independent, easily accessible and efficient methods of alternative dispute resolution (ADR) are available in all Member States. Best practices, such as the Nordic ombudsman model, should be considered to combine a high level of consumer protection with fair conditions of trade for entrepreneurs.

Justification

As products and their possible defaults differ, so do the reasonable remedies in consumer disputes. Flexible legislation together with reliable methods of dispute resolution ensure reasonable solutions both for consumers and entrepreneurs. Nordic ombudsman -model has proved to be one very efficient model and should be considered also on European level.

Amendment 10

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

Amendment

The purpose of this Directive is to ***contribute to*** the proper functioning of the internal market ***and achieve a high level of consumer protection*** by approximating

The purpose of this Directive is to ***achieve a high level of consumer protection*** ensuring the proper functioning of the internal market by approximating certain

certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

Amendment 11

Proposal for a directive

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) 'trader' means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;

Amendment

(2) 'trader' means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader; ***in the case of financial services, the special requirements provided for in Union sectoral financial legislation should be taken into account;***

Amendment 12

Proposal for a directive

Article 2 – paragraph 1 - point 4 – introductory part

Text proposed by the Commission

'goods' means any tangible movable item, with the exception of:

Amendment

'goods' means any tangible ***or intangible*** movable item, with the exception of:

Justification

Growing number of new products are intertwined combinations of physical product, digital content and services alike, which should all be equally in the scope of the directive.

Amendment 13

Proposal for a directive

Article 3 – paragraph 2

Text proposed by the Commission

2. This Directive shall **only** apply to financial services ***as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.***

Amendment

2. This Directive shall apply to financial services ***where they are not covered by special Union or national financial legislation .***

Amendment 14

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

Text proposed by the Commission

3. Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on ***full*** harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council¹² and of Council Directive 90/314/EEC¹³ .

Amendment

3. Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on ***minimum*** harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council¹² and of Council Directive 90/314/EEC¹³ .

Amendment 15

**Proposal for a directive
Article 3 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. Insofar as it is not harmonised in this Directive, the rules do not affect national law in the area of general contract law regulating the conclusion or validity of a contract, or the rights of the contracting parties to terminate a contract on the basis of a breach of contract.

Amendment 16

Proposal for a directive Article 4 – title

Text proposed by the Commission

Full harmonisation

Amendment

Minimum harmonisation

Amendment 17

Proposal for a directive Article 4

Text proposed by the Commission

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

Amendment

1. Unless otherwise indicated in this Directive, Member States may *adopt or* maintain in *force more stringent provisions, compatible with the TFEU* in *the scope of* this Directive, *to ensure a higher level of consumer protection*.

2. Where Member States maintain or introduce more stringent provisions to ensure a *higher* level of consumer protection *in the field harmonised by this Directive, these provisions shall be compatible with the TFEU and shall be notified to the Commission*.

The Commission shall make that information public on a website or in another easily accessible way.

3. The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may invoke under national rules governing contractual or non-contractual liability.

Justification

The divergence of national consumer contract laws means it is very difficult to agree an

appropriate level at which to harmonise. This inevitably means that some consumers will lose some of their current consumer protection. The principle of maximum harmonisation prevents Member States from maintaining and/or adopting more stringent rules even when market developments call for better or more protective rules. In order to ensure transparency of national measures that go beyond this Directive, a notification system can be put in place.

Amendment 18

Proposal for a directive

Article 5 – title

Text proposed by the Commission

Amendment

General information requirements

Information requirements

Amendment 19

Proposal for a directive

Article 5 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the total cost of the credit to the consumer, comprising all the costs and including: (i) the borrowing rate, fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer; (ii) the total amount of credit; (iii) the annual percentage rate of charge; and (iv) the duration of the credit agreement;

Amendment 20

Proposal for a directive

Article 5 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the existence of a right of withdrawal, where applicable;

(e) the existence *or the absence* of a right of withdrawal *and the conditions and procedures for exercising that right*

including the eventual costs of return of the goods, in accordance with Annex I;

Justification

As well as consumers being told that they have a right to withdraw, they should also be informed what this means in practice and how they can exercise their right.

Amendment 21

**Proposal for a directive
Article 5 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. In the case of unsolicited marketing in the field of financial services and for those transactions not linked to the purchase of a non-financial good or service, the information requirements set out in paragraph 1 shall be provided by the trader in good time before the conclusion of any financial contract.

Amendment 22

**Proposal for a directive
Article 7 a (new)**

Text proposed by the Commission

Amendment

Article 7a

Higher level of protection

With regard to Articles 5, 6 and 7, unless indicated differently in this Directive, Member States may adopt or maintain in force more stringent provisions, compatible with the TFEU in the scope of this Directive, to ensure a higher level of consumer protection.

Amendment 23

Proposal for a directive Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, except as provided for in Article 9, Articles 11(3) and 13(1a), and Articles 19 and 20.

Justification

See Justification in the Amendment relating to Article 4, Paragraph 1

Amendment 24

Proposal for a directive Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least the information regarding the main characteristics of the product and the total price referred to in Articles 5(1)(a) **and** (c) on that particular medium prior to the conclusion of such a contract. The other information referred to in Articles 5 and 7 shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.

3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least the information regarding the main characteristics of the product and the total price referred to in Articles 5(1)(a), (c) **and (ca)** on that particular medium prior to the conclusion of such a contract. The other information referred to in Articles 5 and 7 shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.

Amendment 25

Proposal for a directive Article 11 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall not impose any formal requirements other than those provided for in paragraphs 1 to 4. **deleted**

Justification

Member States should not be prevented from imposing further requirements, as this can have a significant negative impact on the ability of national regulators to propose information remedies to address identified consumer detriment.

Amendment 26

Proposal for a directive

Article 12 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In the case of a distance contract for the sale of goods, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered.

The withdrawal period ends fourteen days after the latest of the following:

- a) the time of conclusion of the contract;***
- b) the time when the entitled party receives from the other party adequate information on the right to withdraw; or***
- c) if the subject-matter of the contract is the delivery of goods, the time when the goods are received;***

Justification

The ability to withdraw from a distance contract or an off-premises contract is a fundamental consumer right. The withdrawal period must be linked to the receipt by the consumer of information from the trader about his right to withdraw. Otherwise consumers could lose their right to withdraw before they knew such a right existed.

Amendment 27

Proposal for a directive
Article 12 – paragraph 4

Text proposed by the Commission

Amendment

4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period.

deleted

Amendment 28

Proposal for a directive
Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may maintain national provisions allowing for a longer withdrawal period or provisions which do not set off the withdrawal period as long as the information referred to in paragraph 1 has not been provided.

Amendment 29

Proposal for a directive
Article 17 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The **consumer** shall **only** be **charged for** the **direct cost of returning the goods** unless the **trader has agreed to bear that cost**.

The **costs of return of the good(s)** shall be **borne by the trader** unless **stipulated otherwise in the contract**.

Amendment 30

Proposal for a directive
Article 17 – paragraph 2

Text proposed by the Commission

2. The consumer ***shall only be liable*** for any ***diminished*** value of the ***goods resulting from the handling other than what is necessary to ascertain the nature and functioning*** of the goods. ***He shall not be liable for diminished value where the trader has failed to provide notice of the withdrawal right in accordance with Article 9(b).*** For ***service*** contracts ***subject to a right of withdrawal***, the consumer ***shall bear no cost for services performed, in full or in part, during the withdrawal period.***

Amendment

2. The consumer ***is not required to pay*** for:

(a) any ***diminution in the*** value of ***anything received under the contract caused by inspection and testing;***

(b) any ***destruction, or loss of, or damage to, anything received under the contract, provided that the consumer used reasonable care to prevent such destruction, loss or damage.***

For ***services*** contracts, the consumer ***is liable for any accredited costs incurred up to the point of withdrawal only when he expressly requested the early performance of the contract.***

Justification

Requiring a consumer to pay for any diminished value in the goods would significantly undermine the value of the right to withdraw. It would also be difficult to identify an appropriate reduction and would place a considerable and unnecessary burden on both business and consumers.

Amendment 31

Proposal for a directive

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Except as provided for in this Article, the consumer shall not incur any liability through the exercise of the right of withdrawal.

Amendment 32

Proposal for a directive Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Higher level of protection

With regard to Articles 8 to 11, unless otherwise indicated in this Directive, Member States may adopt or maintain in force more stringent provisions compatible with the TFEU in the scope of this Directive, to ensure a higher level of consumer protection.

Amendment 33

Proposal for a directive Article 20 – paragraph 2

Text proposed by the Commission

Amendment

2. Articles 8 to 19 shall not apply to off-premises contracts relating to:

2. With regard to Articles 12 to 19, Member States shall not apply legislation conflicting with the provisions of this Directive.

(a) insurance,

(b) financial services whose price depends on fluctuations in the financial market outside the trader's control, which may occur during the withdrawal period, as

defined in Article 6(2)(a) of Directive 2002/65/EC¹⁶ and

(c) credit which falls within the scope of Directive 2008/48/EC.

Amendment 34

Proposal for a directive

Article 20 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States may choose not to apply Articles 8 to 19 to off-premises contracts up to a nationally decided, specified amount, which shall not exceed EUR 60.

Justification

Directive 85/577/EEC currently permits Member States to choose to exclude from their national legislation off premises contracts under which the total payments to be made do not exceed a value of 60 Euros, as low value purchases do not justify the increased cost to business of compliance and enforcement. According to the European Commission a majority of Member States have chosen to apply a monetary threshold for off premises contracts (Austria, Bulgaria, Estonia, Finland, Germany, Ireland, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the UK).

Amendment 35

Proposal for a directive

Article 26 – paragraph 2

Text proposed by the Commission

Amendment

2. The trader shall remedy the lack of conformity by either repair or replacement according to his choice.

deleted

Amendment 36

Proposal for a directive
Article 26 – paragraph 4 – point d

Text proposed by the Commission

(d) the same defect has **reappeared more than once** within a short period of time.

Amendment

(d) the same **or another** defect has **appeared** within a short period of time **after the good was first repaired or replaced**.

Justification

This amendment seeks to prevent consumers becoming stuck in a cycle of failed repairs.

Amendment 37

Proposal for a directive
Article 28 – paragraph 1

Text proposed by the Commission

1. The trader shall be held liable under Article 25 where the lack of conformity becomes apparent within **two** years as from the time the risk passed to the consumer.

Amendment

1. The trader shall be held liable under Article 25 where the lack of conformity becomes apparent within **six** years as from the time the risk passed to the consumer.

Justification

The legal guarantee period should be increased from 2 to 6 years. Increasing the liability period from 2 years is crucial. A short liability period would create a disincentive for products to be manufactured with a longer lifespan, with the consequent risk of decreasing product standards as well as increased environmental concerns due to increased levels of waste.

Amendment 38

Proposal for a directive
Article 28 – paragraph 2

Text proposed by the Commission

2. When the trader has remedied the lack of conformity by replacement, **he** shall be

Amendment

2. When the trader has remedied the lack of conformity by **repair or** replacement, **the**

held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has acquired the material possession of the replaced goods.

period specified in paragraph 1 shall be suspended from the moment the consumer informs the trader of the lack of conformity until the moment the consumer has reacquired the material possession of the replaced goods.

Amendment 39

Proposal for a directive Article 28 – paragraph 3

Text proposed by the Commission

Amendment

3. In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year.

deleted

Amendment 40

Proposal for a directive Article 28 – paragraph 5

Text proposed by the Commission

Amendment

5. Unless proved otherwise, any lack of conformity which becomes apparent within *six months* of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods and the nature of the lack of conformity.

5. Unless proved otherwise, any lack of conformity which becomes apparent within *one year* of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods and the nature of the lack of conformity.

Justification

A short reversed burden of proof period can deter consumers from exercising their rights to a remedy for faulty goods.

Amendment 41

Proposal for a directive
Article 29 a (new)

Text proposed by the Commission

Amendment

Article 29a

Higher level of protection

With regard to Articles 21 to 29, unless indicated differently in this Directive, Member States may adopt or maintain in force more stringent provisions, compatible with the TFEU in the scope of this Directive, to ensure a higher level of consumer protection.

Amendment 42

Proposal for a directive
Article 34

Text proposed by the Commission

Amendment

Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. That list of contract terms shall apply in all Member States ***and may only be amended in accordance with Articles 39(2) and 40.***

Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. That list of contract terms shall apply in all Member States. ***Member States may adopt or maintain additional contract terms in addition to those included in that list.***

Amendment 43

Proposal for a directive
Article 35

Text proposed by the Commission

Amendment

Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. That

Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. That

list of contract terms shall apply in all Member States *and* may *only be amended* in *accordance with Articles 39(2) and 40*.

list of contract terms shall apply in all Member States. *Member States may adopt or maintain additional contract terms in addition to those included in that list.*

Amendment 44

Proposal for a directive Article 39 a (new)

Text proposed by the Commission

Amendment

Article 39a

Higher level of protection

With regard to Articles 30 to 39, unless otherwise indicated in this Directive, Member States may adopt or maintain in force more stringent provisions compatible with the TFEU in the scope of this Directive, to ensure a higher level of consumer protection.

Amendment 45

Proposal for a directive Article 45

Text proposed by the Commission

Amendment

The consumer shall be exempted from *the provision of any consideration* in cases of unsolicited supply of a product as prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. The absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

The consumer shall be exempted from *any obligation* in cases of unsolicited supply of a product as prohibited by Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. The absence of a response from the consumer following such an unsolicited supply shall not constitute consent. *Notwithstanding the right of objection of employees, this shall not prevent employers from automatically enrolling employees into their workforce pension schemes if those schemes are funded by employers' contributions. It shall also not prevent the tacit renewal of*

insurance, credit and other financial contracts whereby they are automatically renewed upon expiry following explicit contract provisions when such tacit renewal is permitted by law.

PROCEDURE

Title	Consumer rights	
References	COM(2008)0614 – C6-0349/2008 – 2008/0196(COD)	
Committee responsible	IMCO	
Opinion by Date announced in plenary	ECON 19.10.2009	
Rapporteur Date appointed	Sirpa Pietikäinen 21.7.2009	
Discussed in committee	2.6.2010	28.6.2010
Date adopted	28.9.2010	
Result of final vote	+: –: 0:	36 3 0
Members present for the final vote	Burkhard Balz, Udo Bullmann, Pascal Canfin, George Sabin Cutaş, Rachida Dati, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Vicky Ford, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Othmar Karas, Wolf Klinz, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Íñigo Méndez de Vigo, Sławomir Witold Nitras, Ivari Padar, Rolandas Paksas, Antolín Sánchez Presedo, Edward Scicluna, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Kay Swinburne, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool	
Substitute(s) present for the final vote	David Casa, Ashley Fox, Sophia in ‘t Veld, Olle Ludvigsson, Thomas Mann, Siiri Oviir, Sirpa Pietikäinen, Gianni Pittella	

PROCEDURE

Title	Consumer rights			
References	COM(2008)0614 – C6-0349/2008 – 2008/0196(COD)			
Date submitted to Parliament	8.10.2008			
Committee responsible Date announced in plenary	IMCO 19.10.2009			
Committee(s) asked for opinion(s) Date announced in plenary	ECON 19.10.2009	JURI 19.10.2009		
Rapporteur(s) Date appointed	Andreas Schwab 14.9.2009			
Discussed in committee	2.9.2009	29.9.2009	16.11.2009	2.12.2009
	25.1.2010	26.1.2010	23.2.2010	16.3.2010
	3.6.2010	24.6.2010	12.7.2010	11.10.2010
	18.11.2010	29.11.2010	9.12.2010	
Date adopted	1.2.2011			
Result of final vote	+: –: 0:	22 16 1		
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Malcolm Harbour, Iliana Ivanova, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Hans-Peter Mayer, Claudio Morganti, Gianni Pittella, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Laurence J.A.J. Stassen, Catherine Stihler, Alexandra Thein, Kyriacos Triantaphyllides, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler			
Substitute(s) present for the final vote	Cornelis de Jong, Frank Engel, Ashley Fox, María Irigoyen Pérez, Constance Le Grip, Morten Messerschmidt, Catherine Soullie, Wim van de Camp			