



24.11.2016

DRAFT 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 certain aspects concerning contracts for the online and other distance sales
of goods
(COM(2015)0635 – C8-0391/2015 – 2015/0288(COD))

Rapporteur (*): Heidi Hautala

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

PA_Legam

SHORT JUSTIFICATION

Following its Digital Single Market strategy of 6 May 2015, the Commission adopted on 9 December 2015 two legislative proposals on harmonised rules for contracts in the digital environment. While one of the proposals deals with contracts for the supply of digital content, the proposal that we are assessing here focuses on online and other distance sales of goods.

The objective of the proposal is to further harmonise certain aspects of contract law. The Commission opted for a fully harmonised set of rules that deals with certain aspects of contract rules, namely and mainly conformity with the contract and remedies in case of non-conformity. The scope is also limited to business-to-consumer contracts and to contracts for the online and other distance sales of goods.

Your rapporteur supports the proposal for a directive which objective is to further harmonise contract law in order to increase consumer confidence when buying online and across borders, as well as to create a business-friendly environment and make it easier for businesses to sell cross-border. However, since minimum harmonisation does not seem to be the optimal approach to achieve the purposes of the proposed Directive, only targeted full harmonisation is suitable in consideration of the rapporteur's concerns about the risks of lowering consumer protection throughout the Union. Therefore, a number of adjustments should be made to the Commission's proposal. The rapporteur would particularly like to underline the following ones.

1. Extension of the scope

The Commission's proposal creates a new set of rules for online and distance sales of goods and therefore, depending on whether the goods are sold online or off-line, different rules apply. However, in its REFIT exercise, the Commission considers the possibility of a single regulatory regime for both distance and face-to-face sales.

Your rapporteur considers that applying similar rules on contractual remedies for both face-to-face and online and other distance sales of goods could make the regulatory framework less complicated for consumers and businesses. Therefore, she proposes an amendment that extends the scope to offline-sales and, consequently, repeals the Consumer Sales and Guarantees Directive (Directive 1999/44/EC).

However, your rapporteur considers that the impact of an extension of the scope of the proposal to face-to-face sales of goods should be thoroughly assessed. Therefore, she would only support an extension of the scope after a proper impact assessment has been conducted and reserves the possibility to withdraw her amendment to extend to scope to off-line sales if the impact assessment is not conclusive in that sense.

She also has serious concerns regarding legal considerations when it comes to making a substantial change in the Commission's proposal. Your rapporteur considers that if a major change, such as the extension of the scope of the Directive to off-line sales, is introduced to the proposal, the accurate procedure and the principles of better law-making should apply.

Parliament, together with other institutions, are committed to follow the Interinstitutional Agreement on Better Law-Making. As a Member of the Committee on Legal Affairs, which is

responsible for better law-making and the simplification of Union law, your rapporteur does not want to override the principles and the Interinstitutional Agreement on Better Law-making (in particular Articles 15 and 16) and unconditionally put forward amendments that would lead to a substantial change without any kind of proper assessment, bearing in mind that such changes would bring substantial changes to consumer and contract law.

2. Remedies: favour consumer choice over hierarchy of remedies

Your rapporteur believes that the consumer should be entitled to choose between different remedies, namely repair, replacement, price reduction and termination of the contract.

3. Introduction of a lifespan guarantee

Your rapporteur considers that the expected lifespan of the product should be taken into consideration when determining the consumer's right to remedy for the lack of conformity of a good with the contract and more particularly the applicable time limits.

The lifespan of a good vary from one good to another, depending on its nature. The period during which the seller is held liable for any lack of conformity of the goods should therefore vary accordingly. The determination of this period should take into account the expected lifespan of the good, which should be determined taking into consideration the indications given by the seller or the producer. Therefore, your rapporteur proposes to set a time limit for the legal guarantee of two years as a minimum, which could be increased depending on the nature and durability of the good. A lifespan guarantee is in line with core societal issues, such as sustainability of products, waste control but also consumer protection as such.

Parliament has requested a study on this issue, and your rapporteur will refine her amendment and possibly table additional ones after the results of the study are published.

4. Targeted full harmonisation

Full harmonisation could result in lowering the level of consumer protection in some Member State and would hardly be acceptable for the consumers of that particular Member State. Therefore, a reduction of the level of consumer protection should be avoided as much as possible. Some requirements allowing to avoid such shortcomings have thus to be introduced.

5. Introduction of a guarantee for hidden defects

Your rapporteur would like to introduce a new consumers' right in the EU legislation, in addition to other legal and commercial guarantees, which relates to remedies for hidden defects. This concept already exists in several national legislations (France, Belgium, Romania). She proposes to give consumers the right to remedies for a defect that could not be detected at the time of the conclusion of the contract but that do not result from the use of the good.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Title 1

Text proposed by the Commission

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

on certain aspects concerning contracts for
the ***online and other distance sales of
goods***

(Text with EEA relevance)

Amendment

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

on certain aspects concerning contracts for
the ***sale of goods and repealing Directive
1999/44/EC***

(Text with EEA relevance)

Or. en

Justification

The extension of the scope of the proposed directive should be considered in order to apply similar rules on contractual remedies for both face-to-face and online and other distance sales of goods and make the regulatory framework less complicated for consumers and businesses. This amendment aims at extending the scope to offline-sales and, consequently proposes to repeal Directive 1999/44/EC. However, the rapporteur would only support an extension of the scope after a proper impact assessment has been conducted and reserves the right to withdraw this amendment extending the scope and repealing Directive 1999/44/EC in the event the impact assessment is not conclusive.

Amendment 2

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) In order to remedy those problems, ***businesses and consumers should be able to rely on*** a set of fully harmonised, targeted rules for the ***online and other distance sales of goods***. Uniform rules are necessary in relation to several essential elements of consumer contract law which under the current minimum harmonisation approach led to disparities and trade barriers across the Union.

Amendment

(8) In order to remedy those problems, a set of fully harmonised, targeted rules for the ***sales of goods on which businesses and consumers could rely on would be ideal***. Uniform rules are necessary in relation to several essential elements of consumer contract law which under the current minimum harmonisation approach led to disparities and trade barriers across the Union. ***However, full harmonisation could result in lowering the level of consumer protection in some Member***

States and would therefore go against the interests of the consumers of those Member States. Therefore, a reduction of the level of consumer protection should be avoided as much as possible.

Or. en

Amendment 3

Proposal for a directive Recital 13

Text proposed by the Commission

(13) This Directive should not apply to goods *like DVDs and CDs* incorporating digital content in such a way that *the goods function only as a carrier* of the *digital content*. *However, this Directive should apply to digital content integrated in goods such as household appliances or toys where the digital content is embedded in such a way that its functions are subordinate to the main functionalities of the goods and it operates as an integral part of the goods.*

Amendment

(13) This Directive should not apply to goods incorporating digital content *such as household appliances or toys*, in such a way that *it operates as an integral* part of the goods *and cannot easily be uninstalled, unless the seller proves that the defect lies in the non-digital content part of the good*. *It should not apply to digital content supplied on a tangible medium (e.g. CD or DVD) either.*

Or. en

Justification

In order to align OSD with DCD, the amendment seeks to exclude from the scope of the directive the goods that include embedded software, unless the seller can prove that the defect lies in the good. This assumption of non applicability can be justified by the increasing complexity of goods with embedded data. This Directive should not apply to the digital content supplied on a tangible medium neither, as the tangible good is only a carrier of the digital content, and its value is the digital content.

Amendment 4

Proposal for a directive Recital 23

Text proposed by the Commission

(23) Ensuring longer durability of consumer goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential to increase trust in the single market. For these purposes, product specific Union legislation ***is the most appropriate approach*** to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives followed in this Union sector specific legislation. In so far as specific durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the criteria for conformity.

Amendment

(23) Ensuring longer durability of consumer goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential to increase trust in the single market. For these purposes, product specific Union legislation ***should be used*** to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives followed in this Union sector specific legislation. In so far as specific durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the criteria for conformity. ***However, some Member States have introduced a lifespan guarantee for products with positive results that should be introduced in the Union legislation for the benefit of consumers and society as a whole.***

Or. en

Amendment 5

Proposal for a directive Recital 26

Text proposed by the Commission

(26) In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first

Amendment

(26) In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first

two years, in order to benefit from the presumption of lack of conformity, the consumer should only establish that the good is not conforming, without needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the Digital Single Market, *a fully harmonised order in which remedies can be exercised should be provided for. In particular, the consumer should enjoy a choice between repair or replacement as a first remedy which should help in maintaining the contractual relation and mutual trust. Moreover, enabling consumers to require repair should encourage a sustainable consumption and could contribute to a greater durability of products.*

two years, in order to benefit from the presumption of lack of conformity, the consumer should only establish that the good is not conforming, without needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the Digital Single Market, *the principle of free choice of remedies should be fully harmonised. The consumer should enjoy free choice between the possible remedies and should be able to require the seller to either repair the defect or replace the defective good with a good which is in conformity with the contract. The consumer should also be able to require price reduction or termination of the contract instead of remedying the defects.*

Or. en

Amendment 6

Proposal for a directive Recital 27

Text proposed by the Commission

(27) The consumer's choice *between repair and replacement* should only be limited where the option chosen would be disproportionate compared to the other option available, impossible or unlawful. For instance, it might be disproportionate to request the replacement of goods because of a minor scratch where this replacement would create significant costs while, at the same time, the scratch could easily be repaired.

Amendment

(27) The consumer's choice should only be limited where the option chosen would be disproportionate compared to the other option available, impossible or unlawful. For instance, it might be disproportionate to request the replacement of goods because of a minor scratch where this replacement would create significant costs while, at the same time, the scratch could easily be repaired.

Or. en

Amendment 7

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32 a) The lifespan of a good varies from one good to another, depending on its nature. The period during which the seller is held liable for any lack of conformity of the goods should therefore vary accordingly. The determination of this period should take into account the expected lifespan of the good, which should be determined taking into consideration the indications given by the seller or the producer. In any case the time limit should not be shorter than two years.

Or. en

Amendment 8

Proposal for a directive Recital 38

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

This amendment aims at repealing the Consumer Sales and Guarantee Directive of 25 May 1999, as a consequence of the expansion of the scope of the proposal to face-to-face sales contracts.

Amendment 9

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 10

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 11

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

Text proposed by the Commission

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

Amendment

3. This Directive shall not apply to any **tangible** medium incorporating digital content. ***This Directive shall neither apply to goods in which digital content is embedded unless the supplier proves that the lack of conformity lies in the hardware of the good.***

Amendment 12

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 13

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 14

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

Text proposed by the Commission

(e) ‘**distance sales contract**’ means **any sales contract concluded under an**

Amendment

deleted

organised distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded;

Or. en

Amendment 15

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

Text proposed by the Commission

(f) ‘durable medium’ means any instrument which enables the consumer or the seller to store information addressed personally to *him* in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

Amendment

(f) ‘durable medium’ means any instrument which enables the consumer or the seller to store information addressed personally to *that person* in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

Or. en

Amendment 16

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

Text proposed by the Commission

Amendment

(f a) ‘tangible medium’ means a tangible moveable item which serves exclusively as a carrier of digital content.

Or. en

Amendment 17

Proposal for a directive

Article 2 – paragraph 1 – point g

Text proposed by the Commission

(g) ‘commercial guarantee’ means any undertaking by the seller or a producer (the guarantor) to the consumer, in addition to **his** legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or **service** goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

Amendment

(g) ‘commercial guarantee’ means any undertaking by the seller or a producer (the guarantor) to the consumer, in addition to **that person's** legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or **handle** goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

Or. en

Amendment 18

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 19

Proposal for a directive

Article 5 – paragraph 1 – point c – introductory part

Text proposed by the Commission

(c) possess qualities and performance capabilities which are normal in goods of the same type and which the consumer **may** expect given the nature of the goods and

Amendment

(c) possess qualities and performance capabilities which are normal in goods of the same type and which the consumer **can reasonably** expect given the nature of the

taking into account any public statement made by or on behalf of the seller or other persons in earlier links of the chain of transactions, including the producer, unless the seller shows that:

goods and taking into account any public statement made by or on behalf of the seller or other persons in earlier links of the chain of transactions, including the producer, unless the seller shows that:

Or. en

Amendment 20

Proposal for a directive

Article 5 – paragraph 1 – point c – point ii

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 21

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

At the time relevant for establishing the conformity with the contract as determined by Article 8, the goods **shall** be free **from any restriction resulting** from any right of a third party, including based on intellectual property **rights that may prevent the consumer from using the goods** in accordance with the contract **and with the consumer's reasonable expectation**.

Or. en

Amendment 22

Proposal for a directive Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Hidden defects

- 1. At the time relevant for establishing the conformity with the contract as determined by Article 8, the goods shall be free from any hidden defect. Any such defect shall be regarded as a lack of conformity with the contract.*
- 2. Hidden defects for the purpose of this Regulation shall be understood to be defects other than minor defects and which make the good unfit for its intended use, or impede its use in such a way that the consumer would not have bought it or would have paid a lower price if he or she had known the existence of the defect.*

Or. en

Amendment 23

Proposal for a directive Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Any lack of conformity with the contract which becomes apparent within two years from the time indicated in paragraphs 1 and 2 is presumed to have existed at the time indicated in paragraphs 1 and 2 unless this **presumption** is incompatible with the nature of the goods or with the nature of the lack of conformity, **notably taking into account the lifespan of the goods, as provided under Article 14.**

Or. en

Amendment 24

Proposal for a directive Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Paragraph 2 is not applicable in case of a hidden defect. The consumer shall be entitled to a remedy for a hidden defect if such remedy is claimed within two years of the moment when the defect is discovered. The burden of proof shall lie on the consumer.

Or. en

Amendment 25

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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

1. In the case of a lack of conformity ***of the goods*** with the contract, the consumer shall be entitled to ***choose between the following remedies:***

(a) have the goods brought into conformity by the seller, free of charge, by repair or replacement in accordance with Article 10 and Article 11;

(b) be entitled to a price reduction in accordance with Article 12;

(c) termination of the contract in accordance with Article 13.

Or. en

Amendment 26

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

Text proposed by the Commission

Amendment

1a. Article 9, paragraph 1, point (a) is not applicable in case of a hidden defect.

Or. en

Amendment 27

Proposal for a directive Article 9 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

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

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

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

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

Or. en

Amendment 28

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 29

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

Text proposed by the Commission

2. Where the consumer had installed the goods in a manner consistent with their nature and purpose, before the lack of conformity with the contract became apparent, the obligation to take back the replaced goods shall include the removal of the non-conforming goods and the installation of replacement goods, or bearing the costs thereof.

Amendment

2. Where the consumer had installed the goods in a manner consistent with their nature and purpose, before the lack of conformity with the contract became apparent, the obligation to take back the replaced goods shall include the removal of the non-conforming goods and the installation of replacement goods, or bearing the costs thereof, ***according to the seller's choice.***

Or. en

Justification

Clarification purpose.

Amendment 30

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

Text proposed by the Commission

The consumer may choose between ***repair and replacement*** unless the option chosen

Amendment

The consumer may choose between ***the remedies provided for in Article 9,***

would be impossible, unlawful or, compared to the other *option*, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

paragraph 1, unless the option chosen would be impossible, unlawful or, compared to the other *options*, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

Or. en

Amendment 31

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 32

Proposal for a directive Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The notice mentioned in Article 13, paragraph 1, shall become effective when it reaches the addressee, unless it provides for a delayed effect, that is to say:

(i) when it is delivered to the addressee;

(ii) when it is delivered to the addressee's place of business or, where there is no such place of business or the

notice is addressed to a consumer, to the addressee's habitual residence;

(iii) in the case of a notice transmitted by electronic mail or other individual communication, when it can be accessed by the addressee; or

(iv) when it is otherwise made available to the addressee at such a place and in such a way that the addressee could be expected to obtain access to it without undue delay.

Or. en

Justification

In order to avoid any national divergence, this amendment seeks to set clear rules on the time when the notice (and therefore the termination) becomes effective.

Amendment 33

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

The consumer shall be entitled to a remedy for the lack of conformity with the contract of the goods where the lack of conformity becomes apparent within two years as from the relevant time for establishing conformity ***or, depending on the nature of the goods, where the lack of conformity becomes apparent after more than two years, taking into account the durability of the good. In order to determine the expected lifespan of the good, the information provided by the seller or the producer shall be taken into account.*** If, under national legislation, the rights laid down in Article 9 are subject to a limitation period, that period shall not be shorter than two years from the relevant time for establishing conformity with the contract.

Or. en

Justification

The time limit should take into consideration the expected lifespan of the goods.

Amendment 34

Proposal for a directive

Article 15 – paragraph 1 – point b

Text proposed by the Commission

(b) advertising available at the time of *or before* the conclusion of the contract; and

Amendment

(b) advertising available at the time of the conclusion of the contract *or the latest advertising available* before the conclusion of the contract; and

Or. en

Amendment 35

Proposal for a directive

Article 15 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 36

Proposal for a directive

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Within its own territory, the Member State in which the goods are marketed may, in accordance with the Treaties, provide that the guarantee be drafted in one or more languages which it

shall determine from among the official languages of the Union.

Or. en

Amendment 37

Proposal for a directive Article 19 – title

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 38

Proposal for a directive Article 19 – paragraph 1 Directive 1999/44/EC Article 1 – paragraphs 1 and 2

Text proposed by the Commission

Amendment

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

deleted

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

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

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

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

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

(ii) the following point is added:

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

Or. en

Amendment 39

Proposal for a directive Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19 a

Repeals

Directive 1999/44/EC is repealed.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex I.

Or. en