AMENDMENTS
213 - 673

Draft report
Andreas Schwab
(PE442.789v04-00)

on Consumer rights

Proposal for a directive
Amendment 213
Robert Rochefort

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,

Or.fr

Amendment 214
Robert Rochefort

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,

Or.fr

Amendment 215
Robert Rochefort

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

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.
the former Directives under which Member States could maintain or adopt stricter national rules.

Amendment 216
Emilie Turunen
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 stricter national rules providing for a higher level of consumer protection.

Amendment 217
Christel Schaldemose
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

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(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 218
Robert Rochefort
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 219
Heide Rühle
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

(3a) This Directive does not apply to services covered by the proposal for a directive of the European Parliament and of the Council on the application of patients’ rights in cross-border healthcare (COM(2008)414 final).

Amendment

Or.de

Or.fr

Or.en
Justification


Amendment 220
Robert Rochefort

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.

Or.fr
Amendment 221
Emilie Turunen

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 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.

Or. en

Amendment 222
Emilie Turunen

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

(4a) In order to ensure high levels of consumer protection, thereby increasing consumer confidence and activity in the internal market, this Directive shall provide for minimum harmonisation, except for provisions which are indicated as fully harmonised.

Amendment

(4a) In order to ensure high levels of consumer protection, thereby increasing consumer confidence and activity in the internal market, this Directive shall provide for minimum harmonisation, except for provisions which are indicated as fully harmonised.

Or. en

Justification

Contrary to the Commission’s proposal, full harmonisation will not result in one single set of standards throughout the EU as many rules of national general contract law would have to be changed and consumer law cannot be artificially separated.
from general contract law. Full harmonisation will not automatically increase consumer confidence if it results in the abrogation of previously existing higher levels of consumer protection currently provided for by some Member States. Therefore, a mixed approach is necessary where derogations from the principle of minimum harmonisation should be assessed on a case-by-case basis.

Amendment 223
Emilie Turunen

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 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.

Amendment 224
Robert Rochefort

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 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 a high

Amendment

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contribute to the better functioning of the business to consumer internal market. **level of consumer protection and** better functioning of the business to consumer internal market.

**Amendment 225**
Emilie Turunen

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 contract law diverge significantly.

**Amendment 226**
Robert Rochefort

Proposal for a directive
Recital 6
(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 contract law diverge significantly.

Amendment 227
Andreas Schwab

Proposal for a directive
Recital 6

(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 contract law diverge significantly.

Amendment 228
Emilie Turunen

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 229
Robert Rochefort

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) *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.*

Or.fr

Amendment 230
Toine Manders

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 Community. This problem is particularly acute in the light of new market developments *and online market developments like downloading and*
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.
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 233
Robert Rochefort
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, the measures laid out in this Directive shall not prevent Member States from maintaining or introducing more stringent measures providing for a higher level of consumer protection. However, full harmonisation of some key regulatory aspects is justified, in respect of distance and off-premises contracts, with a view to ensuring a consistent framework of consumer protection across the European Union and considerably increasing legal certainty for both consumers and business. In the fields to be harmonised, both consumers and business will be able to rely on a clearer regulatory framework based on well-defined legal concepts regulating certain aspects of distance and off-premises business-to-consumer contracts across the Union.
Or.fr

Amendment 234
Evelyne Gebhardt

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 respective of Article 159 EU-Treaty, the provisions of this Directive shall not hinder the Member States in introducing or maintaining further regulations, that 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 business in cross-border business. In this case, 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. Thus, the consumer will enjoy a high common level of protection across the Union. Furthermore, by establishing uniform rules at Union level, this shall eliminate the barriers stemming from the improportionate fragmentation of the rules and shall complete the internal market in this area.**

Or.en

Amendment 235
Malcolm Harbour

Proposal for a directive
Recital 8
(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. However the regulatory aspects concern only contracts concluded between traders and consumers. Therefore, among others, 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 should be excluded from the Directive.

Or.en

Amendment 236
Emilie Turunen
Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

(8a) The new definition of consumer should encompass situations in which a consumer buys a good or contracts a service partly for personal and partly for professional purposes (mixed purposes).
Many Member States have chosen to
apply consumer protection rules to other persons or entities such as NGOs, start up business or small enterprises that are in a similar position as consumers in terms of lack of bargaining power and expertise. As a consequence, it is necessary to allow Member States to maintain or extend the protective rules to other legal or natural persons that are not consumers.

More and more goods are purchased or downloaded in an intangible digital format. Therefore it is necessary to include intangible goods within the definition of "goods". This will ensure that consumers are equally protected when buying both online and offline.

The definition of goods should encompass water, gas and electricity. The inclusion of these sectors in the scope of the Directive is necessary in a context where traditional public monopolies are dismantled and the involvement of private sector players in these industries.

Amendment 237
Christel Schaldemose
Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission Amendment

(8a) The new definition of consumer should encompass situations in which a consumer buys a good or contracts a service partly for personal and partly for professional purposes (mixed purposes).

Many Member States have chosen to apply consumer protection rules to other persons or entities such as NGO's, start up business or small enterprises that are in a similar position as consumers in terms of lack of bargaining power and
expertise. As a consequence, it is necessary to allow Member States to maintain or extend the protective rules to other legal or natural persons that are not consumers.

Or.en

Amendment 238
Christel Schaldemose
Proposal for a directive
Recital 8 b (new)

Text proposed by the Commission

(8b) Nowadays more and more goods are purchased or downloaded in an intangible digital format. Therefore it is necessary to include intangible goods within the definition of “goods”. This will ensure that consumers are equally protected when buying both online and off-line.

Or.en

Amendment 239
Christel Schaldemose
Proposal for a directive
Recital 8 c (new)

Text proposed by the Commission

(8c) The definition of goods should encompass water, gas and electricity. The inclusion of these sectors in the scope of the directive is necessary in a context where traditional public monopolies are dismantled with the private sector entering these sectors.

Or.en
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 distance and off-premises contracts, the right of withdrawal for distance and off-premises contracts, consumer rights specific to contracts of sale and unfair contract terms in consumer contracts; certain consumer rights specific to contracts of sale and certain provisions relating to unfair contract terms in consumer contracts must also be harmonised.

Or.fr

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

(9a) The provision of pre-contractual information on business premises lies outside the scope of this Directive, since Member States retain the right to maintain or introduce national rules on consumer information at points of sale, concerning inter alia:

– the main characteristics of the goods or services;
– the price of the goods or services;
– the conditions of sale or service; and
– any limits on the trader’s liability.

Or.fr

Justification

This amendment clarifies the consequences of focusing Chapters II and III on consumer information and the right of withdrawal in respect of distance and off-premises contracts.

Amendment 242
Emilie Turunen

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

deleted

Or.en

Amendment 243
Evelyne Gebhardt

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.

(11) Whilst the existing Community legislation on consumer financial services contains numerous rules on consumer protection, the consumers in the area of financial services should be able to benefit from this Directive insofar as this is necessary to fill the regulatory gaps.
Amendment 244
Andreas Schwab

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 Community legislation on consumer financial services contains numerous rules on consumer protection. For this reason this Directive applies to financial services only insofar as they are subject to unfair contract terms.

Or.de

Amendment 245
Philippe Juvin, Constance Le Grip

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 various special contracts or sectors, such as financial services and package travel, contains numerous rules on consumer protection. For this reason this Directive shall apply to those sectors without prejudice to the provisions of existing Union legislation.

Or.fr

Justification

Financial services are not the only sector covered by specific Union legislation dealing with aspects of consumer protection. The Consumer Rights Directive must therefore apply to those particular sectors without prejudice to the rules laid down at EU level.
Amendment 246
Malcolm Harbour

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. For this reason the provisions of this Directive cover contracts relating to financial services only in relation to unfair terms in such consumer contracts and allow for more stringent national rules to be applied in that field.

Or.en

Amendment 247
Cristian Silviu Bușoi, Edvard Kožušník

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission
(11a) This Directive shall 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
Or.en

Justification
The proposal for a directive rightly excludes the sale of immovable property from the
scope of the directive in order to avoid encroachment on national property law of the Member States (Art. 20 (1a)). However, it should be clarified that this exclusion from the scope also applies to contracts inseparably connected with the sale of immovable property given that mixed-purpose contracts as a rule will be covered by the directive.

Amendment 248
Evelyne Gebhardt
Proposal for a directive
Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) The European Union shall aim for a European Charter of Consumer Rights in the area of financial services. This Charter ought to unify and simplify all existing provisions. It should specify the rights of the consumer such as the access to information, the administration and management of one's own financial records, appropriate advice and education in consumer protection. Moreover financial inclusion shall be promoted, best practices from the Member States shall be incorporated, collective redress shall be facilitated and the participation of the stakeholders encouraged. In addition, an annual report shall evaluate the progress in the fulfillment of the measures aimed at in the Charter.

Or.en

Amendment 249
Malcolm Harbour
Proposal for a directive
Recital 11 c (new)

Text proposed by the Commission

Amendment

(11c) In case of overlap between this Directive and Directive 2006/123/EC or Directive 2000/31/EC of the European
Parliament and of the Council, this Directive should take precedence.

Or.en

Amendment 250
Malcolm Harbour
Proposal for a directive
Recital 11 d (new)

Text proposed by the Commission

Amendment

(11d) This Directive should apply only in so far as there are no specific provisions with the same objective, nature or effect in other existing or future Union legislation such as in the fields of transport or energy supply. The corresponding provisions of this Directive should not therefore apply in the areas covered by such specific provisions.

Or.en

Amendment 251
Malcolm Harbour
Proposal for a directive
Recital 11 e (new)

Text proposed by the Commission

Amendment

(11e) This Directive should not affect the possibility of the Member States to adopt or maintain national provisions under other Union minimum harmonisation legislation.

Or.en
Amendment 252
Emilie Turunen
Proposal for a directive
Recital 11 f (new)

Text proposed by the Commission

(11f) The definition of "consumer" is 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' in the meaning of the previous sentence, e.g. NGOs, start-up businesses, etc

Amendment 253
Emilie Turunen
Proposal for a directive
Recital 11 g (new)

Text proposed by the Commission

(11g) The definition of "goods" is any tangible or intangible item, including water, gas and electricity with exception of goods sold by way of execution or otherwise by authority of law.

Amendment 254
Emilie Turunen
Proposal for a directive
Recital 11 h (new)
(11h) the definition of "trader" means any natural or legal person and anyone acting in the name or on behalf of the trader, irrespective of whether privately or publically owned who, in contracts covered by this Directive, is acting for purposes relating to this person's trade, business, craft or profession, irrespective of whether or not this person intends to make a profit in the course of this activity.

(11i) Digital goods 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 with the possibility to store it on his computer, should be treated as goods for the application of the provisions applying to sales contracts. The format in which a product is presented or purchased should not matter in terms of consumer protection and consumers should be equally protected on line and off-line.
(11j) This Directive does not affect Member States’ provisions on the purchase and acquisition of property or the formulation or transfer of rights to property. This also includes agreements connected with such legal acts, especially contracts for purchases from a property developer or leasing contracts.

Amendment 257
Catherine Soullie, Damien Abad, Philippe Juvin, Constance Le Grip

Proposal for a directive
Recital 11 k (new)

(11k) This Directive shall 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 immovable property. This includes agreements connected with such legal acts, such as sales of immovable property still to be developed and hire-purchase.

Amendment 258
Louis Grech

Proposal for a directive
Recital 11 l (new)
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.

Or.en

**Justification**

*The proposal for a directive rightly excludes the sale of immovable property from the scope of the directive in order to avoid encroachment on national property law of the Member States (Art. 20 (1a)). However, it should be clarified that this exclusion from the scope also applies to contracts inseparably connected with the sale of immovable property given that mixed-purpose contracts as a rule will be covered by the directive.*

**Amendment 259**

Robert Rochefort

**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 sales and service contracts are concluded *without the simultaneous physical presence of the parties*, 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.

Or.fr
Amendment 260  
Robert Rochefort

Proposal for a directive  
Recital 12 a (new)

Text proposed by the Commission

(12a) European markets feature an increasing amount of online digital content, and a growing number of new products are intertwined combinations of physical product and digital content and services; it should be clear, therefore, that the goods covered by this Directive also include digital products (such as downloads and software), where consumers acquire permanent use of those products or a form of use that is comparable to the physical possession of goods.

Amendment

Or.fr

Amendment 261  
Othmar Karas

Proposal for a directive  
Recital 12 a (new)

Text proposed by the Commission

(12a) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the very specific nature of these activities, in the light of which Member States should be able to introduce other or more stringent consumer protection measures.

Amendment

Or.de
Justification

Pursuant to consistent ECJ case law, in the field of gambling activities Member States have the right to determine the level of protection of their citizens and to introduce specific consumer protection rules. The European Parliament (resolution of 9 March 2009) and the Council (current debate in the working party on consumer protection) have always shared this position.

Amendment 262
António Fernando Correia De Campos

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission Amendment

(12a) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the very specific nature of these activities which entail implementation by the Member States of other and more stringent consumer protection measures not aiming at the completion of the Internal Market.

Or.en

Amendment 263
Eija-Riitta Korhola, Marianne Thyssen, Christel Schaldemose

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission Amendment

(12a) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the very specific nature of these activities which entail implementation by the Member States of other and more stringent consumer protection measures.

Or.en
**Justification**

The Member States have specific national rules in place to protect consumers from the risks that can occur through gambling. The standing jurisprudence of the Court of Justice of the EU confirms that "Member States can define in detail the level of protection", "in accordance with their traditions and cultures". The Commission proposal generally applies to gambling and betting services and aiming at a maximum harmonisation of the rights of consumers and companies, would prevent Member States from maintaining or adopting a number of consumer protection provisions they deem appropriate in this area.

### Amendment 264

Heide Rühle

Proposal for a directive

Recital 12 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
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<tbody>
<tr>
<td>(12a) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the very specific nature of these activities which entail implementation by the Member States of other and more stringent consumer protection measures not aiming at the completion of the Internal Market.</td>
<td></td>
</tr>
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</table>

**Justification**

The Member States have specific national rules in place to protect consumers from the risks that can occur through gambling. The inclusion of gambling activities in the scope of the Directive would prevent Member States from maintaining or adopting a number of consumer protection provisions they deem appropriate in this area.

### Amendment 265

Othmar Karas

Proposal for a directive

Recital 13
(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.

Justification

It should not only be the case that the contract is concluded without the simultaneous physical presence of the parties and using exclusively distance communication; in addition, no personal advice should have been given before the contract was concluded. Contracts themselves are frequently concluded without the simultaneous physical presence of the parties and using distance communication, particularly by SMEs in the trades sector.

Amendment 266
Andreas Schwab, Hans-Peter Mayer, Anja Weisgerber

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.

(Does not affect English version.)
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.

Justification

(Does not affect English version.)

Amendment 267
Cristian Silviu Buşoi, Edvard Kožušník

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

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. Contracts which are concluded away from the business premises of the trader are characterised by the fact that the consumer is not prepared for the negotiations of the contract and is under psychological pressure regardless whether he/she has solicited the trader’s visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business
an off-premises contract. premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract.

However, contracts which, according to the provisions of the Member States, are authenticated by a public official, do not present a situation where the consumer is put under such exceptional psychological pressure. Such contracts are hence neither considered as off-premises contracts nor as distance contracts within the meaning of this directive.

Or.en

Justification

The concept of the conclusion of an ‘off-premises contract’ and the exceptional nature of the psychological situation for the consumer who risks being caught off his/her guard are essential for the protective system foreseen by the directive. As the notion of ‘business premises’ is used in a very restrictive way in the directive (Art. 2 (9)), the latter would in many Member States also apply to contracts which, due to the participation of a public official in the conclusion procedure, already ensure that the objectives envisaged by the directive, such as preventing the consumer from taking a hasty decision and guaranteeing that he/she is provided with detailed information, are fully fulfilled. Such participation of a public official bound by the law to be impartial and to provide detailed information for the parties comprehensively guarantees that the consumer will only conclude a contract after due reflection and in full awareness of its legal scope. Consequently, it is not appropriate to include these contracts in the scope of the directive in order not to encroach on the national systems of legal justice of the Member States. Furthermore, this amendment also corresponds to the EC acquis.

Amendment 268
Andreas Schwab, Anna Maria Corazza Bildt

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

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 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. Contracts under which the payment to be made by the consumer does not exceed EUR 20 are nevertheless not covered by the above definition, so that e.g. 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 transactions are readily understandable.

Justification

This amendment replaces the previous amendment 3.

Amendment 269
Othmar Karas

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

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 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.

An uninvited visit at home or at the workplace may take the consumer by surprise and result in particular psychological buying pressure. In such circumstances, moreover, the consumer has no opportunity to compare price and quality with those of other products. All these factors are not present in the case of a contract concluded in a shop, or where the consumer has sought the contract. Consequently the particular protection rules should also not apply in these cases (e.g. where the consumer has asked the trader to come to his home). Furthermore, in order to prevent circumventions of rules, contracts which come about after consumers are approached away from business premises (e.g. on the street), but which are concluded in a shop, or contracts concluded as part of an advertising trip, should be regarded as off-premises contracts.

Justification

An exception to the basic principle of contract law, i.e. that contracts must be adhered to, in the form of a right of withdrawal, carries conviction only where there is particular justification, as might be the case where consumers are taken by surprise, e.g. by an unsolicited visit to their homes. Consumers are not taken by surprise where they themselves have asked traders to visit them.

Amendment 270
Matteo Salvini

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

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 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 271
Tiziano Motti

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, non-commercial context, consumers could be faced with an unexpected situation in the event of a commercial approach being made, no matter whether they have solicited it 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.

Or.it
Amendment 272
Robert Rochefort

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. *Contracts concluded away from the trader’s business premises are characterised by the fact that consumers are unprepared for contract negotiations and are temporarily in a special situation both from a psychological point of view and in terms of comparing items 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.

Or.fr

Amendment 273
Cornelis de Jong

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

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 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 274
Philippe Juvin, Damien Abad
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 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.

Contracts which are endorsed by a public officer in accordance with Member States’ national legislation shall not constitute an unusual situation from a psychological point of view. Such contracts must not be regarded as off-premises or distance contracts within the
meaning of this Directive.

Or.fr

Justification

The involvement of a public officer who is required by law to show impartiality and provide the parties with detailed legal information affords consumers a high level of protection and enables them to take an informed decision free from any psychological pressure. It is consequently unjustified to include this type of contract in the scope of the Directive.

Amendment 275
Kurt Lechner

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. Contracts concluded away from a trader's business premises are characterised by the fact that the consumer is not prepared for contract negotiations and is under psychological pressure no matter whether he has 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. In contrast, no such difficult psychological situation applies where contracts are certified using the services of a public office-holder in accordance with the rules of the Member States. Such contracts are therefore not considered to be either off-premises contracts or distance contracts.
for the purposes of this Directive.

Or.de

Amendment 276
Catherine Soullie, Constance Le Grip

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, after an unsolicited visit by the trader. 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. Contracts which, according to the provisions of the Member States, are authenticated by a public official are not considered as off-premises contracts nor as distance contracts within the meaning of this directive.

Or.en

Amendment 277
Othmar Karas

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

(14a) In order to avoid disproportionate obstacles for business transactions, contracts normally concluded away from business premises or cases where the
nature of the undertaking means that it
does not operate in permanent business
premises should be exempt where the
transaction on both sides is fulfilled
immediately and payment does not exceed
EUR 50, as for example in the case of
the mobile sale of food and drink at sports
and leisure events, contracts with
fairground workers taking payment on the
spot, mobile flower sellers or sightseeing
tours with various means of transport.

Justification

Making reference to off-premises contracts rather than visits to the home or
workplace, as in the Doorstep Selling Directive currently in force, hugely expands the
scope to cover what are everyday transactions for micro-enterprises, where no
problems have arisen up to now. A flexible derogation is needed in line with the
Small Business Act.

Amendment 278
Evelyne Gebhardt
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
stands 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

Amendment

(15) Business premises should include
premises in whatever form (such as shops,
lorries or taxis) which serve as a
permanent place of business for the trader.
Public transport shall also be included.
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
should not be regarded as business premises.

well as private homes or workplaces should not be regarded as business premises.

Amendment 279
Andreas Schwab

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 activity 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 280
Emilie Turunen

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Business premises should include premises in whatever form (such as shops)

Amendment

(15) The definition of "business premises" means any immovable or
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 281**

**Robert Rochefort**

**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 business for the trader. Market stalls 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.
Justification

Taxis come within the definition of movable business premises, and may be included among the examples given. As for fair stands, it is a question of ensuring consistency with the amendment tabled on the definition of business premises.

Amendment 282
Christel Schaldemose

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 trader. 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 283
Zuzana Roithová

Proposal for a directive
Recital 15 a (new)
(15a) Digital goods transmitted to the consumer in a digital format, where the consumer obtains the permanent possibility of use should be treated as goods for the application of the provisions applying to sales contracts.

Amendment

Proposal for a directive

Recital 16

(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.

(16) The definition of durable medium should include all statements made in writing, 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. Any communication by electronic means which provides a durable record in a durable medium is equivalent to "writing".

Or.de

E-mails should be seen as suitable for the durable reproduction of written statements (text form). This should be made clear in the definition to ensure that the Directive is brought into line with modern technology and standard practice. Otherwise information could be transmitted only using CD-ROMs, DVDs or USB sticks and similar devices. This would be contrary to usual practice, where information is routinely sent by e-mail as well as on paper.

Justification
Amendment 285
Andreas Schwab, Anna Maria Corazza Bildt, Wim van de Camp, Lara Comi, Pablo Arias Echeverría

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 and the hard disks of computers on which electronic mail or data saved in unmodifiable form are stored. Internet websites as such should not be durable media.

Or.de

Justification

This amendment replaces the previous amendment 4.

Amendment 286
Othmar Karas

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 and the hard disks of computers on which electronic mail or data saved in unmodifiable form are stored. Websites as such should not be durable media. Any communication by electronic means which provides a durable record in a durable medium should be equivalent to "writing".

Or.de
Justification

The definition of 'writing' takes account of the fact that, in practice, information is routinely sent by e-mail as well as on paper. This approach is in line with the approach to agreements on jurisdiction taken in Article 23(2) of Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments.

Amendment 287
Matteo Salvini

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) The definition of durable medium should include in particular paper documents, USB sticks, CD-ROMs, DVDs, memory cards and computer hard drives on which files or emails are saved in read-only form. Internet sites should not be regarded as durable media unless they meet the above criteria.

Or.it

Amendment 288
Tiziano Motti

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) The definition of durable medium should include specific paper documents, USB sticks, CD-ROMs, DVDs, memory cards and computer hard drives on which files or emails are saved in read-only form. Electronic mail, Internet sites and SMS and MMS messages may be regarded as durable media where the content of the communication between consumer and trader may be saved by the parties.
Justification

L’emendamento chiarifica il concetto secondo il quale “La posta elettronica e i siti web di Internet in quanto tali non sono annoverati tra i supporti durevoli”. Cio’ porterebbe alla conclusione che tutte le informazioni dei commercianti debbano essere fornite via posta. Questo non risponderebbe a criteri di efficienza, soprattutto in vista dell’obbligo a fornire informazioni prima della conclusione del contratto. Si tratta di un problema anche per il consumatore, che si troverebbe costretto a informare il commerciante tramite un supporto durevole, qualora non desideri ricevere il bene. Il consumatore, per questioni di velocità’, preferira’ infatti usare una e-mail in buona parte dei casi.

Amendment 289
Frank Engel

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) The definition of durable medium should include in particular documents on paper and the different types of bulk data storage (such as USB sticks, CD-ROMs, memory cards and computer hard drives) on which electronic mail or data are stored interchangeably.

Amendment 290
Zuzana Roithová

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

Amendment

(16) Durable media should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard disks of computers on which electronic mail, internet websites or files are stored.
pdf file is stored.

Amendment 291
Cornelis de Jong
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) 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 files saved in unmodifiable form are stored for future reference.

Or.en

Amendment 292
Eija-Riitta Korhola
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) 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 files saved in unmodifiable form are stored for future reference. Internet sites as such should not be regarded as durable media unless such sites meet the criteria specified above.

Or.en
**Justification**

To ensure that the Directive is future-proof for technological developments reference should be made to the suitability of durable media for unmodifiable future reference that allow information to be stored securely for the purposes of both consumers and traders.

**Amendment 293**

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive

Recital 16

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.

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**Justification**

The definition of the durable medium should be future-proof for technological developments and to allow information to be stored securely for the purposes of both consumers and traders. Full level of harmonization

**Amendment 294**

Toine Manders

Proposal for a directive

Recital 16

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 files saved in unmodified form are stored for future reference. Internet sites as such should not be regarded as durable medium unless such sites meet the criteria specified above.

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**Justification**

The definition of the durable medium should be future-proof for technological developments and to allow information to be stored securely for the purposes of both consumers and traders. Full level of harmonization
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.

To follow the 'Better Regulation' policy and to offer an adequate solution regarding the burden of proof in cases of conflict, electronic mail shall also fall within the scope of this definition.

Amendment 295
Malcolm Harbour
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 computer file is stored.

Amendment

(16) The definition of a 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 computer file is stored. The question of how long is adequate for storage of a message depends on the nature of the good or service in question. Where a trader or consumer is under an obligation to provide information on a durable medium providing that information on a durable medium should be satisfied by providing it in a properly addressed e-mail.

Or.en

Amendment 296
Zuzana Roithová
Proposal for a directive
Recital 16 a (new)
Text proposed by the Commission  

(16a) Member States may maintain or extend the application of the rules of this Directive to legal or natural persons which are not 'consumers' in the meaning of the article 2, paragraph 1, such as for example NGOs, start-ups or SMEs.

Or.en

Amendment 297
Andreas Schwab, Anna Maria Corazza Bildt, Konstantinos Poupakis, Lara Comi

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.

Or.de

Justification

This amendment replaces the previous amendment 5.
Amendment 298
Emilie Turunen

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 before the conclusion of the contract to allow them to give a valid and contractual statement.

Or.en

Amendment 299
Rafał Trzaskowski, Róża Gräfin von Thun und Hohenstein

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

Amendment

(17) Consumers should be entitled to receive information in good time before the conclusion of the contract.
arrangements for payment, delivery, performance and the complaint handling policy, since these might not be apparent from the context.

Amendment 300
Robert Rochefort
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 before the conclusion of the contract.

Or.fr

Amendment 301
Sylvana Rapti, Konstantinos Poupakis
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

Amendment

(17) Consumers should be entitled to receive information before the conclusion of the contract in a language they

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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. However traders should not have to provide the information when already apparent from the context, but should be required to draw the attention of consumers to such information and answer any queries or provide explanations. 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 302
Tiziano Motti
Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

(17a) Member States should take particular care – making use of existing instruments and cooperation with the relevant institutions, national authorities, regulatory bodies and consumer organisations in order to do so – to guard against the risk of commercial transactions being carried out by companies using the Internet as a means of concealing long-term contractual arrangements under the cover of what appear to be free content downloads available from their sites following user registration, given that such practices seriously undermine consumer confidence in the EU single market.

Or.el
Amendment 303
Robert Rochefort

Proposal for a directive
Recital 19

Text proposed by the Commission  
Amendment

(19) In the case of public auctions, due to the nature and tradition of that sales method, the auctioneer may instead of communicating the geographical address and the identity of the seller for whom he is selling the goods replace that with his own contact details.

Or.fr

Amendment 304
Tiziano Motti

Proposal for a directive
Recital 21

Text proposed by the Commission  
Amendment

(21) In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions of the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In this case the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible.

Or.it
Amendment 305  
Sylvana Rapti, Konstantinos Poupakis  
Proposal for a directive  
Recital 21

Text proposed by the Commission

(21) In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions of the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In this case the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible.

Amendment

(21) In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions of the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In this case the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available, easily accessible, clear and in a language which the consumer understands.

Or.el

Amendment 306  
Tiziano Motti  
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, up until the end of the return period, have a right of withdrawal, which allows him to ascertain the nature and quality of the goods and whether they function properly.

Or.it
Justification

There are few instances in which the principle of good faith may be applied (e.g. insurance policies). However, in these cases, that principle applies without it being necessary to include a reference to it in this text.

Amendment 307
Robert Rochefort
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, which allows him to ascertain the nature, quality and functioning of the goods.

Or.fr

Amendment 308
Andreas Schwab
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.

Or.de

Justification

This amendment replaces the previous amendment 7.
Amendment 309
Emilie Turunen
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 *and off premises transactions*, 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.

Or.en

Amendment 310
Emilie Turunen
Proposal for a directive
Recital 22 a (new)

*Text proposed by the Commission*

(22a) The starting point of the cooling off period should be linked with the trader’s compliance with his information obligations, otherwise a contract could persist even in cases where the consumer was not properly informed of his rights; yet this creates a disincentive for the trader to perform his information obligations. The system should also allow the consumer to test the goods during the period of withdrawal.

*Amendment*

(22a) The starting point of the cooling off period should be linked with the trader’s compliance with his information obligations, otherwise a contract could persist even in cases where the consumer was not properly informed of his rights; yet this creates a disincentive for the trader to perform his information obligations. The system should also allow the consumer to test the goods during the period of withdrawal.

Or.en

Amendment 311
Matteo Salvini
Proposal for a directive
Recital 23
(23) The current varying lengths of the withdrawal periods both between the Member States and for distance and off-premises contracts cause legal uncertainty and compliance costs. The same withdrawal period should apply to all distance and off-premises contracts.

In principle, the withdrawal period should end fourteen days after the contract is concluded. However, in the case of distance contracts for the sale of goods, the withdrawal period should end fourteen days after the consumer acquires the material possession of the goods.
**Amendment 313**  
Sylvana Rapti, Konstantinos Poupakis

Proposal for a directive  
Recital 25

*Text proposed by the Commission*


*Amendment*

(25) The rules on distance contracts should be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders as set out by Articles 9 and 11 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), *and in any case consumers should not be bound by the contract unless he or she has received all the information set out in Article 5 of this directive.*

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**Amendment 314**  
Andreas Schwab, Anna Maria Corazza Bildt

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 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*

*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 carrier and indicated by the consumer acquires the material possession of the first partial shipment.*
**Proposal for a directive**

**Recital 27**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(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 <em>three-month</em> limitation period should be introduced, <em>provided that the trader has fully performed his contractual obligations</em>. 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.</td>
<td>(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 <em>one-year</em> limitation period should be introduced.</td>
</tr>
</tbody>
</table>

**Justification**

*This amendment replaces the previous amendment 9.*
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.

Justification

The scheduled start of the limitation period would prolong the period of uncertainty for far too long and lead to excessively long periods of use by the consumer in the case of both service and purchase contracts. This would also lead to complex revocations, particularly in the case of services.

Amendment 317
Robert Rochefort

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

(27) If the trader has not informed the consumer whether or not he has the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended by 12 months.
Amendment 318
Emilie Turunen

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

(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 to one year.

Or.en

Justification

Many Member States currently provide for longer or even unlimited period of time in such cases. Therefore Member States should be allowed to maintain or extend the minimum one-year period.

Amendment 319
Christel Schaldemose

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

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 to one year. However, Member States should be allowed to maintain or extend the minimum one-year
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 320
Iliana Ivanova

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 standard withdrawal form to be used by the consumer in his own official EU language 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.

Or.en

Amendment 321
Frank Engel

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

Amendment

(28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for

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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.

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**Amendment 322**

Emilie Turunen

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 standard withdrawal form to be used by the consumer would simplify the withdrawal process and bring legal certainty.

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**Amendment 323**

Iliana Ivanova

Proposal for a directive

Recital 29

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(29) As experience shows that many consumers and traders prefer to communicate via the trader's website, there should be a possibility for the trader to give the consumer the option of filling in a web-based withdrawal form. In this case the trader should provide an acknowledgement of receipt by email without delay, in any case no later than one working day from submitting the withdrawal form.

Justification

"without delay" could be interpreted differently in each Member State.

Amendment 324
Tiziano Motti
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 the case of valid withdrawal the trader should reimburse all payments the consumer has reasonably made.

Or.it

Amendment 325
Cornelis de Jong
Proposal for a directive
Recital 31

Text proposed by the Commission
(31) Some consumers exercise their right

Amendment
(31) The consumer is entitled to handle or
of withdrawal after having used the goods to an extent more than necessary to ascertain the nature and functioning of the good. In this case the consumer should be liable for any diminished value of the goods. In order to ascertain the nature and functioning of a good, the consumer should only handle or try it in the same manner as he would be allowed to do in a shop. For example, the consumer should only try on a garment and should not be allowed to wear it. In order to ensure the effectiveness of the withdrawal right in service contracts, in particular for non-urgent renovation works for which consumers may be subject to high pressure selling at their homes followed by the immediate performance of the service before the expiration of the withdrawal period, consumers should bear no cost for such a service.

Amendment 326
Christel Schaldemose
Proposal for a directive
Recital 31

Text proposed by the Commission

(31) Some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to ascertain the nature and functioning of the good. In this case the consumer should be liable for any diminished value of the goods. In order to ascertain the nature and functioning of a good, the consumer should only handle or try it in the same manner as he would be allowed to do in a shop. For example, the consumer should only try on a garment and should not be allowed to wear it. In order to ensure the effectiveness of the withdrawal right in

Amendment

(31) In order to ascertain the nature and functioning of a good, the consumer should be able to inspect and test the goods during the cooling-off period. The consumer should not be liable for damage to the good provided he used reasonable care to prevent such damage. In services contracts the consumer should also be able to exercise the right of withdrawal. In order to ensure the effectiveness of the withdrawal right, in particular for non-urgent renovation works for which consumers may be subject to high pressure selling at their homes followed by the
service contracts, in particular for non-urgent renovation works for which consumers may be subject to high pressure selling at their homes followed by the immediate performance of the service before the expiration of the withdrawal period, consumers should bear no cost for such a service.

Amendment 327
Andreas Schwab

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 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 should also be exempt from the right of withdrawal, e.g. commodities.

Justification

This amendment replaces the previous amendment 13.
Amendment 328
Kurt Lechner

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 trader or manufacturer.* That is applicable in particular to foodstuffs and other hygienically sensitive or perishable goods, for example to *electrical appliances for personal care or electrical appliances that come into contact with food.*

Or.de

Amendment 329
Robert Rochefort

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 or *off-premises* 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. The consumer loses his right of withdrawal when performance begins with his prior express agreement, *provided that it is a case of informed consent, ie that the consumer has been informed of the consequences of this decision in terms of losing his right of withdrawal.*
(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.

In contrast, because of the potential for psychological pressure in the case of off premises contracts for the provision of
services (including where goods are provided as part of the transaction) the consumer should retain his right of withdrawal in cases where performance begins during the withdrawal period at the consumer’s express request on a durable medium. However, it would be unfair to allow the consumer to withdraw without the consumer being obliged to pay a reasonable amount to the trader to reflect services provided and goods provided as part of the transaction prior to withdrawal, provided that the trader informed the consumer of the obligation to pay, on a durable medium prior to conclusion of the contract.

Or.en

Amendment 332
Malcolm Harbour

Proposal for a directive
Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) It would not be proportionate to apply the rules in Chapter 3 to very low value off premises contracts.

Or.en

Amendment 333
Emilie Turunen

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.

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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.

Amendment 334
Kyriacos Triantaphyllides
Proposal for a directive
Recital 36

Text proposed by the Commission
(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.

Amendment
(36) The application of a right of withdrawal may be inappropriate for certain services relating to accommodation, transport and leisure. If performance begins during the withdrawal period, it would be unfair to allow the consumer to withdraw after the service has been partly or wholly provided to the consumer. Therefore, the consumer should lose the right of withdrawal, when performance begins with his or her prior specific agreement in a durable medium.

Or.el

Amendment 335
Andreas Schwab, Rafał Trzaskowski, Konstantinos Poupakis, Lara Comi
Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission
(37a) 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 may release himself from the
contract if no action has been taken when
this 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 on other
remedies in the event of non-delivery by
the time limit set by the consumer, in
order to ensure a higher level of
protection for the consumer.

Or.de

Justification

This amendment replaces the previous amendment 17.

Amendment 336
Othmar Karas

Proposal for a directive
Recital 37 a (new)

Text proposed by the Commission

(37a) 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 a
reasonable period and notify him of his
intention to withdraw from the contract if
delivery does not take place. If payment
has already been made, the consumer
should be entitled to a refund within seven
days of withdrawal. It should be possible
for Member States to adopt or maintain
provisions of national law on other
remedies in the event of non-delivery by
the time limit set by the consumer, in
order to ensure a higher level of protection for the consumer.

Justification

Damages claims for late delivery are possible under national law. In this connection, then, a clear distinction should be made - not in 'harmonised' paragraph 2 of Article 22, but, rather, in new paragraph 2a of Article 22.

Amendment 337
Robert Rochefort

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) Given that in the context of consumer sales the delivery of goods can take place in various ways (either immediately or at a later date), where delivery is not immediate the trader must indicate a deadline by which he undertakes to deliver the goods. 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.

Or.fr
Amendment 338  
Robert Rochefort  
Proposal for a directive  
Recital 38 a (new)  

Text proposed by the Commission  

(38a) As regards delivery, it should be stipulated that if the trader exceeds the scheduled delivery date by more than seven days, the consumer is entitled to terminate the contract and demand the reimbursement of all sums paid in application of the contract. In such cases, the contract is deemed to be terminated on the date the trader receives a letter from the consumer informing him of this decision, provided that the delivery has not taken place in the meantime. The trader is required to reimburse all sums paid in application of the contract as soon as possible, and no more than seven days after receiving the letter terminating the contract.  

Or.fr  

Amendment 339  
Robert Rochefort  
Proposal for a directive  
Recital 38 b (new)  

Text proposed by the Commission  

(38b) A single, common concept of conformity with contracts, which provides a high level of consumer protection, will provide businesses and consumers with greater legal certainty.  

Or.fr
Amendment 340  
Emilie Turunen

Proposal for a directive  
Recital 39 a (new)

Text proposed by the Commission  

(39a) In many transactions consumers are not provided with enough choices of means of payments or they are charged if they refuse to use certain means. This situation needs to be reflected in a disposition which ensures that the trader will offer to the consumer different means of payment and in case of distance contracts these should include both electronic and non electronic means of payment. As an example, a non electronic system of payment would be the possibility to print an order from the trader’s web site to be paid by cash in a bank or in any other contact point of the trader.

Or.en

Amendment 341  
Robert Rochefort

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. he

Amendment

(40) If the good is not in conformity with the contract, the consumer must be able to choose freely between the various forms of redress (repair, replacement, a discount or termination of the contract). However, the consumer may only rescind the contract if the lack of conformity is not minor. Moreover, the consumer cannot demand that the goods be repaired or replaced if the trader shows that this would be illegal, impossible or cause him disproportionate effort. The lack of spare parts should not be a valid ground to justify
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.

the trader's failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort.

Amendment 342
Liem Hoang Ngoc

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) If the good is not in conformity with the contract, the consumer should have the right to choose between the repair of the goods, the replacement of the goods, a reduction in the price or the cancellation of the contract. If the consumer requires the trader to replace the goods, the trader must do so as quickly as possible, unless he 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.

Justification

The choice of remedy should lie with the consumer, not the trader.
(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 remediying 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) The consumer in the first place may require the seller to repair the goods or to replace them unless those remedies are impossible or disproportionate. Whether a remedy is disproportionate should be determined objectively. A remedy should be considered disproportionate if it imposes, in comparison with other remedies, unreasonable costs. This comparison can also be made by considering, for example, the relative costs of repair and of termination of the contract. In order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of another remedy.

**Justification**

The existing hierarchy of remedies should be maintained. It should also be possible to consider whether a remedy is disproportionate by comparing the costs of repair and of termination of the contract.
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 345
Kyriacos Triantaphyllides
Proposal for a directive
Recital 40

(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.

Or.en

Different remedies provided for by this Directive. The consumer should be entitled to require the trader to repair the goods, to replace them, to have the price reduced or to rescind the contract.

Amendment

(40) If the good is not in conformity with the contract, firstly, the consumer should have the possibility to choose between the reparation or replacement of the product, a price reduction or the cancellation of the contract, 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.

Or.el
Justification

In any case, the consumer should choose the manner of compensating for the inadequate compliance of the product.

Amendment 346
Sylvana Rapti, Konstantinos Poupakis
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) 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.

Or.el

Amendment 347
Malcolm Harbour
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...
*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.

In addition the consumer may, normally for a period of 30 days from the delivery of the goods, terminate the contract and have the price refunded in full. 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. A 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 348
Christel Schaldemose
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) If the good is not in conformity with the contract, the consumer should *always* have the possibility to choose between different remedies granted by this directive. The consumer should be entitled to require the trader to repair the goods or to replace them, have the price reduced or the contract rescinded.
Amendment 349
Olga Sehnalová

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, nor any costs for remedying the lack of conformity if this remedy is effected by a technically competent trader other than the final seller or the appointed service agent. Furthermore, the consumer should not compensate the trader for the use of the defective goods.

Or.cs

Justification

This amendment is intended to protect consumers against cancellation of guarantees because of unqualified consumer repair or adjustment of the product.

Amendment 350
Othmar Karas

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 bringing the good into conformity with the contract, particularly the cost of postage, labour and materials. Member States may provide that any reimbursement to the consumer may be reduced to take account of the use the consumer has had of the goods since they were delivered to him.
It would be unfair to rule out claims on account of unjust enrichment, taking account of the extent to which a good has been used, and this could lead to abuse. This would also introduce a punitive element that has no place in civil law in general and guarantee law in particular.

Amendment 351
Liem Hoang Ngoc
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
deleted

(see the amendment tabled by Mr Hoang Ngoc to Recital 40.)

Justification

The consumer must be free to choose the remedy in all cases, not just in the event of a refusal or failure on the part of the trader to act.

Amendment 352
Kyriacos Triantaphyllides
Proposal for a directive
Recital 42
(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.

Or.el

Amendment 353
Tiziano Motti
Proposal for a directive
Recital 42

(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.

(42) When the trader has either refused or has 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. It is implicit when the trader does not respond or ignores the consumer's request to remedy the lack of conformity. Member States shall identify the legal remedies available to consumers should a trader refuse or fail to remedy the lack of conformity.

Or.it

Amendment 354
Robert Rochefort
Proposal for a directive
Recital 42
(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.

(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 is 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 protection for the consumer. However, the relevant provisions of national law must be consistent with the Treaty on the Functioning of the European Union and, in particular, must not run counter to the purpose of the Directive, namely that of guaranteeing the smooth functioning of the internal market and preventing distortions of competition in the Union. With that aim in view, the provisions of national law must be fit for purpose and proportionate.
**Justification**

*This amendment replaces the previous amendment 22.*

**Amendment 356**

**Kurt Lechner**

**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) When the trader has either refused or has failed *at least twice* 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.

**Or.de**

**Amendment 357**

**Malcolm Harbour**

**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) When *various circumstances are relevant* the consumer should be entitled to choose freely any of the available remedies. This would be the case in particular where the trader has either refused or has failed or will fail to remedy the lack of conformity or the trader has in remedying the *defect caused significant inconvenience or will do so*. 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.
The question of whether a trader will cause significant inconvenience in remedying a defect or is likely to fail to be able to remedy a defect is to be judged on objective grounds, such as, the poor after sale service that has been provided to the consumer.

Amendment 358
Robert Rochefort
Proposal for a directive
Recital 42 a (new)

Text proposed by the Commission

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

Or.fr

Amendment 359
Andreas Schwab
Proposal for a directive
Recital 42 b (new)

Text proposed by the Commission

(42b) With regard to lack of conformity, the consumer should be entitled to a two-year liability period. There should be a rebuttable presumption in his 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 protection for the consumer. However, the relevant provisions of national law must be consistent with the Treaty on the Functioning of the European Union and, in particular, must not run counter to the aim of the Directive, namely that of guaranteeing the smooth functioning of the internal market and preventing distortions of competition in the Union. With that aim in view, the provisions of national law must be fit for purpose and proportionate.

Justification

This amendment replaces the previous amendment 24.

Amendment 360
Robert Rochefort

Proposal for a directive
Recital 42 b (new)

Text proposed by the Commission

(42b) It should be stipulated that those Member States which so wish should have the possibility of maintaining in their national law provisions in force when this Directive is adopted which provide that the trader becomes liable as from the time the lack of conformity is discovered by the consumer.

Or.fr
Amendment 361
Emilie Turunen

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

Or.en

Amendment 362
Matteo Salvini

Proposal for a directive
Recital 43 a (new)

Text proposed by the Commission

(43a) Legislation and case-law in this area in the various Member States show that there is growing concern to ensure a high level of consumer protection. In the light of this trend and of the experience gained in implementing the previous directive (Directive 1994/44/EC), it may be appropriate to provide for the producer's direct liability for defects for which he is responsible.

Amendment

Or.it
Amendment 363
Emilie Turunen

Proposal for a directive
Recital 43 a (new)

Text proposed by the Commission

(43a) It is necessary to introduce the direct liability of the producer for defective products. The achievement of the objective to promote and boost consumer confidence to shop cross-border would be greatly helped by the introduction of the direct liability of producer for defective products.

Amendment

Or.en

Amendment 364
Robert Rochefort

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 by this Directive.

Or.fr

Justification

The consumer's legal rights derive both from the national provisions in force and those laid down by this directive.
Amendment 365  
Sylvana Rapti, Konstantinos Poupakis  
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. *This information should be provided in a language which the consumer understands.*

Or.el

Amendment 366  
Emilie Turunen  
Proposal for a directive  
Recital 45  

*Text proposed by the Commission*  

(45) There is a need to protect consumers against unfair contract terms which have not been individually negotiated, such as standard contract terms. The rules on unfair terms should not apply to terms which the consumer agreed upon following a negotiation. Being afforded the possibility to choose between different contract terms which have been drafted by the trader or a third party on behalf of the trader should not be regarded as a negotiation.

*Amendment*  

(45) There is a need to protect consumers against unfair contract terms. The protection against unfair terms should be extended to individually negotiated terms as the consumer will often lack the bargaining power and the knowledge...
required to be in a position to influence the content of contract terms during an individual negotiation.

Amendment 367
Emilie Turunen
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.

Amendment 368
Olga Sehnalová
Proposal for a directive
Recital 47

Text proposed by the Commission Amendment

(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.

Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.

Justification

By means of this amendment I recommend incorporating into the proposal the obligation to present the terms and conditions in a single font size, since the biggest problem with current practice in some EU Member States is that the most important information in a contract is presented in exceptionally small print, which restricts the rights of senior citizens, in particular, to proper access to this information.

Amendment 369
Robert Rochefort

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) Consumer contracts should be drafted in plain, intelligible language and be confirmed in textual form on a durable medium. 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 or making those terms otherwise available where the consumer might reasonably expect to find them (e.g. placed prominently 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.
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 370
Zuzana Roithová

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) Consumer contracts should be drafted in plain, intelligible language and be legible. **The contract terms have to be drafted in the same font size.** 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.
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) Consumer contracts should be drafted in plain, intelligible language, be legible and **easily and permanently accessible in the language in which the contract is concluded.** 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 **where the consumer reasonably expects to find them** (e.g. clearly placed 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 **prior and 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.

Or.en

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...
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.

Justification

It would be inadvisable to leave traders free to choose the font type and size, even assuming they would make a choice consistent with the principles of legibility, comprehensibility and clarity. Studies have shown that printing characters in a size below 8-point made a number of contracts illegible.

Amendment 373
Sylvana Rapti, Konstantinos Poupakis

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) Consumer contracts should be drafted in plain, intelligible language, be legible and at all events be available at least in the language of the consumer. Traders should be free to choose the font type or size in which the contract terms are drafted, providing they meet the above conditions and comply with any requirements of Member States. Furthermore, terms of contracts should also appear prominently in the contract and be available in the language in which
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.

*the contract has been drawn up. Member States may maintain or introduce in their national law additional requirements concerning better presentation of the terms.* 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 374**

**Christel Schaldemose**

**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) or

**Amendment**

(47) Consumer contracts should be drafted in plain, intelligible language, be legible and *easily and permanently accessible in the language* in which the contract is concluded. 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 *where a consumer reasonably expects to find them* (e.g. *clearly placed* on the trader's website in respect of distance contracts) or
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.

attaching standard terms to the order form (in respect of off-premises contracts). The trader should seek the consumer's prior and 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.

Or.en

Amendment 375
Othmar Karas

Proposal for a directive
Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) The rules should not cover formal national requirements with regard to the conclusion of contracts or other formal requirements concerning the language of the contract, for example, or provisions on the content or formulation of clauses in contracts for specific sectors.

Or.de

Justification

The Member States should continue to be free to retain or introduce formal requirements in general contract law – concerning the conclusion of contracts, for example – which are not deemed to be stipulations on presentational aspects of the contract.

Amendment 376
Andreas Schwab

Proposal for a directive
Recital 49 a (new)
(49a) It will be presumed that clauses providing for prices to be increased are unfair if the consumer is not allowed to withdraw from the contract in such an event and the ultimate price is too high in relation to the agreed price. This should not, however, prevent tour operators from altering contractually agreed prices subject to the conditions stipulated in Article 4 (4), (5) and (6) of Council Directive 90/314/EC des Rates.

Amendment 377
Robert Rochefort

Proposal for a directive
Recital 50

(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.

(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. These same lists should apply in all Member States. As these lists are non-exhaustive, they may be supplemented by the Member States, which may maintain or adopt provisions that are more protective of consumer interests, in order to give a greater number of contract terms the status of terms that are deemed unfair in all circumstances.
(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.

(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 presumed to be unfair unless the trader proves otherwise.

Or.en
Amendment 380
Catherine Stihler

Proposal for a directive
Recital 50a (new)

Text proposed by the Commission
(50a) Requiring a consumer to purchase ancillary goods or services not advertised in the price of the main contract should be presumed to be unfair. Contingent charges, such as penalties for breaching the contract terms, should be presumed to be unfair where they are clearly disproportionate to the costs incurred by the trader.

Amendment 381
Emilie Turunen

Proposal for a directive
Recital 52

Text proposed by the Commission
(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.

Amendment 382
Sylvana Rapti, Konstantinos Poupakis

Proposal for a directive
Recital 52
Text proposed by the Commission

(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.

Amendment 383
Christel Schaldemose
Proposal for a directive
Recital 52

Text proposed by the Commission

(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.

Or.en

Amendment 384
Emilie Turunen
Proposal for a directive
Recital 53
(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.

Or.en

Amendment 385
Damien Abad

Proposal for a directive
Recital 53

Text proposed by the Commission

(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.

Or.fr

Amendment 386
Sylvana Rapti, Konstantinos Poupakis

Proposal for a directive
Recital 53

Text proposed by the Commission

(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.
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.

Or.el

Amendment 387
Christel Schaldemose

Proposal for a directive
Recital 53

Text proposed by the Commission

(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.

Or.en

Amendment 388
Sylvana Rapti, Konstantinos Poupakis

Proposal for a directive
Recital 55

Text proposed by the Commission

(55) The Member States should ensure that their courts or administrative authorities have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts.

(55) The Member States should ensure that their courts or administrative authorities have at their disposal adequate and effective means of preventing the application of unfair terms in consumer contracts.

Or.el
Amendment 389
Iliana Ivanova

Proposal for a directive
Recital 55 a (new)

*Text proposed by the Commission*

(55a) The Member States should ensure that their national authorities have the necessary level of cooperation with the ECC network, so as to react in cross-border cases, especially on pending requests at European Consumer Centers.

*Amendment*

Or.en

Amendment 390
Evelyne Gebhardt

Proposal for a directive
Recital 57

*Text proposed by the Commission*

(57) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded legal remedies for initiating proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

*Amendment*

(57) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded legal remedies, among which the possibility of initiating collective redress proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

Or.en

Amendment 391
Sylvana Rapti, Konstantinos Poupakis

Proposal for a directive
Recital 57

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Text proposed by the Commission

(57) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded legal remedies for initiating proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

Amendment

(57) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be able to initiate collective protection proceedings and afforded legal remedies for initiating proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

Or.el

Amendment 392
Emilie Turunen

Proposal for a directive
Recital 59 a (new)

Text proposed by the Commission

(59a) We ask the Commission to bring forward proposals on collective redress for consumers

Amendment

Or.en

Amendment 393
Werner Langen

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 European Commission, following consultation with the Member States and interested parties, will look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.
Because, in all likelihood, it is traders who will become responsible for informing consumers about their rights, they – like the Member States, which are responsible for the directive’s implementation in national law – must, without fail, be involved in deciding on the most suitable and practicable means of doing so.

Amendment 394
Sylvana Rapti, Konstantinos Poupakis
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 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 and in so far as possible elsewhere.

Amendment 395
Sylvana Rapti, Konstantinos Poupakis
Proposal for a directive
Recital 63

Text proposed by the Commission

(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 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

(63) It is appropriate to review this Directive if consumer protection problems and some barriers to the internal market were identified. The review could lead to a Commission proposal to amend this Directive, which may include 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.
(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 necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.

(65) Since the objectives of this Directive cannot be sufficiently achieved only by the Member States and can therefore in some circumstances 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 necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.

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.

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.
Proposal for a directive
Article 1 – paragraph 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 higher level of consumer protection, by strengthening the consumer's trust into the internal market. At the same time, the replacement of four existing Directives by this single one should help clarify the rights of consumers. In addition, certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders shall be approximated.

Or.en

Proposal for a directive
Article 1 – paragraph 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.

Or.de

Justification

Does not affect the English version.
Amendment 400
Emilie Turunen

Proposal for a directive
Article 1 – paragraph 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.

Justification

The first and foremost purpose of this directive is to achieve a high level of consumer protection.

Amendment 401
Damien Abad, Constance Le Grip

Proposal for a directive
Article 1 a (new)

Text proposed by the Commission

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

Amendment

Article 1a

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

The definitions must be harmonised as far as possible in order to offer businesses greater legal certainty.

Amendment 402
Kerstin Westphal

Proposal for a directive
Article 2 – paragraph 1 – 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 legal transactions, is acting for purposes which are outside his trade, business or field of self-employment or employment;

Or.de

Justification

The concept of a legal transaction is broader than that of a contract as it implies not only synallagmatic but also unilateral legal action.

Amendment 403
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – 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) (a) "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;

(b) Member States may maintain or extend the application of the rules of this Directive to legal or natural persons which are not "consumers" in the
meaning of the point a.

Justification

The definition should encompass, as it is already the case in several Member States, situations in which a consumer buys a good or a service partly for personal and partly for professional purposes (mixed purposes), as well as persons or entities that are in a similar position as consumers in terms of lack of bargaining power and expertise.

Amendment 404
Robert Rochefort

Proposal for a directive
Article 2 – paragraph 1 – 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 primarily for purposes which are not related to his trade, business, craft or profession.

Member States may extend the scope of the rules laid down in this Directive to cover natural or legal persons who are not consumers within the meaning of this Directive.

Justification

The definition of consumer must cover situations in which a consumer purchases goods or concludes a contract for the provision of a service partly for personal and partly for professional reasons. What is more, many Member States have chosen to apply consumer protection rules to other entities (NGOs, small firms, etc.), and they should be allowed to continue doing so.
Amendment 405
Evelyne Gebhardt

Proposal for a directive
Article 2 – paragraph 1 – 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" in the meaning of the previous paragraph.

Or.en

Amendment 406
Konstantinos Poupakis, Sylvana Rapti

Proposal for a directive
Article 2 – paragraph 1 – 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 or legal person for whom the products or services offered on the market are intended or who uses such products or services in so far as he or she is the final recipient.

‘Consumer’ also means any recipient of the advertising message.

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

Or.el
Amendment 407
Morten Løkkegaard

Proposal for a directive
Article 2 – paragraph 1 – 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' in the meaning of the previous paragraph.

Or.en

Amendment 408
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 – 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' in the meaning of the previous paragraph.

Or.en

Justification

The definition proposed by the Commission does not encompass situations in which a consumer buys a good or a service partly for personal and partly for professional
purposes (mixed purpose). Therefore the Commission’s proposed text would have the result that a person who buys, for instance, a computer for mixed purposes (he works with it but also plays games or watches films on it) will not be considered a consumer and thus will not receive the protection provided by consumer legislation. The extension of consumer protection rules to such kind of “mixed purpose” contracts is however a reality in a number of member states (DE, DK, FI, SE, Norway). The Draft Common Frame of Reference (DCFR) does indeed broaden the protection to such “mixed purpose” transaction. In addition, many Member States currently extend consumer protection rules to other persons or entities that are in a similar position as consumers in terms of lack of bargaining power and expertise (NGOs, start up business etc). It is important to ensure that MS can maintain this under the proposed directive.

Amendment 409
Zuzana Roithová
Proposal for a directive
Article 2 – paragraph 1 – 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;

Or.en

Amendment 410
Anja Weisgerber
Proposal for a directive
Article 2 – paragraph 1 – 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 other than in the exercise of his trade, business, craft or profession;

Or.de
Justification

Classification as a consumer should not be precluded where a person enters into a contract related in some way to his trade, business, craft or profession, as, for example, in the cases of buying clothes to wear at work or spending one’s own money on a coffee machine for the office: hence the need to replace the reference to ‘purposes’ with the concept of ‘exercise’ in the definitions of both consumers and traders.

Amendment 411
Emilie Turunen

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

Text proposed by the Commission

Amendment

(1a) "vulnerable consumer" means a consumer who is particularly vulnerable to a commercial practice or an underlying product because of, inter alia, his or her mental or physical infirmity, age or credulity, in a way which the trader could reasonably be expected to foresee

Or.en

Justification

The specific needs of vulnerable consumers should be taken into account

Amendment 412
Kerstin Westphal

Proposal for a directive
Article 2 – paragraph 1 – 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 anyone acting in the name of or on behalf

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

(see Article 2(1))

Justification

Many people who operate craft businesses are self-employed and the distinction between self-employment and employment makes for greater clarity than the reference to the concept of craft because independent professions not necessarily craft-related are thus covered.

Amendment 413
Emilie Turunen

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 and anyone acting in the name or on behalf of the trader, irrespective of whether privately or publicly owned who, in contracts covered by this Directive, is acting for purposes relating to this person's trade, business, craft or profession, irrespective of whether or not this person intends to make profit in the course of this activity;

Justification

The definition of a trader should encompass public bodies.

Amendment 414
Robert Rochefort

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

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(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;

(2) 'trader' means any natural or legal person, whether publicly or privately owned, 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;

Or.fr

Amendment 415
Evelyne Gebhardt

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;

(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, irrespective of whether privately or publicly owned.

Or.en

Amendment 416
Andreas Schwab, Wim van de Camp

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;

(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, including where such is within the public sector;
This amendment replaces the previous amendment 35.

Amendment 417
Catherine Stihler

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 or on behalf of a trader;

Amendment

(2) "trader" means any natural or legal person and anyone acting in the name or on behalf of the trader, irrespective of whether privately or publicly owned who, in contracts covered by this Directive, is acting for purposes relating to this person’s trade, business, craft or profession, irrespective of whether or not this person intends to make profit in the course of this activity;

Justification

In contrast to the existing Unfair Contract Terms Directive and the Directive on distance marketing of financial services, it seems that the proposal does not encompass public bodies within the definition of “trader”. On the contrary, the DCFR clarifies that public bodies can also qualify as business and that the intention to make profit is not relevant.

Amendment 418
Anja Weisgerber

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

Text proposed by the Commission

(2) 'trader' means any natural or legal person

Amendment

(2) 'consumer' means any natural person
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, who, in contracts covered by this Directive, is acting in the exercise of his trade, business, craft or profession;

Justification

Classification as a consumer should not be precluded where a person enters into a contract related in some way to his trade, business, craft or profession, as, for example, in the cases of buying clothes to wear at work or spending one’s own money on a coffee machine for the office: hence the need to replace the reference to ‘purposes’ with the concept of ‘exercise’ in the definitions of both consumers and traders.

Amendment 419
Andreas Schwab, Wim van de Camp, Anna Maria Corazza Bildt, Sandra Kalniete, Lara Comi

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

Text proposed by the Commission

(2a) 'goods' means any tangible movable item, with the exception of goods sold by way of execution or otherwise by authority of law. Water and gas shall also be considered as ‘goods’ within the meaning of this directive where they are put up for sale in a limited volume or set quantity;

Justification

This amendment replaces the previous amendment 36. See amendment to Article 2, point 4.
Amendment 420
Andreas Schwab, Wim van de Camp, Lara Comi

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

Text proposed by the Commission

(2b) ‘service’ means any work or other service of any kind provided by the trader for the consumer for remuneration;

Amendment

Or.de

Amendment 421
Robert Rochefort

Proposal for a directive
Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘sales contract’ means any contract for the transfer of ownership of goods, either immediately on conclusion of the contract or at a later date, by means of which the trader undertakes to deliver the goods to the consumer, with the latter undertaking to pay the relevant price;

Amendment

Or.fr

Amendment 422
Andreas Schwab, Wim van de Camp, Konstantinos Poupakis, Sandra Kalniete, Lara Comi

Proposal for a directive
Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘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
and services; consumer undertakes to pay the 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;

Justification

This amendment replaces the previous amendment 38. As regards Article 2, point 3, second sentence, see amendment to Article 21(2); minor alterations have been made to the text.

Amendment 423
Louis Grech

Proposal for a directive
Article 2 – paragraph 1 – 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 for the sale of goods and services by the trader to the consumer including any mixed-purpose contract having as its object both goods and services;

Justification

Necessarily remedies for service provisions are different from those for the sale of goods. That is why a comprehensive, future proof, principled framework Directive should accommodate all types of 'sales contracts', including that for services.

Amendment 424
Kerstin Westphal

Proposal for a directive
Article 2 – paragraph 1 – point 4 – introductory part
Text proposed by the Commission

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

(4) 'goods' means tangible movable items in any condition, including those sold by quantity, volume or weight and digital products;

Or.de

Justification

The inclusion of digital products makes it possible for this directive to be applied more easily to software and for the scope of sales law to be extended.

Amendment 425
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

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

(4) "goods" means any tangible movable item, including water, gas and electricity, with the exception of goods sold by way of execution or otherwise by authority of law.

Or.en

Justification

The definition of "goods" should include intangible items such as digital content products (software, music, etc.). Furthermore, gas, electricity and water should be included because their exclusion is not tenable in a context where traditional public monopolies are dismantled and where private entities enter these markets.

Amendment 426
Robert Rochefort

Proposal for a directive
Article 2 – paragraph 1 – point 4 – introductory part
Text proposed by the Commission

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

Amendment

(4) 'goods' means any movable item, **whether**

- **intangible**, if the consumer can make use of the item on a permanent basis or in a manner which can be equated with physical possession;

- **or tangible**, with the exception of:

Or.fr

Amendment 427
Evelyne Gebhardt

Proposal for a directive
Article 2 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

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

Amendment

(4) "goods" means any tangible movable and **intangible** item, with the exception of:

Or.en

Amendment 428
Zuzana Roithová

Proposal for a directive
Article 2 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

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

Amendment

(4) “goods” means any tangible or **intangible** item, including water, gas and electricity with the exception of goods sold by way of execution or otherwise by authority of law.

Or.en
Amendment 429
Eija-Riitta Korhola

Proposal for a directive
Article 2 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

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

Amendment

(4) "goods" means any tangible or intangible item, with the exception of:

Or.en

Justification

The definition of goods should include intangible items, so that the provisions regarding guarantees for lack of conformity could be applied to digital content products. The downloading of most digital goods to be used on permanent basis, is a one-off transaction against payment, by which the consumer receives digital files for permanent use. The format in which a product is presented or purchased should not matter in terms of consumer protection: consumers should be equally protected online and off-line.

Amendment 430
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 – point 4 – introductory part

Text proposed by the Commission

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

Amendment

(4) "goods" means any tangible or intangible item, including water, gas and electricity with the exception of goods sold by way of execution or otherwise by authority of law.

Or.en

Amendment 431
Kerstin Westphal

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point a
Text proposed by the Commission

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

deleted

Amendment 432
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point a

Text proposed by the Commission

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

deleted

Or.en

Amendment 433
Evelyne Gebhardt

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point a

Text proposed by the Commission

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

deleted

Or.en

Amendment 434
Zuzana Roithová

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point a

Text proposed by the Commission

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

deleted

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Amendment 435
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point a

Text proposed by the Commission

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

Amendment

deleted

Or.en

Amendment 436
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – 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

Or.en

Justification

Water and gas should be included because their exclusion is not tenable in a context where traditional public monopolies are dismantled and where private entities enter these markets.

Amendment 437
Zuzana Roithová

Proposal for a directive
Article 2 – paragraph 1 – 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
up for sale in a limited volume or set quantity,

Amendment 438
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 – 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,

Or.en

Amendment 439
Kerstin Westphal

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point c

Text proposed by the Commission

(c) electricity; deleted

Or.en

Amendment 440
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point c

Text proposed by the Commission

(c) electricity; deleted

Or.en
Justification

Electricity should be included because their exclusion is not tenable in a context where traditional public monopolies are dismantled and where private entities enter these markets.

Amendment 441
Evelyne Gebhardt

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point c

Text proposed by the Commission Amendment

(c) electricity; deleted

Or.en

Amendment 442
Zuzana Roithová

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point c

Text proposed by the Commission Amendment

(c) electricity; deleted

Or.en

Amendment 443
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 – point 4 – point c

Text proposed by the Commission Amendment

(c) electricity; deleted

Or.en
Amendment 444
Andreas Schwab, Lara Comi

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

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

Or.de

Justification

This amendment replaces the previous amendment 40.

Amendment 445
Robert Rochefort

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(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 for the provision of a service by a trader to a consumer;

Or.fr

Justification

The reference by default to a sales contract is too broad in scope. Simplification and clarification.

Amendment 446
Andreas Schwab, Wim van de Camp, Sandra Kalniete, Lara Comi

Proposal for a directive
Article 2 – paragraph 1 – point 5 a (new)
Text proposed by the Commission

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

Justification

This amendment replaces the previous amendment 41.

Amendment 447
Anja Weisgerber

Proposal for a directive
Article 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission

(5a) ‘utility supply contracts’ means sales and service contracts for the supply of gas and water, where they are not put up for sale in a limited volume or set quantity, and for the supply of electricity;

Justification

Amendment 448
Evelyne Gebhardt

Proposal for a directive
Article 2 – paragraph 1 – 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 trader, for the conclusion or the initiation of the contract, makes exclusive use of one or more means of distance communication;

Or.en

Justification

For clarification reasons it should be stated that also the initiation of a contract is considered as a distance contract (i.e. if one orders a product by phone, but fetches it afterwards in the shop)

Amendment 449
Robert Rochefort

Proposal for a directive
Article 2 – paragraph 1 – 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 concluded between a trader and a consumer where the parties are not simultaneously physically present and where, for the conclusion of the contract, they make exclusive use of one or more means of distance communication;

Or.fr

Amendment 450
Othmar Karas

Proposal for a directive
Article 2 – paragraph 1 – point 6

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(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;

Or.de

Justification

The definition should make it clear that the lack of simultaneous physical presence and the exclusive use of one or more means of distance communication applies not just to the conclusion of the contract itself; beforehand too there will have been no personal contact or personal consultation. It is very common for the actual conclusion of a contract to take place without the parties being simultaneously physically present, and using means of distance communication.

Amendment 451
Zuzana Roithová

Proposal for a directive
Article 2 – paragraph 1 – 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 contract for the provision of a good or service concluded between a trader and a consumer under a distance sales or service-provision scheme where the trader and the consumer are not simultaneously physically present prior to or at the conclusion of the contract, but, rather, make exclusive use of one or more means of distance communication;

Or.en
Amendment 452
Werner Langen, Kurt Lechner

Proposal for a directive
Article 2 – paragraph 1 – 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

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

Or.de

Justification
The definition needs to be sharpened to the effect that the means of distance communication is used in connection with the conclusion of a contract, in order to reflect the fact that as a rule, in distance selling, acceptance of the contract takes place on delivery.

Amendment 453
Olga Sehnalová

Proposal for a directive
Article 2 – paragraph 1 – point 8 – introductory part

Text proposed by the Commission

8) 'off-premises contract' means:

Amendment

8) 'contract concluded away from permanent business premises' means:
(This amendment applies throughout the text.)

Or.cs

Justification
I recommend adding the word 'permanent' to the phrase 'business premises' throughout the text. This would be a means of preventing the common practice of declaring to the competent registration authority a place of business valid for only one or a few days during which an action takes place (e.g. on restaurant premises, on
Anthony Karass
Proposal for a directive
Article 2 – paragraph 1 – point 8 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(8) 'off-premises contract' means:</td>
<td>(8) 'off-premises contract' means <strong>any</strong> contract between a trader and a consumer for the provision of a good or service:</td>
</tr>
<tr>
<td><strong>(a)</strong> concluded away from business premises with the simultaneous physical presence of the trader and the consumer, or for which an offer was made by the consumer in the same circumstances, unless the consumer initiated the business contact with trader for the purpose of concluding the contract, or</td>
<td></td>
</tr>
<tr>
<td><strong>(b)</strong> concluded in the simultaneous physical presence of the consumer and the trader on the business premises, or for which the consumer made an offer on the business premises after having been approached in the street personally and individually and persuaded to enter the business premises, or</td>
<td></td>
</tr>
<tr>
<td><strong>(c)</strong> concluded in the simultaneous physical presence of the consumer and the trader on the business premises in the course of an excursion initiated by the trader, or a third party working with him, for the purpose of marketing and selling goods, or for which the consumer made an offer in the same circumstances;</td>
<td></td>
</tr>
</tbody>
</table>

**Justification**

*An exception to the basic principle of contract law that contracts must be adhered to, in the form of a right of withdrawal, is persuasive only where there is particular*
justification, as might be the case where consumers are taken by surprise, e.g. by an unsolicited visit or an approach on the street. Consumers are not taken by surprise where they themselves have asked traders to visit them or have initiated the transaction.

Amendment 455
Jürgen Creutzmann
Proposal for a directive
Article 2 – paragraph 1 – point 8 – introductory part

Text proposed by the Commission

(8) 'off-premises contract' means:

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

Or.de

Amendment 456
Catherine Soullie, Constance Le Grip
Proposal for a directive
Article 2 – paragraph 1 – point 8 – introductory part

Text proposed by the Commission

(8) "off-premises contract' means:

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

Or.en

Amendment 457
Robert Rochefort
Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(a) any sales or service contract concluded away from business premises with the simultaneous physical presence of the

Amendment
(a) any sales or service contract concluded away from business premises with the simultaneous physical presence of the

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trader and the consumer or any sales or service contract for which an offer was made by the consumer in the same circumstances, or trader and the consumer, even if preceded by an offer from the consumer, or

Justification

Clarification and simplification.

Amendment 458
Damien Abad, Philippe Juvin

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(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

(a) any sales or service contract concluded away from business premises with the simultaneous physical presence of the trader and the consumer, even if preceded by an offer from the consumer,

Justification

Simplification of the Commission proposal.

Amendment 459
Andreas Schwab

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(a) any sales or service contract concluded away from business premises with the simultaneous physical presence of the

Amendment

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

service contract for which an offer was made by the consumer in the same circumstances, or

Justification

This amendment is intended simply to replace the previous formulation of Article 2(8)(a). Otherwise the previous amendment 44 stands.

Amendment 460
Emma McClarkin

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(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

(a) any sales or service contract during an excursion organized by the trader away from their business premises, or during a visit by a trader to the consumer’s home or to that of another consumer, or to the consumer’s place of work, where the visit does not take place at the express request of the consumer.

Justification

The extension of the rules for door-to-door sales to all contracts concluded away from business premises is not appropriate. The special situation consumers face when negotiating with a salesman door-to-door or within their own home cannot be applied to every business contact in the public arena and/or away from business premises. This extension of the scope and the associated information and formal requirements would especially burden the street sale of individual magazines and newspapers. Against this background the current definition of ‘off-premises contracts’ in the Doorstep Selling Directive should be maintained.
Amendment 461
Anja Weisgerber

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(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

(a) any sales or service contract concluded between a trader and a consumer which the consumer was persuaded to conclude through negotiations initiated or conducted by the trader with the consumer and in his presence, off the trader’s business premises or at a leisure event;

Justification

Die Definition beschreibt Überrumpelungsgeschäfte sachgerechter als bislang, indem nicht schematisch auf den Ort des Vertragsschlusses, sondern darauf abgestellt wird, in welcher Situation sich der möglicherweise fehlerhafte Vertragswille des Verbrauchers gebildet hat. Das ist klassischerweise die Vertragsanbahnungs- oder Verhandlungssituation. Die vorgeschlagene Fassung macht auch klar, dass die Initiative vom Gewerbetreibenden auszugehen hat. Mit dem Erfordernis der gemeinsamen Gegenwart (das auch bei Telefonaten nicht erfüllt ist) wird die Abgrenzung zu Fernabsatzgeschäften vollzogen.

Amendment 462
Jürgen Creutzmann

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(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

(a) concluded away from business premises with the simultaneous physical presence of the trader and the consumer in one of the following situations, or for which an offer was made by the consumer in the same circumstances:
Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(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

(a) any sales or service contract concluded away from business premises with the simultaneous physical presence of the trader and the consumer at the consumer’s workplace or in his or another consumer’s home, unless the visit is not made at the consumer’s express wish. This shall exclude contracts which, in accordance with the provisions of the Member States, are certified 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 concludes the contract only on the basis of careful consideration and with knowledge of its legal scope;

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission

(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

(a) which is concluded away from business premises with the simultaneous physical presence of the trader and the consumer, unless the consumer himself has established the business contact with the trader or his agent for the purpose of concluding the contract, or
Amendment 465
Eija-Riitta Korhola

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a

Text proposed by the Commission
(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
(a) any sales or service contract concluded:
- during an excursion organised by the trader away from his business premises, or
- during a visit by a trader to the consumer’s home or to that of another consumer or to the consumer’s place of work where the visit does not take place at the express request of the consumer.

Justification
This definition (Art 2-parag 1- point 8-subpoints a, b, c and d) would exclude renovations and other such services, where a consumer has invited a trader home to estimate and plan a renovation and the contract has been concluded there, from the scope of "off-premises contract". It would be unreasonable to apply here withdrawal rights etc that otherwise are applied in off-premises contracts.

Amendment 466
Jürgen Creutzmann

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a – point i (new)
(i) at the consumer’s workplace or in a private residence unless the consumer, on his own initiative, has previously sent for the trader,

Or.de

Amendment 467
Jürgen Creutzmann

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a – point ii (new)

(ii) at a leisure event run by the trader, or by a third party at least inter alia in the trader's interest, or

Or.de

Amendment 468
Jürgen Creutzmann

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a – point iii (new)

(iii) in a vehicle or a publicly accessible place;

Or.de

Amendment 469
Kurt Lechner

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point a – point i (new)
(i) ‘Everyday transactions’

Sales or service contracts in which, as a rule, the contract is performed in full immediately following its conclusion.

Amendment 470
Anja Weisgerber

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b

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.

Justification


Amendment 471
Kurt Lechner

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b
(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. with the exception of contracts which, according to the provisions of the Member States, are authenticated 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 (authentic instrument).

Justification

The concept of the conclusion of the ‘off-premises contract’ and the exceptional nature of the psychological situation for the consumer who risks being caught off his/her guard are essential for the protective system foreseen by the directive. As the notion of ‘business premises’ is used in a very restrictive way in the directive (Art. 2 (9)), the latter would in many Member States also apply to contracts which, due to the specific context in which they are concluded, given the participation of a public official, guarantee to reach the objectives envisaged by the directive, such as preventing the consumer from taking a hasty decision and guaranteeing that he/she is
provided with detailed information. Consequently, it is not appropriate to include these contracts in the scope of the directive in order not to encroach on the national systems of legal justice of the Member States. Furthermore, this amendment also corresponds to the EC acquis.

**Amendment 473**  
Jürgen Creutzmann

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 8 – point b**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>b)</strong> 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.</td>
<td>(b) concluded on business premises <strong>but</strong> which the consumer has been persuaded to conclude by means of negotiations under the circumstances stipulated in point (a).</td>
</tr>
</tbody>
</table>

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**Amendment 474**  
Catherine Soullie, Constance Le Grip

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 8 – point b**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(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.</td>
<td>(b) <strong>which is</strong> concluded on business premises but <strong>whose main components have been determined</strong> away from business premises, with the simultaneous physical presence of the trader and the consumer. This excludes contracts which, according to the provisions of the Member States, are authenticated by a public official.</td>
</tr>
</tbody>
</table>

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Amendment 475
Eija-Riitta Korhola

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b

Text proposed by the Commission

(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;

Amendment

(b) any contract for the supply of goods or services other than those concerning which the consumer requested the visit of the trader,

Or.en

Justification

This definition (Art 2-parag 1- point 8-subpoints a, b, c and d) would exclude renovations and other such services, where a consumer has invited a trader home to estimate and plan a renovation and the contract has been concluded there, from the scope of "off-premises contract". It would be unreasonable to apply here withdrawal rights etc that otherwise are applied in off-premises contracts.

Amendment 476
Eija-Riitta Korhola

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b a (new)

Text proposed by the Commission

(ba) any sales or service contract in respect of which an offer was made by the consumer under conditions similar to those described in subparagraph a or subparagraph b although the consumer was not bound by that offer before its acceptance by the trader.

Amendment

Or.en

Justification

This definition (Art 2-parag 1- point 8-subpoints a, b, c and d) would exclude renovations and other such services, where a consumer has invited a trader home to estimate and plan a renovation and the contract has been concluded there, from the scope of "off-premises contract". It would be unreasonable to apply here withdrawal
rights etc that otherwise are applied in off-premises contracts.

Amendment 477  
Eija-Riitta Korhola

Proposal for a directive  
Article 2 – paragraph 1 – point 8 – point b b(new)

Text proposed by the Commission

(bb) any offer made contractually by the consumer under conditions similar to those described in subparagraph a or subparagraph b where the consumer is bound by his offer.

Or.en

Justification

This definition (Art 2-parag 1- point 8-subpoints a, b, c and d) would exclude renovations and other such services, where a consumer has invited a trader home to estimate and plan a renovation and the contract has been concluded there, from the scope of "off-premises contract". It would be unreasonable to apply here withdrawal rights etc that otherwise are applied in off-premises contracts.

Amendment 478  
Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive  
Article 2 – paragraph 1 – point 8 – point b a (new)

Text proposed by the Commission

(ba) any sales or service contract concluded by whatever means following a sales or service contract under (a) or (b) above, between the same trader and consumer pertaining to same products.

Or.en
Amendment 479
Zuzana Roithová

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b a (new)

Text proposed by the Commission

Amendment

(ba) concluded during the excursion of the trader with the aim of promoting and selling goods or services acquired by the consumer.

Or.en

Amendment 480
Philippe Juvin, Damien Abad

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Contracts which, in accordance with the laws of the Member States, are authenticated by a public official shall be excluded from the scope of this Directive.

Or.fr

Justification

See justification for the amendment to Recital 14.

Amendment 481
Jürgen Creutzmann

Proposal for a directive
Article 2 – paragraph 1 – point 8 – point b a (new)

Text proposed by the Commission

Amendment

(ba) This shall not include contracts for everyday transactions worth not more than EUR 60 which are performed in full
by the trader immediately following their conclusion.

Justification

In the case of low-value everyday transactions, requirements concerning the provision of information, while not really necessary for purposes of consumer protection, would place a considerable burden on traders.

Amendment 482
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – point 9 – introductory part

Text proposed by the Commission Amendment

(9) "business premises" means:

(9) "business premises" means any immovable or movable retail premises, including seasonal retail premises, where the trader carries on his activity on a permanent basis;

Or.en

Justification

The rules on off-premises contracts should apply in market stalls and fair stands, in particular because consumers are often put under psychological pressure and frequently they are persuaded by the trader, who offers special conditions "on the spot".

Amendment 483
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – point 9 – point a

Text proposed by the Commission Amendment

(a) any immovable or movable retail premises, including seasonal retail deleted

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premises, where the trader carries on his activity on a permanent basis, or

Amendment 484
Kerstin Westphal

Proposal for a directive
Article 2 – paragraph 1 – 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

Or.en

Amendment 485
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – 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

Or.en

Justification

The rules on off-premises contracts should apply in market stalls and fair stands, in particular because consumers are often put under psychological pressure and frequently they are persuaded by the trader, who offers special conditions "on the spot".
Amendment 486
Evelyne Gebhardt

Proposal for a directive
Article 2 – paragraph 1 – 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

Or.en

Amendment 487
Zuzana Roithová

Proposal for a directive
Article 2 – paragraph 1 – 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

Or.en

Amendment 488
Catherine Stihler

Proposal for a directive
Article 2 – paragraph 1 – 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

Or.en
Amendment 489
Robert Rochefort

Proposal for a directive
Article 2 – paragraph 1 – 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;

Or.fr

Amendment 490
Othmar Karas

Proposal for a directive
Article 2 – paragraph 1 – point 11

Text proposed by the Commission

(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;

Amendment

(11) ‘in writing’ means the communication of notifications or information on paper. Any communication by electronic means which provides a durable record available to the receiver in a durable medium is equivalent to ‘writing’.

(All the directive’s current stipulations concerning durable media should be changed to refer to ‘writing’.)

Or.de

Justification

The definition of ‘writing’ takes account of the fact that, in practice, information is routinely sent by e-mail as well as on paper. This approach is in line with the approach to agreements on jurisdiction taken in Article 23(2) of Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments.
Amendment 491
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – point 12

Text proposed by the Commission

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

Amendment

(12) "product" means any good or service; Or.en

Amendment 492
Robert Rochefort

Proposal for a directive
Article 2 – paragraph 1 – 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 third party, acting as the trader's agent, offers goods or services to consumers, who attend or are given the possibility to attend the auction in person, through a transparent competitive bidding procedure. The third party acting as agent intervenes in the conclusion of the sales or service contract by knocking down the goods or services to the highest bidder on completion of the procedure. Or.fr

Amendment 493
Emilie Turunen

Proposal for a directive
Article 2 – paragraph 1 – point 16

Text proposed by the Commission

(16) "public auction" means a method of sale where goods are offered by the trader

Amendment

(16) "public auction" means a method of sale where goods or services are offered by
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; 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;

\[\text{Or.en}\]

**Amendment 494**
Robert Rochefort

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

**Or.fr**

**Justification**

The Commission's definition is unacceptable as it stands, because it confuses the commercial guarantee with the guarantee of conformity, even though a commercial guarantee is a contract by means of which the trader enters into undertakings vis-à-vis the consumer, in addition to his obligations relating to the guarantee of conformity. The commercial guarantee may thus cover many other matters linked to the sale transaction, such as delivery, exemption from charges for estimates, etc.
(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.

Or.fr

Justification

This definition is consistent with many national legal provisions. What is more, the concept of 'ancillary contract' is employed in the 'timeshare' directive.

(20) 'ancillary contract' means a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract concluded as a principal 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.

Or.fr

Justification

This definition is consistent with many national legal provisions. What is more, the concept of 'ancillary contract' is employed in the 'timeshare' directive.
Proposal for a directive
Article 2 – paragraph 1 – 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) ‘ancillary contract’ means a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract from a trader, 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.

Or.de

Proposal for a directive
Article 2 – paragraph 1 – point 20 a (new)

Text proposed by the Commission

(20a) ‘goods made to the consumer's specifications or clearly personalised’ means any non-prefabricated goods production of which is completed on the basis of an individual choice or decision by the customer on, for example, colour, size, material or finish, which, because they are made to consumer’s wishes in these respects, are unsaleable or saleable only at an unreasonable discount, and which the trader has clearer identified to the consumer as customised goods.

Amendment

(20a) ‘goods made to the consumer's specifications or clearly personalised’ means any non-prefabricated goods production of which is completed on the basis of an individual choice or decision by the customer on, for example, colour, size, material or finish, which, because they are made to consumer’s wishes in these respects, are unsaleable or saleable only at an unreasonable discount, and which the trader has clearer identified to the consumer as customised goods.

Or.de

Justification

Goods made to the consumer's specifications need to be defined as a specific...
category. Otherwise there could be a gap in the law with regard to the not uncommon practice of producing goods individually to customers’ requirements.

Amendment 499
Malcolm Harbour
Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

An obligation in this Directive to provide information on a durable medium is satisfied, where the consumer or trader has provided the other party with an e-mail address, by providing the information in an e-mail to that address.

Or.en

Amendment 500
Anja Weisgerber
Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

Amendment

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.

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. The provisions of this Directive applying to service contracts shall apply to utility supply contracts within the meaning of Article 2 (5a) irrespective of whether they are classified as sales or service contracts.

Or.de

Justification

Verträge über die Lieferung von Strom, Gas und Wasser sind für die Verbraucher von großer Bedeutung. Sie sollten daher von der Richtlinie grundsätzlich erfasst sein. Die
rechtliche Einordnung als Kauf- oder Dienstleistungsvertrag ist in den Mitgliedstaaten allerdings unterschiedlich. Um diesen Unterschieden Rechnung zu tragen, werden die Verträge als "Versorgungsverträge" bezeichnet. Mit dem Begriff der "Versorgungsverträge" wird kein neuer Vertragstypus neben Kauf- und Dienstleistungsverträgen geschaffen, sondern lediglich eine Teilmenge der beiden Kategorien für bestimmte Leistungsgegenstände bezeichnet.

Amendment 501
Robert Rochefort

Proposal for a directive
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This Directive shall not apply to contracts concluded by means of public auctions.

Or.fr

Amendment 502
Robert Rochefort

Proposal for a directive
Article 3 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. This Directive shall not apply to contracts concluded before notaries or members of equivalent professions.

Or.fr

Amendment 503
Robert Rochefort

Proposal for a directive
Article 3 – paragraph 1 c (new)
Text proposed by the Commission

Amendment

1c. This Directive shall not apply to health or pharmaceutical services.

Or.fr

Amendment 504
Emilie Turunen

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.

Or.en

Amendment 505
Evelyne Gebhardt

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.

Or.en
Amendment 506
Philippe Juvin

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 be without prejudice to the provisions contained in European Union legislation concerning special contracts or sectors.

Or.fr

Justification

See amendment to Recital 11.

Amendment 507
Tiziano Motti

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 only apply to financial services as regards 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.

Or.it
Justification

The proposed directive should only apply to financial services in so far as it concerns Chapters I and V. Due to the various directives already in force (such as the Consumer Credit Directive, Directive on Distance Marketing of Financial Services, Markets in Financial Instruments Directive, Payment Services Directive, Prospectus Directive, etc.) the adding of another layer of legislation would add complexity and prevent the establishment of legal certainty.

Amendment 508
Kurt Lechner

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 only apply to financial services as regards general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation

Or.de

Amendment 509
Ashley Fox

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 only apply to financial services as regards certain 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.
Justification

Retail financial services are complex products and Member States must therefore be able to apply tailored information requirements and withdrawal rights to this sector.

Amendment 510
Malcolm Harbour

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 only apply to financial services as regards 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 the relevant definitions in Article 2. Member States may maintain or introduce in their national law provisions in relation to financial services which are more stringent than those in Articles 30 to 39.

Amendment 511
Robert Rochefort

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

2a. This Directive shall be without prejudice to the provisions contained in European Union legislation concerning special contracts or sectors.

Amendment

Or.fr
Amendment 512  
Othmar Karas

Proposal for a directive  
Article 3 – paragraph 2 a (new)

Text proposed by the Commission  

Amendment

2a. This Directive shall not apply to off-premises contracts which are drawn up with the help of a public office-holder who has a statutory obligation to be independent and impartial and must ensure, by providing comprehensive information, that the consumer only concludes the contract on the basis of careful consideration and with knowledge of its legal scope;

Or.de

Justification

The involvement of a public office-holder who already has a statutory obligation to be independent and impartial and to provide comprehensive legal information to the parties ensures that the consumer only concludes the contract on the basis of careful consideration and with knowledge of its legal scope. It would therefore be inappropriate, and would encroach on Member States' judicial systems, to include these contracts.

Amendment 513  
Othmar Karas

Proposal for a directive  
Article 3 – paragraph 2 b (new)

Text proposed by the Commission  

Amendment

2b. This Directive shall not apply to gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;

Or.de
Pursuant to consistent ECJ case law, in the field of gambling activities Member States have the right to determine the level of protection of their citizens and to introduce specific consumer protection rules. The European Parliament (resolution of 9 March 2009) and the Council (current debate in the working party on consumer protection) have always shared this position. Maximum harmonisation of consumer rights including in relation to gambling activities would deprive Member States of their right of determination.

Amendment 514
Othmar Karas
Proposal for a directive
Article 3 – paragraph 2 c (new)

2c. This Chapter shall not apply to distance and off-premises contracts:
   (a) relating to immovable property rights, except for rental and works relating to immovable property;
   (b) for financial services;
   (c) for transport services.

Justification
The existing Community acquis in the area of financial services and transport services contains numerous rules on consumer protection. The exception for transport services also takes account of the problems which the broad definition of 'off-premises contracts' would raise in particular for this sector.

Amendment 515
Othmar Karas
Proposal for a directive
Article 3 – paragraph 2 d (new)
Text proposed by the Commission

2d. This Chapter shall not apply to off-premises contracts in respect of which the transactions on both sides are to be performed immediately and the payment does not exceed EUR 50, if they are usually concluded by undertakings away from their business premises or if the business is, by its nature, not run on permanent business premises.

Or.de

Justification

Even the purchase of a bunch of roses from a mobile flower seller or the purchase of tickets for city sightseeing tours would be subject to the rules. A workable exception is therefore needed. If the consumer is required to pay straight away he will be directly aware of the financial cost and will therefore act accordingly carefully. The limit on the amount prevents the exception from being abused.

Amendment 516
Malcolm Harbour

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

2a. The Directive shall not affect the general contract law of Member States, insofar as this is not harmonised, within the scope of the Directive.

Or.en

Amendment 517
Emilie Turunen

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 Council\(^\text{12}\) and of Council Directive 90/314/EEC\(^\text{13}\).

\(^\text{13}\) OJ L 158, 23.6.1990, p. 59.

Amendment 518
Evelyne Gebhardt

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 Council\(^\text{12}\) and of Council Directive 90/314/EEC\(^\text{13}\).

\(^\text{13}\) OJ L 158, 23.6.1990, p. 59.

Or.en

Amendment 519
Robert Rochefort

Proposal for a directive
Article 3 – paragraph 3 a (new)
3a. Insofar as it is not harmonised by them, the rules laid down in this directive do not affect national law in the area of general contract law.

Amendment 520
Emilie Turunen

Proposal for a directive
Article 3 – paragraph 4

Text proposed by the Commission


Amendment 521
Evelyne Gebhardt

Proposal for a directive
Article 3 – paragraph 4

Text proposed by the Commission


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Parliament and of the Council\textsuperscript{15}.

\textsuperscript{14} OJ L 376, 27.12.2006, p. 36.
\textsuperscript{15} OJ L 178, 17.7.2000, p. 1.

Amendment 522
Robert Rochefort

Proposal for a directive
Article 3 – paragraph 4

\textit{Text proposed by the Commission}

4. \textit{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\textsuperscript{14} and Directive 2000/31/EC of the European Parliament and of the Council.\textsuperscript{15}

\textit{Amendment}


Amendment 523
Malcolm Harbour

Proposal for a directive
Article 3 – paragraph 4

\textit{Text proposed by the Commission}


\textit{Amendment}

Amendment 524
António Fernando Correia De Campos

Proposal for a directive
Article 3 – paragraph 4 – subparagraph 1 (new)

Text proposed by the Commission
Amendment

This Directive shall not apply to gambling activities, which involve wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions.

Or.en

Amendment 525
Kurt Lechner

Proposal for a directive
Article 3 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission
Amendment

This Directive shall not apply to provisions in Member States’ laws relating to the legal nature, sale, acquisition or transfer of ownership of immovable property or to the formulation or transfer of rights to ownership of immovable property.

Or.de

Amendment 526
Kurt Lechner

Proposal for a directive
Article 3 – paragraph 4 – subparagraph 1 b (new)

Text proposed by the Commission
Amendment

Articles 5 to 29 shall not apply to contracts which, in accordance with the provisions of the Member States, are certified 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;

Or.de

Amendment 527
Kurt Lechner

Proposal for a directive
Article 3 – paragraph 4 – subparagraph 1 c (new)

Text proposed by the Commission

Amendment

The Member States may decide that this Directive shall apply only to contracts for which the payment to be made by the consumer exceeds a specified amount. The amount may not exceed EUR 100.

Or.de

Amendment 528
Kurt Lechner

Proposal for a directive
Article 3 – paragraph 4 – subparagraph 1 d (new)

Text proposed by the Commission

Amendment

Articles 12 to 19 shall not apply to distance and off-premises 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.

Or.de
Amendment 529
Cristian Silviu Busoi, Edvard Kožušník

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

4a. This directive shall be without prejudice to the application of the provisions of the Member States relating to the formation, acquisition or conveyancing of rights in rem in immovable property or guarantees in rem in immovable property.

Amendment

Justification

Clarification that the directive does not affect the application of the property laws of the Member States with respect to the conveyancing of immovable property or the formation or transfer of immovable property rights.

Amendment 530
Hans-Peter Mayer

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

4a. This Directive shall be without prejudice to provisions in Member States' laws relating to the sale, acquisition or transfer of ownership of immovable property or to the formulation, acquisition or transfer of rights to ownership of immovable property.

Amendment

Justification

Clarification that the Directive is without prejudice to Member States' property law rules in respect of the transfer of immovable property and the formulation or transfer of rights to ownership of immovable property.
of immovable property rights.

Amendment 531
Emma McClarkin

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

4a. Member States may decide that this Directive shall apply only to contracts for which the payment to be made by the consumer exceeds a specified amount.

Amendment

4a. Member States may decide that this Directive shall apply only to contracts for which the payment to be made by the consumer exceeds a specified amount.

Or.en

Justification

The Commission proposal does not contain a de-minimis clause even though such a clause is – with good reason - included in the Doorstep Selling Directive 85/577/EEC (Article 3 paragraph 1). This means that the extensive information and formal requirements set out in the text will apply to all contracts, making the street sale of magazines and newspapers considerably more difficult, if not even impossible. A de-minimis clause is therefore not only necessary for the free and unhindered street-sale of newspapers but is also in the interest of consumers.

Amendment 532
Damien Abad, Constance Le Grip

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

4a. This Directive shall not apply to social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State.

Amendment

4a. This Directive shall not apply to social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State.

Or.fr
Justification

Social services of general interest are dealt with separately in European Union legislation. They are essential in order to preserve the principles of social cohesion and solidarity and should not be affected by this directive, as they are not services like any others. This amendment also incorporates the exclusion provided for in Article 2(2)(j) of Directive 2006/123/EC on services in the internal market.

Amendment 533
Eija-Riitta Korhola, Marianne Thyssen, Christel Schaldemose

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a. This directive shall not apply to gambling activities, which involve wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions.</td>
</tr>
</tbody>
</table>

Or.en

Justification

The Member States have specific national rules in place to protect consumers from the risks that can occur through gambling. The standing jurisprudence of the Court of Justice of the EU confirms that "Member States can define in detail the level of protection", "in accordance with their traditions and cultures". The Commission proposal generally applies to gambling and betting services and aiming at a maximum harmonisation of the rights of consumers and companies, would prevent Member States from maintaining or adopting a number of consumer protection provisions they deem appropriate in this area.

Amendment 534
Catherine Soullie, Damien Abad, Philippe Juvin, Constance Le Grip

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a. This directive shall be without</td>
</tr>
</tbody>
</table>

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prejudice to the application of the provisions of the Member States relating to the formation, acquisition or conveyance of rights in immovable property or guarantees in immovable property.

Or.en

Amendment 535
Heide Rühle

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. This Directive shall not apply to gambling activities, which involve wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions.

Or.en

Justification

The Member States have specific national rules in place to protect consumers from the risks that can occur through gambling. The inclusion of gambling activities in the scope of the Directive would prevent Member States from maintaining or adopting a number of consumer protection provisions they deem appropriate in this area

Amendment 536
Malcolm Harbour

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Without prejudice to paragraph 4, each of the provisions of this Directive shall apply only in so far as there are no specific provisions with the same objective
in other Union legislation.

Amendment 537
Malcolm Harbour

Proposal for a directive
Article 3 – paragraph 4 b (new)

Text proposed by the Commission

4b. Member States, in accordance with Union law, may maintain or introduce appropriate and proportionate additional information or presentation requirements adopted as a result of an investigation or a study of a sector of the economy which demonstrates consumer detriment, or a failure of competition, in that sector.

Amendment

Or.en

Amendment 538
Louis Grech

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

4a. This Directive shall be without prejudice to the application of the provisions of the Member States relating to the formation, acquisition or conveyancing of rights in rem in immovable property or guarantees in rem in immovable property.

Amendment

Or.en

Justification

Clarification that the directive does not affect the application of the property laws of the Member States with respect to the conveyancing of immovable property or the
formation or transfer of immovable property rights.

Amendment 539
Robert Rochefort

Proposal for a directive
Article 4 – title

Text proposed by the Commission Amendment

**Full** harmonisation **Degree of** harmonisation

Or.fr

Amendment 540
Evelyne Gebhardt, Christel Schaldemose, António Fernando Correia De Campos, Louis Grech, Alan Kelly, Gianni Pittella, Mitro Repo, Catherine Stihler, Bernadette Vergnaud, Barbara Weiler, Anna Hedh, Liem Hoang Ngoc, Claude Moraes, Pier Antonio Panzeri, Andres Perello Rodriguez, Sylvana Rapti, Olga Sehnalová, Marc Tarabella, Kerstin Westphal, Marek Siwiec

Proposal for a directive
Article 4 – title

Text proposed by the Commission Amendment

**Full** harmonisation **Minimum** harmonisation

Or.en

Amendment 541
Kyriacos Triantaphyllides

Proposal for a directive
Article 4 – title

Text proposed by the Commission Amendment

**Full** harmonisation **Harmonisation indicator**

Or.el
Amendment 542
Catherine Stihler

Proposal for a directive
Article 4 – paragraph 1

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

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.

Or.en

Amendment 543
Emilie Turunen

Proposal for a directive
Article 4 – paragraph 1 and paragraph 1 a (new)

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. Except where provided for in paragraph 2, Member States may adopt or maintain in force more stringent provisions, in the field covered by this Directive, in order to ensure a higher level of consumer protection.

1a. Member States may not maintain or introduce in their national law provisions diverging from those laid down in Articles 12 to 17, including more or less stringent provisions to ensure a different level of consumer protection.

Or.en

Justification

A mixed approach should be adopted, where full harmonisation can only be applied for specific points for which it is feasible and meaningful. In order to avoid problems of delineation and unexpected impact on national law, a default rule based on minimum harmonisation is absolutely necessary.
Amendment 544
Robert Rochefort

Proposal for a directive
Article 4 – paragraph 1 and paragraph 1 a (new)

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. Except where provided for in paragraph 2, Member States may adopt or maintain in force more stringent provisions, in the field covered by this Directive, in order to ensure a higher level of consumer protection. Member States shall ensure that such provisions are compatible with the Treaties.

1a. Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in Articles 2, 3, 5, 12(1) to (3), 13 to 18, 22, 23, 24(1) and (2) and 31(1) to (3) of this Directive, including more stringent provisions to ensure a different level of consumer protection.

Or.fr

Justification

Principe d'harmonisation minimale par défaut, assorti de domaines d'application d'harmonisation maximale qui sont explicitement cités, et qui consisteraient dans les chapitres/articles suivants : - articles 2 et 3 du chapitre I ; - les chapitres II et III de la proposition de la Commission "fusionnés" (c'est-à-dire recentrés sur l'information des consommateurs et le droit de rétractation en ce qui concerne les contrats conclus à distance et hors établissement) à l'exception des articles 6 (défaut d'information), 10 et 11 (obligations formelles), et 19 et 20 (exceptions au droit de rétractation), pour lesquels les États membres pourraient maintenir ou introduire, dans leur droit national, des dispositions plus strictes que celles fixées dans la directive, afin d'assurer un niveau plus élevé de protection du consommateur. En outre, le paragraphe 12.4 devrait soit être supprimé, soit être adapté pour permettre aux États membres de garder une flexibilité pour le "hors établissement" (possibilité de fixer, à l'intérieur du délai de rétractation, une période pendant laquelle l'exécution du contrat ne peut commencer) ; - articles 22, 23 et 24 paragraphes 1 et 2 du chapitre IV ; - article 31 paragraphes 1, 2 et 3 du chapitre V
Amendment 545
Evelyne Gebhardt, Christel Schaldemose, António Fernando Correia De Campos, Louis Grech, Alan Kelly, Gianni Pittella, Mitro Repo, Catherine Stihler, Bernadette Vergnaud, Barbara Weiler, Anna Hedh, Liem Hoang Ngoc, Claude Moraes, Pier Antonio Panzeri, Andres Perello Rodriguez, Sylvana Rapti, Olga Sehnalová, Marc Tarabella, Kerstin Westphal, Marek Siwiec

Proposal for a directive
Article 4 – paragraph 1 and paragraph 1 a (new)

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
I. Member States may maintain or introduce, in their national laws, provisions diverging from those laid down in this Directive as long as they guarantee a higher degree of consumer protection.

1a. The rights resulting from this Directive shall be exercised without prejudice to the provisions of another Community act governing consumer protection.

Or.en

Justification
The general approach of the Directive should be minimum harmonization, as full harmonization prevents Member States from maintaining or adopting more stringent rules. With a minimum harmonization level in consumer contract law it can be guaranteed that consumers benefit from the protection granted to them by consumer protection rules laid down in the consumer legislation in force in their Member States and that Member States cannot introduce new consumer rights which are to the detriment of the consumers. Moreover, this Directive shall not be contrary to the existing consumer protection provisions in European laws.

Amendment 546
Kyriacos Triantaphyllides

Proposal for a directive
Article 4 – paragraph 1
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

Member States may, in order to ensure a higher level of consumer protection, maintain or introduce, in their national law, provisions diverging from those laid down in this Directive.

Or. el

Justification

Full harmonisation would deprive consumers of more favourable provisions which are in force in some EU Member States.

Amendment 547
Malcolm Harbour

Proposal for a directive
Article 4 – paragraph 1

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

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, unless provided otherwise in this Directive.

Or. en

Amendment 548
Catherine Stihler

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Unless indicated differently in the respective provisions in this Directive,
Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty in the field covered by this Directive, to ensure a higher level of consumer protection.

Amendment 549
Catherine Stihler
Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

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 must be compatible with the Treaty and must be notified to the Commission.

The Commission shall make that information public on a website or in another easily accessible way.

Amendment 550
Catherine Stihler
Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1c (new)

Text proposed by the Commission

The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may invoke under the national rules governing contractual or non-contractual liability.
Amendment 551
Jürgen Creutzmann

Proposal for a directive
Article 4 – paragraph 1 a (new)

Text proposed by the Commission  

Amendment

1a. This Chapter shall apply to distance and off-premises contracts.

This Chapter shall not apply to distance and off-premises contracts:

(a) relating to the sale, acquisition, transfer or encumbrance of immovable property or of immovable property rights;
(b) relating to the construction or major modification of a building or the renting of a building or an apartment.

Or.de

Justification of

Contracts relating to the construction or major modification of a building are, as a rule, carefully prepared by the two parties to the contract, so that no provisions on the right of withdrawal are needed. All of the information can be obtained by the consumer in the course of negotiations; the information requirements in this Chapter are not appropriate to contracts of this kind. Each Member State already has comprehensive and very different rules on rental contracts.

Amendment 552
Jürgen Creutzmann

Proposal for a directive
Article 4 – paragraph 1 b (new)

Text proposed by the Commission  

Amendment

This Chapter shall not apply to distance and off-premises contracts relating to financial services.

Or.de
Justification

Financial services are very complex and comprehensive rules relating to them are already laid down in other directives, including the consumer credit directive and the directive on the distance marketing of financial services. Information requirements and consumers' right of withdrawal in respect of financial services should therefore be laid down within the framework of this specific Community legislation.

Amendment 553
Andreas Schwab, Frank Engel

Proposal for a directive
Article 4a (new)

Text proposed by the Commission

Amendment

Article 4a

Targeted full harmonisation

Save as otherwise provided by this Chapter, Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter.

Or.de

Amendment 554
Andreas Schwab, Anja Weisgerber, Sandra Kalniete, Lara Comi

Proposal for a directive
Article 4b (new)

Text proposed by the Commission

Amendment

Article 4b

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) relating to immovable property rights, except for rental and works relating to
immovable property;


3. This Chapter shall not apply to off-premises

(a) credit agreements as defined in Article 3(c) of Directive 2008/48/EC of the European Parliament and of the Council;

(b) non-life insurance contracts as defined in Article 2(2) and Annex I(A) of Directive 2009/138/EC of the European Parliament and of the Council;

(c) life insurance contracts as defined in Article 2(3) of and Annex II to Directive 2009/138/EC of the European Parliament and of the Council;

(d) contracts for which the payment to be made by the consumer does not exceed EUR 20.

4. This Chapter 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 their use, in so far as they relate to the use thereof, or relating to single telephone, Internet or fax connections established by the consumer;


5. 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.
This amendment replaces the previous amendments 65 up to and including 68.

Amendment 555
Catherine Stihler

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a
New Harmonisation

With regard to articles 5-7, unless indicated differently in this Directive, Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty in the field covered by this Directive, to ensure a higher level of consumer protection.

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 articles 9, 10, 11, Article 13 paragraph 2, Article 19 and 20.

Amendment 556
Robert Rochefort

Proposal for a directive
Chapter 2 – title

Text proposed by the Commission

Amendment

Consumer information and withdrawal right for distance and off-premises contracts
Justification

Focusing of Chapters II and III of the Commission proposal on consumer information and the withdrawal right for distance and off-premises contracts. Reference, by default, to the general principle of maximum harmonisation of the provisions of this chapter, with insertion, where appropriate and for any article which may be concerned, of a minimum clause.

Amendment 557
Damien Abad, Constance Le Grip

Proposal for a directive
Chapter 2 – title

Text proposed by the Commission Amendment

Consumer information Consumer information and withdrawal right for distance and off-premises contracts

Or.fr

Justification

Chapters II and III must be merged in order to place on a unified basis the provisions of this Directive which go to the heart of cross-border trade within the single market, as indicated by the rapporteur.

Amendment 558
Jürgen Creutzmann

Proposal for a directive
Chapter 2 – title

Text proposed by the Commission Amendment

Consumer information Consumer information and withdrawal right for distance and off-premises contracts

Or.de
Amendment 559
Othmar Karas
Proposal for a directive
Chapter 2 – title

Text proposed by the Commission

Consumer information

Targeted full harmonisation

Or.de

Amendment 560
Robert Rochefort
Proposal for a directive
Article - 5 (new)

Text proposed by the Commission

Article - 5

Except as otherwise provided in this chapter with regard to consumer information and the right of withdrawal for distance and off-premises contracts, Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter.

Or.fr

Justification

Focusing of Chapters II and III of the Commission proposal on consumer information and the withdrawal right for distance and off-premises contracts. Reference, by default, to the general principle of maximum harmonisation of the provisions of this chapter, with insertion, where appropriate and for any article which may be concerned, of a minimum clause.
Amendment 561
Othmar Karas
Proposal for a directive
Article - 5 (new)

Text proposed by the Commission

Amendment

Article - 5

Save as otherwise provided by this Chapter, Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, in order to ensure a different level of consumer protection.

Or.de

Amendment 562
Catherine Stihler
Proposal for a directive
Article 5 – title

Text proposed by the Commission

Amendment

General information requirements

Information requirements

Or.en

Amendment 563
Emilie Turunen
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 service contract, the trader shall provide the consumer with the following information, if not already apparent from the context:

1. Prior to the conclusion of any sales or service contract, the trader shall provide the consumer with information about the goods or services that the consumer can reasonably expect taking into account the specific circumstances of the contract and
related advertisements, including the following:

Or.en

Amendment 564
Robert Rochefort

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. In good time and at all events prior to the conclusion of the distance or off-premises contract, the trader shall communicate to the consumer the following information in a clear and precise manner and in comprehensible language:

Or.fr

Justification

The principle that the consumer must have certain information at his disposal before concluding the contract must be posited firmly and clearly.

Amendment 565
Liem Hoang Ngoc

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. In good time to enable the consumer to ascertain the facts effectively and at all events prior to the conclusion of any sales or service contract, the trader shall provide the consumer with the following information in a clear and intelligible manner:
Amendment 566
Damien Abad, Philippe Juvin, Constance Le Grip

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. In good time and at all events prior to the conclusion of the distance or off-premises contract, the trader shall communicate to the consumer the following information in a clear and intelligible manner:

Justification
The principle that the consumer must have certain information at his disposal before concluding the contract must be posited firmly and clearly.

Amendment 567
Andreas Schwab, Wim van de Camp, Anna Maria Corazza Bildt, Lara Comi, Pablo Arias Echeverría

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

This amendment replaces the previous amendment 70.

Amendment 568
Tiziano Motti

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

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:

- a) the fact that it is a sales or service contract, meaning that the intentions of the parties must be established on the basis of this legal arrangement.

Amendment

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:

Or.it

Amendment 569
Zuzana Roithová

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. Prior to the conclusion of any sales or services contract, the trader shall provide the consumer with information about the goods or services that the consumer can reasonably expect taking into account the specific circumstances of the contract and related advertisements, including the following:

Or.en
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. In good time before the consumer gives his binding agreement to any distance or off-premises contract, the trader or any person acting in his name or on his behalf shall provide the consumer with the following information, if not already apparent from the context:

Or.de

Justification

Consumers must receive the information at a point when they are not yet bound by having expressed their agreement. Some time can, however, elapse between the offer on the part of the consumer and acceptance by the trader and thus the conclusion of the contract.

Amendment

571

Rafał Trzaskowski, Róża Gräfin von Thun und Hohenstein

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. In good time before the conclusion of any sales or service contract, the trader shall provide the consumer with the following information:

Or.en

Amendment

572

Kurt Lechner

Proposal for a directive  
Article 5 – paragraph 1 – point a
(a) the main characteristics of the product, to an extent appropriate to the medium and the product;

(a) the name or description of the good or service;

Amendment 573
Róża Gräfin von Thun und Hohenstein

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

(aa) In the case of digital products, technical protection measures, where applicable, and the interoperability with commonly used hardware and software as well as any known lack of interoperability

Amendment 574
Emilie Turunen

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

(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;

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

Justification

The address should refer to the actual place of business of the trader.
Amendment 575
Evelyne Gebhardt

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

Or.en

Amendment 576
Liem Hoang Ngoc

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 business address and the identity of the trader, such as his trading name and, where applicable, the business address and the identity of the trader on whose behalf he is acting;

Or.fr

Amendment 577
Kurt Lechner

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 business address and the identity of the trader;
geographical address and the identity of
the trader on whose behalf he is acting;

Amendment 578
Catherine Stihler

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;

Or.de

Amendment 579
Emilie Turunen

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

Text proposed by the Commission

(ba) contact details including the
telephone number and any other means of
distance communication enabling the
consumer to contact and communicate
with the trader rapidly and directly

Or.en

Amendment 580
Robert Rochefort

Proposal for a directive
Article 5 – paragraph 1 – point b a (new)
Text proposed by the Commission

(ba) contact details including the telephone number or any other means of distance communication (fax, e-mail, etc.) enabling the consumer in practice to contact and communicate with the trader rapidly and directly;

Amendment

Justification

It is not enough to quote the trader’s telephone numbers or e-mail address. Often, responses are slow or the contact details prove not to work. It is therefore important to indicate that they must enable the consumer to enter into direct communication with the trader quickly.

Amendment 581
Liem Hoang Ngoc

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

Text proposed by the Commission

(ba) at least one other indication of how to contact the trader, enabling consumers to contact him effectively and quickly (telephone number, fax number or e-mail address).

Amendment

Justification

It is important that the trader should supply at least one other means of contacting him, enabling consumers to do so quickly (as a postal address is not enough for this purpose) and to do so effectively (often telephone numbers supplied to consumers do not work).
Amendment 582
Philippe Juvin, Damien Abad, Constance Le Grip

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

Text proposed by the Commission
(ba) the business address of the trader and his telephone and fax numbers or e-mail address, where available, so that the consumer can genuinely contact the trader;

Or.fr

Justification
As the telephone numbers indicated on the websites of certain traders sometimes do not work, it is essential that the proposal for a directive should specify the need for effective contact between the trader and the consumer. All consumers must be able to contact the trader with whom they have concluded a contract, particularly in the event of a problem with the delivery of the goods or in connection with the performance of the contract.

Amendment 583
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

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

Text proposed by the Commission
(ba) the business address of the trader plus his telephone or fax number or email address, where available so that the consumer can contact the trader quickly and communicate with him efficiently;

Or.en

Justification
A growing number of businesses do not use fax anymore as it will ultimately be outdated soon. Full level of harmonization.
Amendment 584
Emilie Turunen

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

Text proposed by the Commission

(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;

Amendment

(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; in case of an open-ended contract, the final price shall mean the total monthly costs

Justification

The price indicated in the pre-contractual information should be the one that the consumer will exactly pay.

Amendment 585
Robert Rochefort

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

Text proposed by the Commission

(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

Amendment

(c) the final price inclusive of taxes, or where the nature of the goods 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 or, where these charges cannot reasonably be calculated in
fact that such additional charges may be payable;

advance, the fact that such additional charges may be payable;

Amendment 586
Evelyne Gebhardt

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

Text proposed by the Commission

(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;

Amendment

(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; the total monthly cost has to be indicated in cases of open ended contracts.

Amendment 587
Konstantinos Poupakis, Sylvana Rapti

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

Text proposed by the Commission

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;

Amendment

c) the 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;
payable; charges may be payable;

Amendment 588
Wim van de Camp

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

Text proposed by the Commission

(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;

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. In case of a services contract containing a subscription, the price shall mean the total monthly subscription costs;

Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in Article 5, including more or less stringent provisions intended to ensure a different level of consumer protection.

Or.en

Amendment 589
Zuzana Roithová

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

Text proposed by the Commission

(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

Amendment

(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
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; 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; if applicable the percentage of the price that is due to private copying levy on equipment or blank media. In case of an open-ended contract, the final price shall mean the total monthly costs.

Amendment 590
Kyriacos Triantaphyllides

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

Text proposed by the Commission

Amendment

Paint 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.

Or.en

Justification

It is critically important that consumers should know the final price they will pay including all additional charges.

Amendment 591
Jürgen Creutzmann

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

Or.el
Text proposed by the Commission

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;

Amendment

c) the price inclusive of taxes, unless the nature of the product or fluctuations on the market, for example for raw materials, mean that the price cannot reasonably be calculated in advance, 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;

Justification

A trader cannot be expected to disclose how he calculates his prices. Account must be taken of situations in which, because of market fluctuations over which the trader has no influence, the price cannot be precisely calculated in advance.

Amendment 592
Toine Manders

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

Text proposed by the Commission

(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 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. In case of a services contract including a subscription, the price shall be the total monthly subscription costs;

Or.de

Or.en
Amendment 593  
Catherine Stihler  
Proposal for a directive  
Article 5 – paragraph 1 – point c

Text proposed by the Commission: 
(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;

Amendment: 
(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; In case of an open-ended contract, the final price shall mean the total monthly costs.

Or.en

Amendment 594  
Catherine Stihler  
Proposal for a directive  
Article 5 – paragraph 1 – point c a (new)

Text proposed by the Commission: 
(ca) contact details including the telephone number and any other means of distance communication enabling the consumer to contact and communicate with the trader rapidly and directly.

Amendment: 
(ca) contact details including the telephone number and any other means of distance communication enabling the consumer to contact and communicate with the trader rapidly and directly.

Or.en

Amendment 595  
Kurt Lechner  
Proposal for a directive  
Article 5 – paragraph 1 – point d
Text proposed by the Commission

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

Amendment

deleted

Or.de

Amendment 596
Emilie Turunen

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

Text proposed by the Commission

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

Amendment

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

Or.en

Amendment 597
Werner Langen, Kurt Lechner

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

Text proposed by the Commission

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

Amendment

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

Or.de

Justification

Es kann Gewerbetreibenden und insbesondere kleinen und mittleren Unternehmen nicht zugemutet werden, über das Verfahren zum Umgang mit Beschwerden informieren zu müssen. Zum einen verfügen mittelständische Unternehmen mangels

Amendment 598
Evelyne Gebhardt

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

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

Amendment
(d) the arrangements for payment, delivery, performance, and performance;

Or.en

Amendment 599
Robert Rochefort

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

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

Amendment
(d) the arrangements for payment, delivery, performance, the complaint handling policy and the geographical address to which the consumer may address any complaint;

Or.fr

Justification
Deletion of the concept of professional diligence, which is too vague and subject to interpretation. Insertion of reference to an address to which consumers can send their
complaints.

Amendment 600
Othmar Karas

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

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

Amendment
(d) Where arrangements which depart from statutory provisions are to be agreed, the arrangements for payment, delivery and performance;

Or.de

Justification

It is not the responsibility of businesses to provide information about general statutory provisions. The trader should only be required to give information if he wishes business transactions to provide for agreed departures from statutory provisions. A requirement to provide information on the complaint handling policy would be to the disadvantage of SMEs, which often do not have any formal complaints system.

Amendment 601
Liem Hoang Ngoc

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

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

Amendment
(d) the arrangements for payment, delivery, performance and the complaint handling policy;

Or.fr
Amendment 602  
Jürgen Creutzmann

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

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

Amendment  
(d) the arrangements for payment, delivery and performance;

Justification

Setting out the complaint handling policy would in practice amount to only empty general terms being set out which would not represent any real added value for consumers.

Amendment 603  
Emilie Turunen

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

Text proposed by the Commission  
(da) the complaint handling policy and 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;

Amendment  
(da) the complaint handling policy and 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;

Amendment 604  
Emilie Turunen

Proposal for a directive  
Article 5 – paragraph 1 – point d b (new)
Text proposed by the Commission

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

Or.en

Amendment 605
Liem Hoang Ngoc

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

Text proposed by the Commission

(da) the date by which the trader undertakes to deliver the goods or to perform the service;

Or.fr

Amendment 606
Evelyne Gebhardt

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

Text proposed by the Commission

(da) The procedure of handling complaints, as well as the geographical address of the trader or the trader on whose behalf he/she is acting and the geographical address to which the consumer has to address his complaint;

Or.en
Amendment 607
Evelyne Gebhardt

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

Text proposed by the Commission
(db) the possibility of having recourse to appropriate redress mechanisms, including collective redress and alternative dispute resolution systems.

Amendment

Or.en

Amendment 608
Emilie Turunen

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

Text proposed by the Commission
(e) the existence of a right of withdrawal, where applicable;

Amendment
(e) the existence, or the absence thereof, 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;

Or.en

Amendment 609
Robert Rochefort

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

Text proposed by the Commission
(e) the existence of a right of withdrawal, where applicable;

Amendment
(e) the existence or the absence of a right of withdrawal, and, where applicable, the conditions and procedures for exercising that right pursuant to Annex I, including the withdrawal period and the name and address of the trader to whom the
withdrawal is to be communicated;

Justification

It is important that consumers should be given information about the withdrawal right and the procedures for exercising it, but also about the fact that this right does not exist for certain types of goods or services.

Amendment 610
Liem Hoang Ngoc

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

Text proposed by the Commission

(e) the existence of a right of withdrawal, where applicable;

Amendment

(e) the existence or absence of a right of withdrawal and, where applicable, the conditions for exercising that right;

Or.fr

Amendment 611
Evelyne Gebhardt

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

Text proposed by the Commission

(e) the existence of a right of withdrawal, where applicable;

Amendment

(e) the existence or non-existence of a right of withdrawal, as well as the condition and the procedure of the exercise of one's rights, including the possible return costs of the good, where applicable;

Or.en
Amendment 612
Andreas Schwab, Wim van de Camp

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

Text proposed by the Commission

(e) \textit{the existence of} a right of withdrawal, \textit{where applicable};

Amendment

(e) \textit{in so far as} a right of withdrawal \textit{exists, the conditions, period and procedure for exercising that right; for this purpose, the trader may use the model instructions on withdrawal and the model withdrawal form in Annex I(A) and I(B) respectively or any other clearly worded statement; if the trader informs the consumer using the model instructions on withdrawal in Annex I(A), he shall satisfy these information requirements;}

Or.de

Justification

This amendment replaces the previous amendment 75.

Amendment 613
Zuzana Roithová

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

Text proposed by the Commission

(e) the existence of a right of withdrawal, \textit{where applicable};

Amendment

(e) the existence, or the absence thereof, of a right of withdrawal, \textit{and the conditions and procedures for exercising that right including the eventual costs of return of the goods, in accordance with Annex I;}

Or.en

Amendment 614
Rafał Trzaskowski, Róża Gräfin von Thun und Hohenstein, Sandra Kalniete,
Małgorzata Handzlik

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

Text proposed by the Commission

(e) the existence of a right of withdrawal, where applicable;

Amendment

(e) the existence of a right of withdrawal, where applicable, the conditions, period and procedure for exercising that right, with information that the consumer would be liable to pay for the traders reasonable costs according to Article 17(2) if he decides to use the right of withdrawal after having made a request in accordance to Article 10.2 (a) or 11.4(a).

Or.en

Amendment 615
Jürgen Creutzmann

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

Text proposed by the Commission

(e) the existence of a right of withdrawal, where applicable;

Amendment

(e) in so far as a right of withdrawal exists, the conditions, period and procedure for exercising that right; for this purpose, the trader may use the model instructions on withdrawal and the model withdrawal form in Annex I(A) and I(B) respectively or any other clearly worded statement; if the trader informs the consumer using the model instructions on withdrawal in Annex I(A), he shall satisfy these information requirements;

Or.de

Justification

The use of a model form greatly alleviates the burden above all on SMEs and prevents disputes about the requirements relating to the model instructions. For reasons of legal certainty, it is important that traders can be confident that they have provided proper information if they use the model.
Amendment 616
Catherine Stihler

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

Text proposed by the Commission
(e) the existence of a right of withdrawal, where applicable;

Amendment
(e) the existence, or the absence thereof, 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 1;

Or.en

Justification

I do not believe it is sufficient for consumers just to be told they have a right to withdraw. Instead, consumers should also be told what this means in practice and, specifically, how to exercise that right effectively. Many consumers take initial advice on their rights from the trader, so it is important that traders are obliged to provide full information at the point of sale. If this further detail is not provided, there is a significant risk that consumers will be unaware of how and/or when they need to exercise their right to withdraw. As a result, this crucial right could be weakened.

Amendment 617
Catherine Soullie

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

Text proposed by the Commission
(e) the existence of a right of withdrawal, where applicable;

Amendment
(e) the existence or the absence of a right of withdrawal;

Or.en
Amendment 618
Emilie Turunen

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

Text proposed by the Commission

Amendment

(ea) clarification as to who bears the costs of the return of goods after withdrawal, where applicable;

Or.en

Amendment 619
Emilie Turunen

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

Text proposed by the Commission

Amendment

(eb) information about the financial guarantees to recover payments made in advance, in case of withdrawal or cancellation;

Or.en

Amendment 620
Robert Rochefort

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 on account of an explicit request for performance of the service during the withdrawal period, in accordance with Article 19, the information that the consumer will not benefit from a right of withdrawal, as a result of that request;
In order for the consumer’s choice to be well informed, the consumer must be aware, before making that choice, of the consequences of any explicit request for performance of a service during the withdrawal period, i.e. that he will not subsequently be able to exercise his right of withdrawal.

Amendment 621
Robert Rochefort

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

Text proposed by the Commission

Amendment

(eb) the date by which the trader undertakes to deliver the goods or to perform the service;

Or.fr

Justification

The indication of a latest possible delivery or performance date provides important information serving to ensure that consumers are properly informed.

Amendment 622
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(ea) Information on the financial guarantees to recover advanced payments, in the event of withdrawal from or termination of the contract.

Or.en
Amendment 623
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(eb) where applicable, the specification of who will bear the return costs after the withdrawal;

Or.en

Amendment 624
Damien Abad

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, that the consumer will not benefit from a right of withdrawal;

Or.fr

Justification

It is important that consumers should be given information about the withdrawal right and the procedures for exercising it, but also about the fact that this right does not exist for certain types of goods or services.

Amendment 625
Damien Abad, Philippe Juvin

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

Text proposed by the Commission

Amendment

(eb) the date by which the trader undertakes to deliver the goods or to
perform the service;

Justification

The indication of a latest possible delivery or performance date provides important information serving to ensure that consumers are better informed. It will also make it possible to adapt the transaction to the nature of the goods or service being offered.

Amendment 626
Damien Abad, Philippe Juvin

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

Text proposed by the Commission

Amendment

(eb) the fact that the consumer cannot invoke the right of withdrawal if he explicitly requests performance of the service during the withdrawal period;

Or.fr

Justification

The statement that the consumer cannot invoke the right of withdrawal if he explicitly requests performance of the service during the withdrawal period likewise constitutes important information for the consumer.

Amendment 627
Zuzana Roithová

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

Text proposed by the Commission

Amendment

(ea) clarification as to who bears the costs of the return of goods after withdrawal, where applicable;

Or.en
Amendment 628
Zuzana Roithová

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

Text proposed by the Commission

Amendment

(eb) information about the financial guarantees to recover payments made in advance, in case of withdrawal or cancellation;

Or.en

Amendment 629
Zuzana Roithová

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

Text proposed by the Commission

Amendment

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

Or.en

Amendment 630
Kurt Lechner

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

Text proposed by the Commission

Amendment

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

deleted

Or.de
Amendment 631
Robert Rochefort

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

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;

Or.fr

Amendment 632
Philippe Juvin

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

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;

Or.fr

Justification

It is important to recall the existence of a legal guarantee of conformity of goods.

Amendment 633
Emilie Turunen

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

Text proposed by the Commission
(fa) the existence of codes of conduct and

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

Amendment 634
Evelyne Gebhardt
Proposal for a directive
Article 5 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) where applicable, the existence and the conditions of customer service after the purchase, as well as the commercial guarantees;

Amendment 635
Evelyne Gebhardt
Proposal for a directive
Article 5 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(fb) where applicable, the existence of a code of conduct and how to have recourse to it

Amendment 636
Emilie Turunen
Proposal for a directive
Article 5 – paragraph 1 – point g

Text proposed by the Commission

Amendment

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

Or.en

Amendment 637
Evelyne Gebhardt

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 automatically renewable, the conditions for terminating the contract;

Or.en

Amendment 638
Othmar Karas

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, the conditions for terminating the contract, where conditions which depart from statutory provisions are to be agreed;

Or.de

Justification

It is not the responsibility of businesses to provide information about general statutory provisions, particularly in connection with cross-border contracts under the Rome I regulation where the law of the consumer's residence/habitual residence applies. The trader should only be required to give information if he wishes business transactions to provide for agreed departures from statutory provisions.
Amendment 639  
Zuzana Roithová

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 automatically renewable, the conditions for terminating the contract;

Or.en

Amendment 640  
Robert Rochefort

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 to be extended automatically, the conditions for terminating the contract;

Or.fr

Amendment 641  
Toine Manders

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 and the way how to terminating the contract;

Or.en
Amendment 642
Kurt Lechner

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

Text proposed by the Commission

h) the minimum duration of the consumer’s obligations under the contract, where applicable;

Amendment

deleted

Or.de

Amendment 643
Kurt Lechner

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

deleted

Or.de

Amendment 644
Emilie Turunen

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

Text proposed by the Commission

(ia) 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

Or.en
Amendment 645
Emilie Turunen

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

Text proposed by the Commission

Amendment

(ib) whether the other party is a consumer in case of a contract concluded through an intermediary

Or.en

Amendment 646
Emilie Turunen

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

Or.en

Amendment 647
Emilie Turunen

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

Or.en

Justification

Consumers need to receive sufficient and clear information concerning restrictions on the use of purchased digital goods.
Amendment 648
Emilie Turunen

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

*Text proposed by the Commission*

(i.e) the interoperability of digital products with hardware and software according to what the trader is aware of or can reasonably have been aware of, including any lack of interoperability

*Or.en*

*Justification*

Interoperability is an important means to achieve consumer welfare in the digital environment. When buying digital goods, the consumer interest relies on the ability to exchange data from one software or hardware to another, as well as the ability to use the digital goods on the device of their choice.

Amendment 649
Robert Rochefort

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

*Text proposed by the Commission*

(ia) where appropriate, the application of technical protection measures for digital products and the interoperability of digital products with hardware and software, in the light of what the trader knows or should reasonably have known (including non-interoperability).

*Or.fr*
Amendment 650
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(ia) the interoperability of digital products with hard-or software, insofar as the trader has knowledge of this fact, as well as any kind of incompatibility.

Or.en

Amendment 651
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(ib) that the contract is concluded by a trader and that the consumer is accordingly benefiting from the protection of this Directive;

Or.en

Amendment 652
Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(ic) the adoption of the technical protective measures of digital products, where applicable;

Or.en
Amendment 653  
Evelyne Gebhardt

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

Text proposed by the Commission  
Amendment

(id) the timeframe, during which the offer remains available;

Or.en

Amendment 654  
Evelyne Gebhardt

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

Text proposed by the Commission  
Amendment

(ie) the specification whether the other party is a consumer, in case the contract has been concluded by an intermediary;

Or.en

Amendment 655  
Andreas Schwab, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Sandra Kalniete, Lara Comi, Pablo Arias Echeverría

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

Text proposed by the Commission  
Amendment

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

Or.de
Justification

This amendment replaces the previous amendment 77.

Amendment 656
Zuzana Roithová

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

Text proposed by the Commission

Amendment

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

Or.en

Amendment 657
Zuzana Roithová

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

Text proposed by the Commission

Amendment

(ib) the interoperability of digital products with hardware and software according to what the trader is aware of or can reasonably have been aware of, including any lack of interoperability.

Or.en

Amendment 658
Eija-Riitta Korhola

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

Text proposed by the Commission

Amendment

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

Or.en

Justification

Refers specifically to digital products. Consumers need to receive sufficient and clear information concerning any restrictions on the use of the purchased digital goods, that might be prescribed by the contract and/or applied by a technological system, and affect the usability of the good contrary to the consumer's expectations.

Amendment 659
Eija-Riitta Korhola

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

Text proposed by the Commission

Amendment

(ib) the compatibility of digital products with hardware and software according to what the trader is aware of or can reasonably have been aware of, including any lack of compatibility;

Or.en

Justification

Refers specifically to digital products. The provisions on information requirements do not currently correspond to the specificities of digital goods. When buying digital goods, the consumer interest relies on having the information of the ability to use of the digital goods on the device or equipment of their choice, as well as information on ability to enhance data from one software or hardware to another.

Amendment 660
Emilie Turunen

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

Text proposed by the Commission

Amendment

1a. The trader shall ensure that
information about his geographical address and telephone number, as well as about the price inclusive of taxes and about the existence of a right of withdrawal, is provided in such a way that it is easy to find by the consumer

Amendment 661
Morten Løkkegaard
Proposal for a directive
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. the application of technical protection measures for digital products, where applicable;

Amendment 662
Morten Løkkegaard
Proposal for a directive
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. the interoperability of digital products with hardware and software according to what the trader is aware of or can reasonably have been aware of, including any lack of interoperability.

Amendment 663
Robert Rochefort
Proposal for a directive
Article 5 – paragraph 2
Text proposed by the Commission

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.

Amendment

deleted

Or.fr

Justification

This directive must not apply to contracts concluded by means of public auctions. In keeping with the amendment to Article 3(1) a.

Amendment 664
Robert Rochefort

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

Text proposed by the Commission

2a. Member States shall not provide for any other formal requirements applicable to the standard information on withdrawal besides those referred to in Annex I(A) and (A) a.

Amendment

Or.fr

Amendment 665
Evelyne Gebhardt

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

Text proposed by the Commission

2a. Paragraph 1 is not applicable in sales and service contract, that involve dealings of daily life and in which the trader has to render his service immediately when the contract is concluded.
Amendment 666
Andreas Schwab, Lara Comi
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 requirements as regards the content of the model instructions on withdrawal in Annex I(A).

Justification
This amendment replaces the previous amendment 79.

Amendment 667
Kurt Lechner
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.

deleted

Amendment 668
Toine Manders
Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. The information referred to in paragraph

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1 shall **form** an integral part of the sales or service contract. 1 shall **be** an integral part of the sales or service contract and has the appearance of a standard form that will be available in all Member States.

**Amendment 669**  
Emilie Turunen

Proposal for a directive  
Article 5 – paragraph 3 a (new)

*Text proposed by the Commission*  
*Amendment*

3a. The trader bears the burden of proof that he/she has provided the information required by this Article

*Or.en*

**Justification**

It is necessary to use the reversal of the burden of proof.

**Amendment 670**  
Emilie Turunen

Proposal for a directive  
Article 5 – paragraph 3 b (new)

*Text proposed by the Commission*  
*Amendment*

3b. The information provided according to this Article shall be given in plain, intelligible language and be legible

*Or.en*

**Justification**

There should be a transparency requirement in this Article.
Amendment 671
Emilie Turunen
Proposal for a directive
Article 5 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. Where the trader engages in the conclusion of sales or service contracts with a clearly identifiable group of consumers who are particularly vulnerable to the commercial practice or the underlying product, the information to be provided under this Article shall be provided in language, which is plain and intelligible for the average member of that group.

Or.en

Justification

The specific needs of vulnerable consumers in terms of information requirements should be taken into account.

Amendment 672
Emilie Turunen
Proposal for a directive
Article 5 – paragraph 3 d (new)

Text proposed by the Commission

Amendment

3d. This Article shall not affect information requirements imposed on traders on the basis of specific Community legislation.

Or.en

Amendment 673
Jürgen Creutzmann
Proposal for a directive
Article 5 – paragraph 3 d (new)
3d. Member States may not introduce or maintain, in their national law, any other provisions than those set out in Article 5 of this Directive, including where they would result in a higher or lower level of consumer protection.