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*Committee on Legal Affairs*

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**2008/0196(COD)**

24.8.2010

## **DRAFT OPINION**

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

on the proposal for a European Parliament and Council directive on consumer rights  
(COM(2008)0614 – C6-0349/2008 – 2008/0196(COD))

Rapporteur(\*): Diana Wallis

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

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## SHORT JUSTIFICATION

### *Degree of harmonisation*

The intention of the Commission to increase cross-border transactions by eliminating legal fragmentation has to be highly welcomed. However, this aim is almost certainly impossible to achieve given the current circumstances surrounding the consumer *acquis*; there is a certain sense that we would not have started from where we are now if this was the aim we had in view, it having become abundantly clear that the proposed rules cannot function in isolation from national systems of private law. Furthermore, as the proposal is not a comprehensive harmonisation of contract law, it inevitably would have unintended repercussions on national law. Even more, the full harmonisation as proposed would lead in many cases to paradoxical effects, where the fully harmonised provisions of consumer contract law would contrast with other not fully harmonised provisions of b2c and b2b contract law at Member State level<sup>1</sup>. As a result, the goal of a “single set of rules” is highly unlikely to be achievable, and endless litigation around delineation issues is predictable<sup>2</sup>.

Therefore, your rapporteur proposes minimum harmonisation at a high level of consumer protection as a rule - coupled with full harmonisation of some specific, technical rules as set out as an exception of the general rule in a new paragraph 2 of Article 4. By this new paragraph, your rapporteur proposes full harmonisation only for the provisions in Chapter III on exercise and effects of the right of withdrawal. Full harmonisation is not appropriate for general information duties and a number of specific information duties. As regards unfair terms, your rapporteur proposes not to use full harmonisation and to make clear that the black and grey lists are not exhaustive. Your rapporteur also opts for minimum harmonisation as regards consumer sales of goods and remedies for non-performance.

### *Level of consumer protection*

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

### *Consistency with the DCFR*

Even though the main purpose of the Common Frame of Reference was that it could serve as a toolbox for the Commission when revising the *acquis* in the area of contract law, the proposal does not contain any single reference to the DCFR. Based on the study on the comparison between the provisions of the DCFR and the proposal for a CRD<sup>3</sup> your rapporteur

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

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

<sup>3</sup> De Booy, Mak, Hesselink, "A comparison between the provisions of the draft Common Frame of Reference and the European Commission's proposal for a ConsumerRights Directive", study requested by the Committee on Legal Affairs, PE 419.608.

proposes a number of amendments, inspired by the DCFR, in order to improve consistency with national contract law as well as with other EU legislation in the field of consumer law and at the same time provide for a higher level of consumer protection.

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

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

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

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

*Some specific amendments:*

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

## **AMENDMENTS**

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

## Amendment 1

### Proposal for a directive

#### Citation 1

*Text proposed by the Commission*

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

*Amendment*

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

Or.en

## Amendment 2

### Proposal for a directive

#### Citation 4

*Text proposed by the Commission*

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

*Amendment*

Acting in accordance with the *ordinary legislative* procedure,

Or.en

## Amendment 3

### Proposal for a directive

#### Recital 2

*Text proposed by the Commission*

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

*Amendment*

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive.

**Amendment 4****Proposal for a directive  
Recital 3***Text proposed by the Commission*

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

*Amendment*

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

Or.en

**Amendment 5****Proposal for a directive  
Recital 4***Text proposed by the Commission*

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

*Amendment*

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

Or.en

**Amendment 6****Proposal for a directive  
Recital 5**

*Text proposed by the Commission*

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

(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 ***certain aspects of*** consumer information and ***of*** the right of withdrawal in distance and off-premises contracts ***can*** contribute to the better functioning of the business to consumer internal market.

Or.en

**Amendment 7**

**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.

Or.en

**Amendment 8**

**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) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and business.

Or.en



## Amendment 9

### Proposal for a directive

#### Recital 15

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

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

##### *Amendment*

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

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

Or.en

## Amendment 10

### 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**

##### *Amendment*

(17) Consumers should be entitled to receive information before the conclusion of the contract. In distance and off-premises transactions, the **business** should always provide the information on arrangements for payment, delivery, performance and the complaint handling policy.

***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.en

## Amendment 11

### 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 ***of an appropriate duration in order to allow*** him to ascertain the nature, ***quality*** and functioning of the goods.

Or.en

## Amendment 12

### Proposal for a directive Recital 32

*Text proposed by the Commission*

***(32) In order to avoid the trader reimbursing a consumer who has not returned the goods, the consumer should be required to send back the goods no later than fourteen days after having informed the trader about his decision to withdraw.***

*Amendment*

***deleted***

Or.en

## Amendment 13

### 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 possibility to require the **business** to repair the goods or to replace them. The lack of spare parts should not be a valid ground to justify the **business's** failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort.

Or.en

## Amendment 14

### 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**

Or.en

## Amendment 15

### 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 16

### 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

*Amendment*

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

prohibited.

such as pre-ticked boxes online should be prohibited.

Or.en

## Amendment 17

### Proposal for a directive Recital 50

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or.en

## Amendment 18

### Proposal for a directive Recital 51

#### *Text proposed by the Commission*

*(51) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>10</sup>.*

<sup>10</sup> OJ L 184, 17.7.1999, p. 23.

#### *Amendment*

*deleted*

Or.en

## Amendment 19

### 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.*

*Amendment*

*deleted*

Or.en

## Amendment 20

### 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;

Or.en

## Amendment 21

### 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) "*business*" means any natural or legal person, *irrespective of whether it is publicly or privately owned, which*, in contracts covered by this Directive, is acting for purposes relating to *that person's* trade, business, craft or profession

and anyone acting in the name of or on behalf of a *business, even if the person does not intend to make a profit in the course of the activity*;

Or.en

## Amendment 22

### 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 *under which a business undertakes to transfer the ownership* of goods to the consumer, *either immediately on conclusion of the contract or at some future time, and the consumer undertakes to pay the price for such transfer of ownership*;

Or.en

## Amendment 23

### 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

## Amendment 24

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

*Text proposed by the Commission*

*(c) electricity;*

*Amendment*

*deleted*

**Amendment 25****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***deleted**

Or.en

**Amendment 26****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 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.

Or.en

**Amendment 27****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

*Amendment*

3. Only Articles 30 to 39 on consumer rights concerning unfair contract terms shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council and of Council Directive 90/314/EEC.



of the Council and of Council Directive  
90/314/EEC.

Or.en

## Amendment 28

### Proposal for a directive Article 4 – title

*Text proposed by the Commission*

*Amendment*

**Full** harmonisation

**Degree of** harmonisation

Or.en

## Amendment 29

### Proposal for a directive Article 4

*Text proposed by the Commission*

*Amendment*

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

**1. Except where provided for in paragraph 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.**

2. 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

## Amendment 30

### 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 service contract, the **business** shall provide the consumer with ***such information as the consumer may reasonably expect, taking into account the standards of quality and performance which would be normal under the circumstances. The information shall be clear and precise, and expressed in plain and intelligible language. The information must include, in particular,*** the following information, if not already apparent from the context:

Or.en

**Amendment 31**

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

*Text proposed by the Commission*

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

*Amendment*

(b) the geographical address and the identity of the **business with which the consumer is transacting**, such as ***its*** trading name and, where applicable, the geographical address ***of the place of business*** and the identity of the **business** on whose behalf ***it*** is acting;

Or.en

**Amendment 32**

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

*Text proposed by the Commission*

*Amendment*

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

### Amendment 33

#### 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;

Or.en

### Amendment 34

#### 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;

Or.en

### Amendment 35

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

*Text proposed by the Commission*

*Amendment*

**(da) the complaint handling policy and the geographical address to which the consumer can direct any complaints,**

*including where applicable the address of a body dealing with complaints on behalf of the business;*

Or.en

### **Amendment 36**

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

*Text proposed by the Commission*

*Amendment*

*(db) the possibility of having recourse to an amicable dispute settlement, where such a possibility exists;*

Or.en

### **Amendment 37**

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

*Text proposed by the Commission*

*Amendment*

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

(e) the existence *or the absence* of a right of withdrawal, *and, in accordance with Annex I, the conditions and procedures for exercising that right including the withdrawal period and the name and address of the business to which the withdrawal is to be communicated, and the possible costs of returning the goods*;

Or.en

### **Amendment 38**

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

*Text proposed by the Commission*

*Amendment*

*(ea) a new clarification as to who is to bear the costs of the return of goods after*

*withdrawal, where applicable;*

Or.en

#### **Amendment 39**

##### **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 the event of withdrawal or cancellation;***

Or.en

#### **Amendment 40**

##### **Proposal for a directive**

##### **Article 5 – paragraph 1 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

***(ia) that the contract will be concluded with a business and that, as a result, the consumer will benefit from the protection provided for in this Directive;***

Or.en

#### **Amendment 41**

##### **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 42

### 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 43

### 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

## Amendment 44

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

*Text proposed by the Commission*

*Amendment*

***3a. The business shall bear the burden of -proving that it has provided the information required by this Article.***

Or.en

## Amendment 45

### Proposal for a directive Article 6 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Without prejudice to Articles 7(2), 13

2. Without prejudice to Articles 7(2), 13

and 42, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective **contract law** remedies for any breach of Article 5.

and 42, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective remedies for any breach of Article 5.

Or.en

## **Amendment 46**

### **Proposal for a directive Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. This Article shall be without prejudice to national legislation under which certain contracts concluded through an intermediary are considered to be business-to-consumer contracts.***

Or.en

## **Amendment 47**

### **Proposal for a directive Article 9 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

Or.en

## **Amendment 48**

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

*Text proposed by the Commission*

*Amendment*

***1a. The business shall bear the burden of***

*proving that it has provided the information required by this Article.*

Or.en

## Amendment 49

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

#### *Text proposed by the Commission*

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

#### *Amendment*

1. With respect to off-premises contracts, the information provided for in Article 9 shall be given in the order form in plain and intelligible language and ***confirmed in textual form on a durable medium***.

The order form shall include the standard withdrawal form set out in Annex I(B). ***The order form shall be provided to the consumer prior to the conclusion of the contract. In cases where the order form is not on paper, the consumer shall receive a copy of the order form on another durable medium.***

Or.en

## Amendment 50

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

#### *Text proposed by the Commission*

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

#### *Amendment*

2. An off-premises contract shall be valid ***only*** if the consumer signs the order form.

Or.en



## Amendment 51

### Proposal for a directive Article 11 – paragraph 4

*Text proposed by the Commission*

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

*Amendment*

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

Or.en

## Amendment 52

### Proposal for a directive Article 13

*Text proposed by the Commission*

If the ***trader*** has not provided the consumer with the information on the right of withdrawal in breach of Articles 9(b), 10(1) and 11(4), the withdrawal period shall expire ***three months*** after the ***trader has fully performed his other contractual obligations***.

*Amendment*

If the ***business*** has not provided the consumer with the information on the right of withdrawal in breach of Articles 9(b), 10(1) and 11(4), the withdrawal period shall expire ***no later than one year*** after the ***conclusion of the contract***.

Or.en

## Amendment 53

### Proposal for a directive Article 14 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

The consumer shall inform the ***trader*** of his decision to withdraw ***on a durable***

*Amendment*

The consumer shall inform the ***business*** of his decision to withdraw.

*medium either in a statement addressed to the trader drafted in his own words or using the standard withdrawal form as set out in Annex I(B).*

Or.en

#### Amendment 54

##### Proposal for a directive Article 14 – paragraph 1 – subparagraph 2

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

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

###### *Amendment*

Member States shall not provide for any formal requirements applicable to *the communication of withdrawal*.

*A communication of withdrawal may be made by the consumer, in particular, in the form of a statement addressed to the business drafted in his own words, using the standard withdrawal form as set out in Annex I(B), and, unless the circumstances indicate otherwise, by returning the subject matter of the contract.*

Or.en

#### Amendment 55

##### Proposal for a directive Article 14 – paragraph 2

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

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

###### *Amendment*

2. For distance contracts concluded on the Internet, *if the business gives* the option to the consumer to electronically fill in and submit the standard withdrawal form on the *business's* website, *the business* shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.

## Amendment 56

### Proposal for a directive Article 16 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. The **business** shall reimburse any payment received from the consumer **without undue delay, and in any case not later than** thirty days from the day on which **it** receives the communication of withdrawal.

Or.en

## Amendment 57

### Proposal for a directive Article 17 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or.en

## Amendment 58

### Proposal for a directive Article 18 – title

*Text proposed by the Commission*

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

*Amendment*

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

*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

Or.en

## Amendment 59

### Proposal for a directive Article 18 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

Or.en

## Amendment 60

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

*Text proposed by the Commission*

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

*Amendment*

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

Or.en

## Amendment 61

### Proposal for a directive Article 21 – paragraph 3

*Text proposed by the Commission*

**3. This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the**

*Amendment*

**deleted**

*goods by repair under Article 26.*

Or.en

### **Amendment 62**

#### **Proposal for a directive Article 21 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or.en

### **Amendment 63**

#### **Proposal for a directive Article 22 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. Unless the parties have agreed otherwise, the **business** 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, **without undue delay after the conclusion of the contract and in any case not later than** thirty days from the day of the conclusion of the contract.

Or.en

### **Amendment 64**

#### **Proposal for a directive Article 22 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. **Where the trader** has failed to fulfil his obligations to deliver, the consumer shall

2. **Without prejudice to the remedies available under the applicable law of the**

be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1.

**Member States, where the business** has failed to fulfil **its** obligations to deliver, the consumer shall be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1.

Or.en

## Amendment 65

### Proposal for a directive Article 23 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The parties may not, to the detriment of the consumer, exclude the application of this Article, derogate from it or vary its effects.**

Or.en

## Amendment 66

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

*Text proposed by the Commission*

*Amendment*

(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**;

(b) they are fit for any particular purpose for which the consumer requires them and which he made known to the **business** at the time of the conclusion of the contract, **except where the circumstances show that the buyer did not rely, or that it was unreasonable for the buyer to rely, on the seller's skills and judgement**;

Or.en

## Amendment 67

### Proposal for a directive Article 24 – paragraph 5

*Text proposed by the Commission*

*Amendment*

5. Any lack of conformity resulting from the incorrect installation of the goods shall be considered as a lack of conformity of the goods where ***the 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.

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

Or.en

**Amendment 68**

**Proposal for a directive  
Article 26 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or.en

**Amendment 69**

**Proposal for a directive  
Article 26 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***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***

***deleted***

*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.*

Or.en

#### **Amendment 70**

##### **Proposal for a directive Article 26 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or.en

#### **Amendment 71**

##### **Proposal for a directive Article 26 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

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

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

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

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

Or.en



## Amendment 72

### Proposal for a directive Article 26 – paragraph 5

*Text proposed by the Commission*

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

*Amendment*

**deleted**

Or.en

## Amendment 73

### Proposal for a directive Article 28 – paragraph 1

*Text proposed by the Commission*

1. The **trader** shall be held liable under Article 25 **where the** lack of conformity **becomes apparent within two years as from** the time the risk **passed** to the consumer.

*Amendment*

1. The **business** shall be held liable under Article 25 **for any** lack of conformity **which exists at** the time **when** the risk **passes** to the consumer, **even if the lack of conformity becomes apparent only after that time.**

Or.en

## Amendment 74

### Proposal for a directive Article 28 – paragraph 4

*Text proposed by the Commission*

**4. In order to benefit from his rights under Article 25, the consumer shall**

*Amendment*

**deleted**

*inform the trader of the lack of conformity within two months from the date on which he detected the lack of conformity.*

Or.en

## Amendment 75

### Proposal for a directive Article 29 – introductory part (new)

*Text proposed by the Commission*

*Amendment*

#### **1. Definition of a consumer goods guarantee**

**(1) A consumer goods guarantee means any undertaking of a type mentioned in the following paragraph given to a consumer in connection with a consumer contract for the sale of goods:**

**(a) by a producer or a person in later links of the business chain; or**

**(b) by the seller in addition to the seller's obligations as seller of the goods.**

**(2) The undertaking may be that:**

**(a) apart from misuse, mistreatment or accident the goods will remain fit for their ordinary purpose for a specified period of time, or otherwise;**

**(b) the goods will meet the specifications set out in the guarantee document or in associated advertising; or**

**(c) subject to any conditions stated in the guarantee,**

**(i) the goods will be repaired or replaced;**

**(ii) the price paid for the goods will be reimbursed in whole or in part; or**

**(iii) some other remedy will be provided.**

#### **2. Binding nature of the guarantee**

**(1) A consumer goods guarantee, whether contractual or in the form of a unilateral undertaking, is binding in favour of the first buyer, and in the case of a unilateral undertaking is so binding without**

*acceptance notwithstanding any provision to the contrary in the guarantee document or the associated advertising.*

*(2) If not otherwise provided in the guarantee document, the guarantee is also binding without acceptance in favour of every owner of the goods within the duration of the guarantee.*

*(3) Any requirement in the guarantee whereby it is conditional on the fulfilment by the guarantee holder of any formal requirement, such as registration or notification of purchase, is not binding on the consumer.*

### **3. Guarantee document**

*(1) A person who gives a consumer goods guarantee must (unless such a document has already been provided to the buyer) provide the buyer with a guarantee document which:*

*(a) states that the buyer has legal rights which are not affected by the guarantee;*

*(b) points out the advantages of the guarantee for the buyer in comparison with the conformity rules;*

*(c) lists all the essential particulars necessary for making claims under the guarantee, notably:*

*– the name and address of the guarantor;*

*– the name and address of the person to whom any notification is to be made and the procedure by which the notification is to be made;*

*– any territorial limitations to the guarantee;*

*(d) is drafted in plain, intelligible language; and*

*(e) is drafted in the same language as that in which the goods were offered.*

*(2) The guarantee document must be in textual form on a durable medium and be available and accessible to the buyer.*

*(3) The validity of the guarantee is not affected by any failure to comply with paragraphs (1) and (2), and accordingly the guarantee holder can still rely on the guarantee and require it to be honoured.*

*(4) If the obligations under paragraphs*

*(1) and (2) are not observed the guarantee holder may, without prejudice to any right to damages which may be available, require the guarantor to provide a guarantee document which conforms to those requirements.*

*(5) The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.*

#### *4. Coverage of the guarantee*

*If the guarantee document does not specify otherwise:*

*(a) the period of the guarantee is 5 years or the estimated life-span of the goods, whichever is shorter;*

*(b) the guarantor's obligations become effective if, for a reason other than misuse, mistreatment or accident, the goods at any time during the period of the guarantee become unfit for their ordinary purpose or cease to possess such qualities and performance capabilities as the guarantee holder may reasonably expect;*

*(c) the guarantor is obliged, if the conditions of the guarantee are satisfied, to repair or replace the goods; and*

*(d) all costs involved in invoking and performing the guarantee are to be borne by the guarantor.*

#### *5. Guarantee limited to specific parts*

*A consumer goods guarantee relating only to a specific part or specific parts of the goods must clearly indicate this limitation in the guarantee document; otherwise the limitation is not binding on the consumer.*

#### *6. Exclusion or limitation of the guarantor's liability*

*The guarantee may exclude or limit the guarantor's liability under the guarantee for any failure of or damage to the goods caused by failure to maintain the goods in accordance with instructions, provided that the exclusion or limitation is clearly set out in the guarantee document.*

#### *7. Burden of proof*

*(1) Where the guarantee holder invokes a*

*consumer goods guarantee within the period covered by the guarantee the burden of proof is on the guarantor that:*  
*(a) the goods met the specifications set out in the guarantee document or in associated advertisements; and*  
*(b) any failure of or damage to the goods is due to misuse, mistreatment, accident, failure to maintain, or other cause for which the guarantor is not responsible.*  
*(2) The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.*

**8. Prolongation of the guarantee period**

*(1) If any defect or failure in the goods is remedied under the guarantee then the guarantee is prolonged for a period equal to the period during which the guarantee holder could not use the goods due to the defect or failure.*  
*(2) The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.*

Or.en

*Justification*

*Insertion of Articles IV A 6:101 to 108 of the DCFR. The amendment aims to provoke further discussion in the Committee on introducing more coherence with the DCFR concerning commercial guarantees and on the question of introducing a European Guarantee which could be chosen by the parties on an optional, voluntary basis.*

**Amendment 76**

**Proposal for a directive  
Article 29 – paragraph 1**

*Text proposed by the Commission*

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**

*Amendment*

1. **If the terms of a commercial guarantee are not expressed in a guarantee statement, the guarantor shall be liable under such terms as may be derived from the advertising of the commercial guarantee.**

*in the* advertising *on* the commercial guarantee.

Or.en

#### Amendment 77

##### Proposal for a directive

##### Article 29 – paragraph 2 – introductory part

*Text proposed by the Commission*

*Amendment*

2. The guarantee statement ***shall be drafted in plain intelligible language and be legible. It shall include the following:***

2. The guarantee statement ***must indicate:***

Or.en

#### Amendment 78

##### Proposal for a directive

##### Article 29 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

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

(a) ***the*** rights of the consumer ***under*** Article 26 ***of this Directive*** and a clear statement that those rights are not affected by the commercial guarantee, ***and***

Or.en

#### Amendment 79

##### Proposal for a directive

##### Article 29 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

(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,

(b) ***the terms*** of the commercial guarantee, ***in particular those relating to its duration and territorial scope, and requirements*** for making claims, notably the duration, territorial scope and the name and address of the guarantor,

Or.en

## Amendment 80

### Proposal for a directive

#### Article 29 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

*(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.*

*deleted*

Or.en

## Amendment 81

### Proposal for a directive

#### Article 29 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

*2a. The consumer may transfer the guarantee to a subsequent buyer. The guarantee statement may provide otherwise, unless such an exclusion would be unfair under Articles 32 and 35 and point (j) of paragraph 1 of Annex III.*

Or.en

## Amendment 82

### Proposal for a directive

#### Article 29 – paragraph 3

*Text proposed by the Commission*

*Amendment*

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

*3. At the consumer's request, the business shall provide the guarantee statement in textual form on a durable medium.*

Or.en

## Amendment 83

### Proposal for a directive Article 29 – paragraph 4

*Text proposed by the Commission*

4. Non compliance with paragraph 2 or 3 **shall** not affect the validity of **the** guarantee.

*Amendment*

4. Non compliance with paragraph 2, **2 a** or 3 **shall** not affect the validity of **a commercial** guarantee.

Or.en

## Amendment 84

### Proposal for a directive Article 30 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. This Chapter shall apply to contract terms ***supplied*** by the ***business*** or a third party.

Or.en

## Amendment 85

### Proposal for a directive Article 31 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. Contract terms shall be expressed in plain, intelligible language and ***confirmed in textual form on a durable medium.***

Or.en

## Amendment 86

### Proposal for a directive Article 31 – paragraph 2 a (new)



*Text proposed by the Commission*

*Amendment*

**2a. A term which has been supplied by the business in breach of the duty of transparency imposed by paragraphs 1 and 2 may on that ground alone be considered unfair.**

Or.en

## **Amendment 87**

### **Proposal for a directive Article 34**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. ***That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.***

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

Or.en

## **Amendment 88**

### **Proposal for a directive Article 35**

*Text proposed by the Commission*

*Amendment*

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

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

Or.en

## Amendment 89

### Proposal for a directive Article 39 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**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).**

*deleted*

Or.en

## Amendment 90

### Proposal for a directive Article 40

*Text proposed by the Commission*

*Amendment*

**Article 40**

*deleted*

**The Committee**

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

**2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC<sup>17</sup> shall apply, having regard to the provisions of Article 8 thereof.**

<sup>17</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Or.en

## Amendment 91

### Proposal for a directive Annex III – paragraph 3 – point a

*Text proposed by the Commission*

*Amendment*

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

Or.en

## **Amendment 92**

### **Proposal for a directive Annex III – paragraph 4 – point b**

*Text proposed by the Commission*

*Amendment*

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

Or.en

## **Amendment 93**

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

*Text proposed by the Commission*

*Amendment*

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

Or.en