



EUROPEAN PARLIAMENT

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Committee on the Internal Market and Consumer Protection

2008/0196(COD)

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*****I**

DRAFT REPORT

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

Committee on the Internal Market and Consumer Protection

Rapporteur: Andreas Schwab

Symbols for procedures

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

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

Amendments to a draft act

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0614),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0349/2008),
 - having regard to the communication from the Commission to the European Parliament and the Council entitled: 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
 - having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 16 December 2009¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A7-0000/2010),
1. Adopts the position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

¹ Not yet published in the Official Journal.

AMENDMENTS BY PARLIAMENT*

to the Commission proposal

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on consumer rights

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty ~~establishing the European Community~~ *on the Functioning of the European Union*, and in particular Article ~~95/114~~ thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Economic and Social Committee²,

Acting in accordance with the *ordinary legislative* procedure ~~laid down in Article 251 of the Treaty~~³,

Whereas:

(...)

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

(37b) Where the trader has failed to fulfil his obligations to deliver, the consumer should call upon him, on a durable medium, to make the delivery within a period of at least seven days and notify him of his intention to withdraw from the contract if delivery does not take place. Withdrawal should be deemed to have taken place on expiry of that period if no action has been taken. 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

* Political amendments: new or replacement text is marked in bold italics and deletions are indicated by strikethrough.

Technical corrections and adaptations by the services: new or replacement text is marked in italics and deletions are indicated by strikethrough.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

event of non-delivery by the time limit set by the consumer, in order to ensure a higher level of protection for the consumer.

- (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.
- (39) The trader should be liable to the consumer if the goods are not in conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the qualities of the goods. The quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand as well as on the expected life-span of the goods. *Where goods other than those ordered have been delivered, or in the event of undershipment, the goods should be presumed not to be in conformity with the contract.*
- (39a) *Where there is lack of conformity of the goods with the contract, consumers should be entitled to have the goods restored to conformity with the contract free of charge, choosing either repair or replacement, or, failing this, to have the price reduced or the contract rescinded.*
- (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. In order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of another remedy.* ~~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.~~
- (41) The consumer should not bear any costs for remedying the lack of conformity, particularly the cost of postage, labour and materials *and the cost of remedying the lack of conformity himself to a reasonable extent.* Furthermore, the consumer should not compensate the trader for the use of the defective goods.
- (42) ~~When the trader has either refused or has more than once failed to remedy the lack of conformity the~~ *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.* ~~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. *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, those measures must be essential for protecting the consumer, proportionate and effective.*

- (42a) *Where the trader, as final seller, is liable to the consumer because of an act or omission by the producer, it should be ensured that the trader, as final seller, can pursue remedies against the person or persons liable in the contractual chain. To this end, Member States' national provisions should determine the person or persons liable, together with the relevant actions and procedure.*
- (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, those measures must be essential for protecting the consumer, proportionate and effective.*
- (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.
- (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.***
- (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.
- (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.
- (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~~ **the terms otherwise available to him** (e.g. on the trader's website in respect of distance contracts) or attaching ~~standard terms~~ **them** to the ~~order form~~ **contract document** (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.

- (48) When making an assessment of good faith, particular regard should be made to the strength of the bargaining positions of the parties, whether the consumer was induced to accept the term and whether the goods or services were sold or supplied on the special order of the consumer. The requirement of good faith may be satisfied by the trader where he deals fairly and equitably with the other party whose legitimate interests he should take into account.
- (49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer.
- (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. ***However, Member States may adopt or maintain provisions designating additional terms as unfair in all circumstances or designating them clauses presumed to be unfair. However, those measures must be essential for protecting the consumer, proportionate and effective.***
- (51) ~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁺.~~
- (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.~~
- (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~~

⁺OJL 184, 17.7.1999, p. 23.

~~circumstances or which should be deemed unfair unless the trader has proved otherwise.~~

- (54) The Member States may use any concept of national contract law which fulfils the required objective that unfair contract terms should not be binding on the consumer.
- (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.
- (56) In accordance with the Treaty, the Directive provides for a high level of consumer protection. Nothing in this Directive prevents traders from offering consumers contractual arrangements which go beyond the protection afforded by this Directive.
- (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.
- (58) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive and they must ensure that these are enforced. The sanctions should be effective, proportionate and dissuasive.
- (59) The consumer should not be deprived of the protection granted by this Directive. Where the law applicable to the contract is that of a third country, Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) should apply, in order to determine whether the consumer retains the protection granted by this Directive.
- (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.
- (61) Since inertia selling, which consists of unsolicited supplies of goods or services to consumers, is prohibited by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')¹ but no contractual remedy is provided thereof, it is necessary to introduce in this Directive the contractual remedy of exempting the consumer from the provision of any consideration for such unsolicited supplies.
- (61a) Provision should be made for a mutual evaluation process in which, during the transposition period for this Directive, Member States would first have to screen their legislation in order to ascertain what stricter, Treaty-compliant provisions are to be maintained or adopted in their legal system in order to ensure a higher level of protection for the consumer. At the latest by the end of the transposition period for this Directive, Member States should draw up a report on the results of this screening. Each report should be submitted to all other Member States and***

¹ OJ L 149, 11.6.2005, p. 22.

interested parties. Member States would then have six months in which to submit their observations on these reports. No later than one year after the transposition period for this Directive, and every three years thereafter, the Commission should draw up a summary report, accompanied where appropriate by legislative proposals. If necessary, the Commission could assist the Member States in devising a common method.

- (61b) *To ensure a high level of protection in all Member States, persons and organisations with a legitimate interest in consumer protection should be encouraged to notify the Member States and the Commission about their evaluations and issue non-binding recommendations so that they can be taken into account when this Directive is reviewed.*
- (62) Directive 2002/58/EC already regulates unsolicited communications and provides for a high level of consumer protection. The corresponding provisions on the same issue contained in Article 10 of Directive 97/7/EC should be deleted.
- (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.~~
- (64) Directives 85/577/EEC, 93/13/EEC and 97/7/EC and Directive 1999/44/EC should be repealed.
- (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.
- (66) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

(...)

Chapter IV

Other consumer rights specific to sales contracts

Article 21 Scope

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

~~this Chapter shall only apply to the goods.~~ ***Sales contracts within the meaning of this Directive shall also include***

- ~~2. This Chapter shall also apply to contracts for the supply of goods to be manufactured or produced.~~
- ~~3. This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the goods by repair under Article 26.~~
4. Member States may decide not to apply this ***This Chapter shall not apply*** to the sale of second-hand goods ***sold*** at public auctions.

Article 22 Supplies

1. Unless the parties have agreed otherwise, the trader shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, other than the carrier and indicated by the consumer, within a maximum of thirty days from the day of the conclusion of the contract.
2. Where the trader has failed to fulfil his obligations to deliver, the consumer ***may call upon him, on a durable medium, to make the delivery within a period appropriate to the circumstances, which may not be less than seven days, and notify him of his intention to withdraw from the contract if delivery does not take place. If, upon expiry of that period, no action has been taken, it shall be assumed that the consumer has withdrawn from the sales contract.*** A consumer who has already paid the price shall be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1 ***day on which he withdrew from the contract. This shall be without prejudice to the rights of the consumer to claim damages.***
- 2a. ***If the trader fails to deliver within the appropriate period referred to in paragraph 2, Member States may adopt or maintain provisions of national law providing for other remedies for the consumer.***

Article 23 Passing of risk

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

Article 24 Conformity with the contract

1. The trader shall ***be obliged to*** deliver the goods ***to the consumer*** in conformity with the sales contract.

2. Delivered goods shall be presumed to be in conformity with the contract if they satisfy the following conditions:
 - (a) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model;
 - (b) they are fit for any particular purpose for which the consumer requires them and which he made known to the trader at the time of the conclusion of the contract and which the trader has accepted;
 - (c) they are fit for the purposes for which goods of the same type are normally used or
 - (d) they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.
3. There shall be no lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or should reasonably have been aware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.
4. The trader shall not be bound by public statements, as referred to in paragraph 2(d) if he shows that one of the following situations existed:
 - (a) he was not, and could not reasonably have been, aware of the statement in question;
 - (b) by the time of conclusion of the contract the statement had been corrected;
 - (c) the decision to buy the goods could not have been influenced by the statement.
5. Any lack of conformity resulting from the incorrect installation of the goods shall be ~~considered as~~ **equivalent to** a lack of conformity of the goods where the installation forms part of the sales contract and the goods were installed by the trader or under his responsibility. The same shall apply equally if the goods, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Article 25

Legal rights – Liability for lack of conformity

The trader shall be liable to the consumer for any lack of conformity which exists at the time the risk passes to the consumer.

Article 26

Remedies for lack of conformity

1. ~~As provided for in paragraphs 2 to 5, where the goods do not conform to the contract,~~ **Where there is lack of conformity**, the consumer is **shall be** entitled **either** to:

- (a) — have the lack of conformity *of the goods* remedied by repair or replacement *in accordance with paragraphs 2, 3 and 5, or to*
 - (b) — have the price reduced *appropriately or the sales contract rescinded in accordance with paragraphs 4, 5 and 5a.*
 - (c) — have the contract rescinded.
2. The *consumer in the first place* ~~trader shall remedy the lack of conformity~~ *may insist* by either *on* repair or replacement *by the trader, provided that this is neither impossible nor disproportionate* ~~according to his choice.~~
3. *Either of the remedies referred to in paragraph 2 shall be considered disproportionate if it causes the trader costs which* ~~Where the trader has proved that remedying the lack of conformity by repair or replacement is unlawful, impossible or would cause the trader a disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded. A trader's effort is disproportionate if it imposes costs on him which, in comparison with the price reduction or the rescission of the contract, are excessive, taking into account the value of the goods if there was no lack of conformity and the significance of the lack of conformity.~~
- (a) *in the light of what would be the value of the goods if there were no lack of conformity,*
 - (b) *taking into account the significance of the lack of conformity,*
 - (c) *upon consideration of the question as to whether use could be made of other remedies (repair or replacement) without significance inconvenience for the consumer,*
- would be unreasonable by comparison with the alternative remedy (repair or replacement).*
- Repair or replacement shall take place within a reasonable time and without significant inconvenience for the consumer.* ~~The consumer may only rescind the contract if the lack of conformity is not minor.~~
4. *Without prejudice to paragraph 5b,* ~~The~~ *the* consumer may *insist on a reasonable reduction in price or rescission of the contract* ~~resort to any remedy available under paragraph 1,~~ where one of the following situations exists:
- (a) the *consumer is not entitled to have the goods either repaired or replaced* ~~trader has implicitly or explicitly refused to remedy the lack of conformity;~~
 - (b) the trader has failed to remedy the lack of conformity within a reasonable time;
 - (c) the trader has ~~tried to remedy~~ *remedied* the lack of conformity, causing significant inconvenience to the consumer;
 - (d) ~~the same defect has reappeared more than once within a short period of time.~~
5. The significant inconvenience for the consumer and the reasonable time needed for the trader to remedy the lack of conformity shall be assessed taking into account the nature of the goods ~~or~~ *and* the purpose for which the consumer ~~acquired~~ *requires* the goods as ~~provided for by~~ *within the meaning of* Article 24(2)(b).

- 5a. The consumer shall not be entitled to have the sales contract rescinded if the lack of conformity is minor.**
- 5b. Member States may adopt or maintain provisions of national law giving consumers, in the event of lack of conformity, a free choice from among the remedies referred to in paragraph 1, in order to ensure a higher level of protection for consumers. These measures must be essential in order to protect consumers appropriately, and must be proportionate and effective.**

Article 27
Costs and damages

1. The consumer shall be entitled to have the lack of conformity remedied free of any cost.
- 1a. The consumer shall also be refunded by the trader, to a reasonable extent, the cost of remedying the lack of conformity himself.**
2. Without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

Article 27a
Right of recourse

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

Article 28
Time limits and burden of proof

1. The trader shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the risk passed to the consumer.
- ~~2. When the trader has remedied the lack of conformity by replacement, he shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has acquired the material possession of the replaced goods.~~
3. In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year.
- ~~4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within two months from the date on which he detected the lack of conformity.~~
5. Unless proved otherwise, any lack of conformity which becomes apparent within six months of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods and the nature of the lack of conformity.

- 5a. *Member States may adopt or maintain provisions of national providing for a longer liability period, a longer period for reversal of the burden of proof in the consumer's favour or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to ensure a higher level of protection for the consumer. These measures must be essential in order to protect consumers appropriately, and must be proportionate and effective.*

Article 29 Commercial guarantees

1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. In the absence of the guarantee statement, the commercial guarantee shall be binding under the conditions laid down in the advertising on the commercial guarantee.
2. The guarantee statement shall be drafted in plain intelligible language and be legible. It shall include the following:
 - (a) legal rights of the consumer *under the applicable provisions of national law*, as provided for in Article 26, and a clear statement that those rights are not affected by the commercial guarantee,
 - (b) set the contents of the commercial guarantee and the conditions for making claims, notably the duration, territorial scope and the name and address of the guarantor,
 - (c) ~~without prejudice to Articles 32 and 35 and Annex III(1)(j)~~, set out, where applicable, that the commercial guarantee cannot be transferred to a subsequent buyer.
3. If the consumer so requests, the trader shall make the guarantee statement available in a durable medium.
4. Non compliance with paragraph 2 or 3 shall not affect the validity of the guarantee.

Chapter V

Consumer rights concerning contract terms

Article 30 Scope

1. This Chapter shall apply to contract terms *in contracts between traders and consumers which have not been individually negotiated. A contract term shall always be regarded as not individually negotiated where it has been* drafted in advance ~~by the trader or a third party, which~~ and the consumer *has therefore not been able to influence the substance of the term, particularly in the context* ~~agreed to without having the possibility of influencing their content, in particular where such contract terms are part of a pre-formulated standard contract.~~

2. The fact that ~~the consumer had the possibility of influencing the content of certain aspects of a contract term or one specific term~~ **have been individually negotiated**, shall not exclude the application of this Chapter to ~~other~~ **the rest of the contract, terms which form part of the** *provided that, overall, it is considered a pre-formulated standard contract.*
3. This Chapter shall not apply to contract terms ~~reflecting mandatory~~ **based on binding** statutory or regulatory provisions, ~~which comply with Community law and~~ **or on** the provisions or principles of international conventions to which the ~~Community or the~~ Member States **or the Union** are party.

Article 31

Transparency requirements of contract terms

1. Contract terms shall be ~~expressed~~ **written** in plain, intelligible language and be legible.
2. Contract terms shall be made available to the consumer in a manner which gives him a real opportunity of becoming acquainted with them before the conclusion of the contract, with due regard to the means of communication used.
3. The trader shall seek the express consent of the consumer to any payment in addition to the remuneration foreseen for the trader's main contractual obligation. If the trader has not obtained the consumer's express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.
4. Member States shall refrain from imposing any presentational requirements as to the way the contract terms **in a distance or off-premises contract** are expressed or made available to the consumer.

Article 32

General principles

1. ~~Where a~~ **A** contract term ~~is not included in Annex II or III, Member States shall ensure that it is~~ **be** regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the **goods or services** ~~products~~ for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent. When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the trader in accordance with Article 31.
3. ~~Paragraphs 1 and 2 shall not apply to the~~ **The** assessment of **the fairness of contract terms shall concern neither** the main subject matter of the contract ~~or nor~~ **to** the adequacy of the **price of the goods or remuneration for the services in question,**

~~foreseen for the trader's main contractual obligation,~~ provided that the trader fully complies with Article 31(1), (2) and (3).

Article 33 Burden of proof

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

Article 34 Terms considered unfair in all circumstances

1. Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. That list of contract terms shall apply in all Member States ~~and may only be amended in accordance with Articles 39(2) and 40.~~
- 1a. ***Member States may adopt or maintain provisions identifying other contract terms as unfair in all circumstances. Those provisions must be essential in order to protect consumers appropriately, and must be proportionate and effective.***

Article 35 Terms presumed to be unfair

1. Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. That list of contract terms shall apply in all Member States ~~and may only be amended in accordance with Articles 39(2) and 40.~~
- 1a. ***Member States may adopt or maintain provisions designating additional terms as terms presumed to be unfair. Those provisions must be essential in order to protect consumers appropriately, and must be proportionate and effective.***

Article 36 Interpretation of terms

1. Where there is doubt about the meaning of a *contract* term, the interpretation most favourable to the consumer shall prevail.
2. This Article shall not apply in the context of the procedures laid down in Article 38(2).

Article 37 Effects of unfair contract terms

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

Article 38
Enforcement in relation to unfair contract terms

1. Member States shall ensure that, in the interests of consumers and of ~~competitors~~ **traders**, adequate and effective means exist to ~~prevent~~ **end** the ~~continued~~ use of unfair terms in contracts concluded **by traders** with consumers ~~by sellers or suppliers~~.
2. **The means referred to in paragraph 1 shall also include legislation and** ~~In particular,~~ persons or organisations, having a legitimate interest under national law in protecting consumers, ~~may take~~ **and capable of taking** action before the courts or **competent** administrative authorities, **in compliance with provisions of national law**, ~~for a decision~~ **as to so that they can decide** whether contract terms drawn up for general use are unfair **and deploy effective means to end the use of such terms**.
- ~~3. Member States shall enable the courts or administrative authorities to apply appropriate and effective means to prevent traders from continuing to use terms which have been found unfair.~~
4. **The means referred to in paragraph 2 may be deployed** ~~Member States shall ensure that the legal actions referred to in paragraph 2 and 3 may be directed either separately or jointly depending on national procedural laws against a number of traders from the same economic sector or their associations which use or recommend the use of the same general contract terms or similar terms.~~

~~Article 39~~
~~Review of the terms in Annexes 2 and 3~~

- ~~1. Member States shall notify to the Commission the terms which have been found unfair by the competent national authorities and which they deem to be relevant for the purpose of amending this Directive as provided for by paragraph 2.~~
- ~~2. In the light of the notifications received under paragraph 1, the Commission shall amend Annex II and III. Those measures designed to amend non essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 40(2)~~

Chapter VI

General requirements

~~Article 40~~
~~Committee~~

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

~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC⁺ shall apply, having regard to the provisions of Article 8 thereof.~~

Article 41 Enforcement

1. Enforcement 1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:
 - (a) public bodies or their representatives;
 - (b) consumer organisations having a legitimate interest in protecting consumers;
 - (c) professional organisations having a legitimate interest in acting.

Article 42 Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
2. Member States shall notify those provisions to the Commission by the date specified in Article 46 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 43 Imperative nature of the Directive

If the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by this Directive.

Article 44 Information

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

⁺ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 44).

Article 45
Inertia selling

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

Article 46
Implementation

1. Member States shall adopt and publish, by [eighteen months after its entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
They shall apply those provisions from [two years after its entry into force].
When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.
2. ~~Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

Article 46a
Reporting requirement and mutual evaluation

1. ***By [the end of the transposition period], and every three years thereafter, Member States shall draw up a report containing the following information:***
 - (a) the text of any additional information requirements which Member States adopt or maintain pursuant to Article 5(3)(b) and (c);***
 - (b) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 22(2a);***
 - (c) the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 26(5b) and Article 28(5a);***
 - (d) the text of any additional contract terms designated by Member States, pursuant to Article 34(1a), as unfair in all circumstances;***
 - (e) the text of any additional contract terms designated by Member States, pursuant to Article 35(1a), as terms presumed to be unfair;***
 - (f) the text of any decisions of fundamental importance – together with the grounds for them – taken by Member States' courts, arbitration bodies or competent administrative authorities in the field covered by this Directive.***

2. *With regard to the information referred to in paragraph 1(a), (b), (c), (d) and (e), Member States shall detail why diverging provisions of national law are essential in order to protect consumers appropriately and in what way they are proportionate and effective. Commercial practicability and the furnishing of evidence, from a practical and legal point of view, in successfully concluded court proceedings shall be the sole criterion for assessing the consumer protection effectiveness of diverging provisions of national law.*
3. *The Commission shall ensure that the details referred to in paragraph 1(d) and (e) are easily accessible to consumers and traders, e.g. on a website.*
4. *The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit their observations on each of the reports within six months of receipt. Within the same period, the Commission shall consult interested parties on those reports.*

Article 46b

Reporting by consumer protection agents

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

Article 46c

Commission report

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

Chapter VII

Final provisions

Article 47

Repeal

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

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

Article 48
Review

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

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

Article 49
Entry into force

This Directive shall enter into force on the on the 20th day following its publication in the Official Journal of the European Union.

Article 50
Addresses

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX II

CONTRACT TERMS WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

Contract terms, which have the object or effect of the following, shall be unfair in all circumstances:

- (a) excluding or limiting the **statutory** liability of the trader ~~for death or personal injury caused to~~ **where the consumer dies or is physically injured through as a result of** an act or omission of that trader;
- (aa) **excluding or limiting the statutory liability of the trader where the consumer's property is damaged as a result of for death or personal injury caused to the consumer as a result of an intentional or grossly negligent act or omission of that trader;**
- (ab) **making the period for termination of an open-ended contract by the trader shorter than that set for the consumer;**
- (b) limiting the trader's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular **formal requirement** ~~condition which depends exclusively on the trader;~~
- (c) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, **restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with the other party to the contract.**
- (ca) **assigning exclusive jurisdiction in all disputes under a contract to the competent court where the trader is resident, unless that court is the competent court where the consumer is resident, too;**
- (cb) **enabling the trader, at his own discretion, to set the prices of goods and services which should be set after conclusion of the contract;**
- ~~(d) restricting the evidence available to the consumer or imposing on him a burden of proof which, according to the applicable law, should lie with the trader;~~
- (e) giving the trader the right to determine whether the goods or services supplied are in conformity with the contract or giving the trader the exclusive right to interpret any term of the contract;
- (f) **enabling the trader to terminate or modify the contract because of the introduction of the euro.**

ANNEX III

CONTRACT TERMS WHICH ARE PRESUMED TO BE UNFAIR

1. Contract terms, which have the object or effect of the following, are presumed to be unfair:
 - (a) excluding or **unduly** limiting the legal rights of the consumer vis-à-vis the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the rights of the consumer of offsetting a debt owed to the trader against a claim which the consumer may have against him;
 - (b) allowing the trader to retain a payment **amounts paid** by the consumer where the ~~latter~~ **consumer** fails to conclude or perform the contract, ~~without giving~~ **with** the consumer ~~the having no~~ right to be compensated of the same amount **corresponding compensation** if the trader fails to conclude or perform the contract;
 - (c) requiring any consumer who fails to fulfil his ~~obligation~~ **obligations** to pay **disproportionately high** damages ~~which significantly exceed the harm suffered by~~ **to** the trader;
 - (d) allowing the trader to terminate the contract **at his own discretion** where the same right is not granted to the consumer, **and allowing the trader, where he himself terminates the contract, to retain amounts paid for services not yet provided by him**;
 - (e) ~~enabling~~ **allowing** the trader to terminate an open-ended contract without reasonable notice except where ~~the consumer has committed a~~ **there are** serious ~~breach of contract~~ **grounds for doing so**;
 - (f) automatically renewing a fixed-term contract where the consumer ~~does~~ **has** not indicate otherwise **made a statement to the contrary** and has to give a long notice **the point in time when the consumer must state that he does not wish to terminate** **renew** the contract at the end of each renewal period **is unduly far ahead in the future**;
 - (g) ~~allowing~~ **enabling** the trader to increase the price - **without the consumer being entitled to withdraw from the contract - if the final price, in relation to the price agreed with the consumer when the contract was concluded, is too high** without giving the consumer the right to terminate the contract;
 - (h) obliging the consumer to fulfil all his obligations where the trader ~~has failed~~ **fails** to fulfil all his obligations;
 - (i) giving the trader the possibility of transferring his obligations under the contract, without the consumer's agreement, **if it possibly reduces guarantees for the consumer**;
 - (j) ~~restricting the consumer's right to re-sell the goods by limiting the transferability of any commercial guarantee provided by the trader;~~

- (k) enabling the trader to unilaterally alter the terms of the contract, including the characteristics of the product or service, ***without a valid reason which is specified in the contract***;
 - (ka) ***enabling the trader to alter unilaterally, without a valid reason, any characteristics of the product or service to be provided***;
 - ~~(l) unilaterally amending contract terms communicated to the consumer in a durable medium through on-line contract terms which have not been agreed by the consumer.~~
 - (la) ***making an agreement binding on the consumer whereas provision of services by the trader is subject to a condition whose realisation depends on his own will alone***;
 - (lb) ***irrefutably presuming the agreement of the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract***;
2. Point 1(e) shall not apply to ***preclude*** terms by which a supplier of financial service ***services*** reserves the right to terminate ~~unilaterally~~ an open-ended contract ***unilaterally and - where there is a valid reason -*** without notice, provided that the ~~supplier~~ ***trader*** is required to inform the other contracting party or parties thereof immediately.
3. ~~Point~~ ***Points 1(e), (g) and (ka)*** shall not apply to
- (a) transactions in transferable securities, financial instruments and other ~~products~~ ***goods*** or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;
 - (b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;
 - ~~(c) price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.~~
- 3a. Point 1(g) shall not preclude price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.***
4. Point 1(k) shall not apply to ***preclude terms under which***
- ~~(a) terms under which~~ a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately;
 - ~~(b) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;~~
 - ~~(c) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;~~

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

ANNEX IV
Repealed Directives with the list of its successive amendments
(as referred to in Article 47)

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises	OJ L 372, 31.12.1985, p. 31.
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts	OJ L 95, 21.4.1993, p. 29.
Directive 97/7/EC of the European Parliament and of the Council	OJ L 144, 4.6.1997, p. 19.
Directive 2002/65/EC of the European Parliament and of the Council	OJ L 271 of 09.10.02, p. 16.
Directive 2005/29/EC of the European Parliament and of the Council	OJ L 149 of 11.06.05, p. 29.
Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007	OJ L 319 of 05.12.07, p. 1.
Directive 1999/44/EC of the European Parliament and of the Council	OJ L 171, 7.7.1999, p. 12.

ANNEX V
CORRELATION TABLE

(To be inserted later)