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Committee on Legal Affairs

2008/0196(COD)

24.1.2011

OPINION

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

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

Rapporteur(*): Diana Wallis

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

PA_Legam

SHORT JUSTIFICATION

Degree of harmonisation

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

Therefore, your rapporteur proposes minimum harmonisation at a high level of consumer protection as a rule - coupled with full harmonisation of some specific, technical rules as set out as an exception of the general rule in a new paragraph 2 of Article 4. By this new 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 CRD³ your rapporteur

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

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

³ De Booy, Mak, Hesselink, "A comparison between the provisions of the draft Common Frame of Reference

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

and the European Commission's proposal for a Consumer Rights Directive", study requested by the Committee on Legal Affairs, PE 419.608.

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

Amendment 1

Proposal for a directive Citation 1

Text proposed by the Commission

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

Amendment

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

Amendment 2

Proposal for a directive Citation 4

Text proposed by the Commission

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

Amendment

Acting in accordance with the *ordinary legislative* procedure,

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

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

Amendment

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

national rules.

Amendment 4

Proposal for a directive

Recital 3

Text proposed by the Commission

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

Amendment

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

Amendment 5

Proposal for a directive

Recital 4

Text proposed by the Commission

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

Amendment

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

Amendment 6

Proposal for a directive

Recital 5

Text proposed by the Commission

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

Amendment 7

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) The laws of the Member States on consumer contracts show marked

Amendment

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

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

Amendment 8

Proposal for a directive

Recital 7

Text proposed by the Commission

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

Amendment

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

Amendment 9

Proposal for a directive

Recital 8

Text proposed by the Commission

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

Amendment

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

Amendment 10

Proposal for a directive

Recital 9

Text proposed by the Commission

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

Amendment

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

Amendment 11

**Proposal for a directive
Recital 9 a (new)**

Text proposed by the Commission

Amendment

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

Amendment 12

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

Text proposed by the Commission

Amendment

(10a) Digital content, such as computer programs, games or music that is not burned on a tangible medium, is not considered as a tangible item. It should thus not be considered as a good within the meaning of this Directive. On the contrary, media containing digital content such as CDs and DVDs are tangible items and should thus be considered as goods within the meaning of this Directive. The downloading of digital content by a consumer from the Internet should be regarded, for the purpose of this Directive, as a contract which falls within the scope of this Directive, but without a right of withdrawal where performance of the contract has already begun with consumer's prior consent. The Commission should examine the need for harmonised detailed provisions in this respect and submit, if necessary, a proposal to address this matter.

Amendment 13

**Proposal for a directive
Recital 11**

Text proposed by the Commission

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

Amendment

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

Amendment 14

**Proposal for a directive
Recital 12**

Text proposed by the Commission

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

Amendment

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

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

Amendment 15

Proposal for a directive – amending act Recital 14

Text proposed by the Commission

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

Amendment

(14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the **business** and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are **temporarily in a special situation which is different from the situation in a shop, for instance from a psychological point of view and as regards the scope for comparing goods and prices**, no matter whether they have solicited the **business'** visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract. **Member States should, however, be able to establish in their national legislation that the value of a contract not exceeding 60 EUR should be excluded from the scope of Chapter II as the information requirements would be disproportionate to the value of the contract. Contracts which, in accordance with the provisions of the Member States, are established by a public official, do not present a situation where the consumer is put under exceptional psychological pressure. Such contracts should be excluded from the scope of Chapter II.**

Amendment 16

Proposal for a directive Recital 15

Text proposed by the Commission

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

Amendment 17

**Proposal for a directive – amending act
Recital 16**

Text proposed by the Commission

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

Amendment

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

Amendment

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

Amendment 18

Proposal for a directive Recital 17

Text proposed by the Commission

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

Amendment

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

Amendment 19

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

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

Amendment 20

Proposal for a directive Recital 22

Text proposed by the Commission

(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, **allowing** him, **until expiry of the withdrawal period**, to ascertain the nature, **quality** and functioning of the goods.

Amendment 21

Proposal for a directive Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) The provisions regarding information and the right of withdrawal for distance sales should, due to the nature of those services, not apply when a consumer uses a public pay phone, pays to use an Internet connection or chooses a specific provider for one single telephone call, for instance by dialling a prefix, in contrast to what is the case for telephone or Internet subscriptions.

Amendment 22

Proposal for a directive Recital 26

Text proposed by the Commission

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

Amendment

deleted

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

Amendment 23

Proposal for a directive Recital 27

Text proposed by the Commission

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

Amendment 24

Proposal for a directive Recital 28

Text proposed by the Commission

(28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised **standard** withdrawal form to be used by the consumer should simplify the withdrawal

Amendment

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

Amendment

(28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised **model** withdrawal form to be used by the consumer should simplify the withdrawal

process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Community-wide** standard form relating for example to the font size.

process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Union-wide** standard form relating for example to the font size. ***By using the model instructions on withdrawal set out in Annex I(A) the business will also comply with the information requirements for distance and off-premises contracts.***

Amendment 25

Proposal for a directive Recital 30

Text proposed by the Commission

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

Amendment

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

Amendment 26

Proposal for a directive Recital 33

Text proposed by the Commission

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

Amendment

(33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate given the nature of the product ***and exercising a right of withdrawal would unfairly disadvantage the business.*** That is applicable ***in particular to foodstuffs and other hygienically sensitive or perishable goods which by their nature cannot be re-sold after having been opened. Exemptions from the right of withdrawal should also***

exist for certain other goods and services where the value is dependent on fluctuations in the market, for example wine supplied a long time after the conclusion of the contract of a speculative nature (vin en primeur) or commodities.

Amendment 27

Proposal for a directive Recital 34

Text proposed by the Commission

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

Amendment

(34) Considering that the consumer when withdrawing from a service contract is not obliged to pay for the services supplied, certain service providers might prefer not to perform until the withdrawal period has expired to ensure being paid. Therefore a consumer should be able to request the supply of services before the end of the withdrawal period. He should retain the right to withdraw from the contract during the withdrawal period, but should be prepared to bear the costs for any services provided up to the point of withdrawal from the contract. Before the performance begins the business should inform the consumer of any obligation to pay such costs.

Amendment 28

Proposal for a directive Recital 35

Text proposed by the Commission

(35) The Commission has found some key consumer problems in the home improvement sector where consumers are under high pressure to order expensive renovation works. The scope of the information and withdrawal rules should be clarified and extended in order to cover

Amendment

(35) Contracts related to the transfer of rights in immovable property or the creation of such rights (including rights or interests under a trust or similar arrangement), contracts for the construction of new dwellings, for the substantial conversion of existing

this kind of contract. Only contracts for the conveyance of interests in real property should be excluded from the scope of the rules on information and withdrawal rights applicable to distance and off-premises contracts.

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

Amendment 29

Proposal for a directive Recital 36

Text proposed by the Commission

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

Amendment

deleted

Amendment 30

Proposal for a directive Recital 37

Text proposed by the Commission

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

Amendment

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

Amendment 31

Proposal for a directive Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) The main difficulties encountered by consumers and the main source of disputes with businesses concern delivery

of goods, including goods getting lost or damaged during transport and late and partial delivery. It is therefore appropriate to harmonise the national rules on delivery and passing of risk. However, the rules concerning the determination of the conditions for and the moment at which the ownership in the goods is transferred remain subject to national law.

Amendment 32

Proposal for a directive Recital 37 b (new)

Text proposed by the Commission

Amendment

(37b) Where the business has failed to fulfil its obligations to deliver, the consumer should call upon it to make the delivery within a period appropriate to the circumstances. The consumer can withdraw from the contract on expiry of that period if no action has been taken. However, this rule should not apply when the business has refused to deliver the goods or in certain circumstances where time is of the essence, such as, for example, a wedding dress which should be delivered before the wedding or Christmas presents. In those specific cases, if the business fails to deliver the goods on time, the consumer should be entitled to terminate the contract immediately after the expiry of the delivery period initially agreed.

Amendment 33

Proposal for a directive Recital 38

Text proposed by the Commission

Amendment

(38) In the context of consumer sales, the

(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**.

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

Amendment 34

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

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

Amendment 35

Proposal for a directive Recital 40

Text proposed by the Commission

Amendment

(40) If the good is not in conformity with

(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.

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

Amendment 36

Proposal for a directive

Recital 43

Text proposed by the Commission

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

Amendment

deleted

Amendment 37

Proposal for a directive Recital 45 a (new)

Text proposed by the Commission

Amendment

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

Amendment 38

Proposal for a directive Recital 46

Text proposed by the Commission

Amendment

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

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

Amendment 39

Proposal for a directive Recital 47

Text proposed by the Commission

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

Amendment

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

Amendment 40

Proposal for a directive Recital 47 a (new)

Text proposed by the Commission

Amendment

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

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

Amendment 41

Proposal for a directive Recital 49

Text proposed by the Commission

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

Amendment

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

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

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

Amendment 42

Proposal for a directive Recital 50

Text proposed by the Commission

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

Amendment 43

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 Commission¹⁰.

¹⁰ OJ L 184, 17.7.1999, p. 23.

Amendment

deleted

Amendment 44

**Proposal for a directive
Recital 52**

Text proposed by the Commission

Amendment

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

deleted

Amendment 45

**Proposal for a directive
Recital 53**

Text proposed by the Commission

Amendment

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

deleted

Amendment 46

**Proposal for a directive
Recital 64 a (new)**

Text proposed by the Commission

Amendment

(64a) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹, Member States are encouraged to draw up, for themselves

and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

¹ OJ C 321, 31.12.2003, p. 1.

Amendment 47

Proposal for a directive Recital 65

Text proposed by the Commission

(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.

Amendment

(65) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at **Union** level, the **Union** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.

Amendment 48

Proposal for a directive Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Degree of harmonisation

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

Amendment 49

Proposal for a directive

Article 2 – point 1

Text proposed by the Commission

(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;

Amendment 50

Proposal for a directive

Article 2 – point 2

Text proposed by the Commission

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

Amendment

(2) "**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 that person does not intend to make a profit in the course of the activity**;

Amendment 51

Proposal for a directive

Article 2 – point 3

Text proposed by the Commission

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

Amendment

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

Amendment 52

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 53

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

Text proposed by the Commission

Amendment

(c) electricity;

deleted

Amendment 54

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

Text proposed by the Commission

Amendment

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

Amendment 55

**Proposal for a directive
Article 2 – point 5**

Text proposed by the Commission

Amendment

(5) "service contract" means any contract other than a sales contract whereby a

(5) "service contract" means any contract under which a business undertakes to

service *is provided by the trader* to the consumer;

supply a service to the consumer *in exchange for a price*;

Amendment 56

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

Text proposed by the Commission

Amendment

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

Amendment 57

Proposal for a directive Article 2 – point 6

Text proposed by the Commission

Amendment

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

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

Amendment 58

Proposal for a directive Article 2 – point 7

Text proposed by the Commission

Amendment

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

deleted

Amendment 59

Proposal for a directive Article 2 – point 8

Text proposed by the Commission

- (8) 'off-premises contract' means:
- (a) **any sales or service contract** concluded away from business premises with the simultaneous physical presence of the **trader** and the consumer **or any sales or service contract** for which an offer was made by the consumer in the same circumstances, or
- (b) **any sales or service contract** concluded on business premises but **negotiated** away from business premises, with the simultaneous physical presence of the **trader** and the consumer.

Amendment

- (8) "off-premises contract" means **any sales or service contract which is** concluded :
- (a) away from business premises with the simultaneous physical presence of the **business** and the consumer or for which an offer was made by the consumer in the same circumstances, or
- (b) on business premises but **where the main components have been determined** away from business premises, with the simultaneous physical presence of the **business** and the consumer.
- Member States may decide that contracts for the provision of goods or supply of services which have been concluded or negotiated away from the business premises at the explicit and initial request of the consumer are not to be considered as off-premises contracts.**

Amendment 60

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

Text proposed by the Commission

Amendment

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

Amendment 61

Proposal for a directive Article 2 – point 11

Text proposed by the Commission

Amendment

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

Amendment 62

Proposal for a directive Article 2 – point 12

Text proposed by the Commission

Amendment

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

Amendment 63

Proposal for a directive Article 2 – point 14

Text proposed by the Commission

Amendment

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

Amendment 64

Proposal for a directive Article 2 – point 15

Text proposed by the Commission

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

Amendment

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

Amendment 65

Proposal for a directive Article 2 – point 16

Text proposed by the Commission

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

Amendment

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

Amendment 66

Proposal for a directive Article 2 – point 17

Text proposed by the Commission

(17) 'producer' means the manufacturer of goods, the importer of goods into the territory of the **Community** or any person purporting to be a producer by placing his

Amendment

(17) "producer' means the manufacturer of goods, the importer of goods into the territory of the **Union** or any person purporting to be a producer by placing his

name, trade mark or other distinctive sign on the goods;

name, trade mark or other distinctive sign on the goods;

Amendment 67

Proposal for a directive Article 2 – point 18

Text proposed by the Commission

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

Amendment

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

Amendment 68

Proposal for a directive Article 2 – point 20

Text proposed by the Commission

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

Amendment

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

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

changes throughout)

Amendment 69

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 70

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

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

deleted

Amendment 71

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on full harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council¹² and of Council

Amendment

deleted

Directive 90/314/EEC¹³ .

¹² *OJ L 280, 29.10.1994, p. 83.*

¹³ *OJ L 158, 23.6.1990, p. 59.*

Amendment 72

Proposal for a directive Article 3 – paragraph 4

Text proposed by the Commission

Amendment

4. Articles 5, 7, 9 and 11 shall be without prejudice to the provisions concerning information requirements contained in Directive 2006/123/EC of the European Parliament and of the Council¹⁴ and Directive 2000/31/EC of the European Parliament and of the Council¹⁵ . *deleted*

¹⁴ *OJ L 376, 27.12.2006, p. 36.*

¹⁵ *OJ L 178, 17.7.2000, p. 1.*

Amendment 73

Proposal for a directive Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Full harmonisation

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

Amendment 74

Proposal for a directive
Chapter 2 – title

Text proposed by the Commission

Amendment

Consumer information

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

Amendment 75

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Scope

- 1. This Chapter shall apply to distance and off-premises contracts.**
- 2. This Chapter shall not apply to distance and off-premises contracts:**
 - (a) for the creation, transfer or termination of rights or interests in immovable property, and rental of accommodation for residential purposes;**
 - (b) falling within the scope of Council Directive 90/314/EEC or Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts¹;**
 - (c) concluded for the construction of a new dwelling, where the contract, or a linked contract, provides for the sale or transfer of rights in immovable property;**
 - (d) for financial services;**
 - (e) for healthcare services falling within the scope of Directive 2011/.../EU of the European Parliament and of the Council of ... on the application of patients rights in cross-border healthcare², whether or not they are provided via healthcare facilities;**

(f) for social services.

3. This Chapter shall not apply to off-premises contracts:

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

(b) which, in accordance with the provisions of the Member States, are established by a public official who is bound by the law to be independent and impartial and to guarantee, by providing detailed legal information, that the consumer only concludes the contract after due reflection and in full awareness of its legal scope;

(c) where the value of the contract does not exceed 60 EUR. Member States may choose to apply a threshold lower than 60 EUR, in which case Member States shall notify the adopted threshold to the Commission, which shall make that information publicly available in an easily accessible way.

4. This Chapter shall not apply to distance contracts:

(a) concluded with telecommunications operators through public payphones for their use, in so far as they relate to the use thereof or concluded for the use of a single connection by telephone, Internet or fax established by the consumer;

(b) falling within the scope of Directive 2002/65/EC of the European Parliament and Council.

¹ *Text to be adopted.*

² *OJ L 33, 3.2.2009, p. 10*

Amendment 76

Proposal for a directive Article 4 b (new)

Text proposed by the Commission

Amendment

Article 4b

Degree of harmonisation

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

Amendment 77

Proposal for a directive

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. ***In good time before the consumer is bound by any distance or off-premises contract or offer, the business or any person acting in his name or on his behalf*** shall provide the consumer with ***such information as the consumer may reasonably expect, taking into account the standards of quality and performance which would be normal under the circumstances. The information shall be clear and precise, and expressed in plain and intelligible language. The information must include, in particular,*** the following information, if not already apparent from the context:

Amendment 78

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 79

Proposal for a directive

Article 5 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 80

Proposal for a directive

Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) contact details including the telephone and fax number and e-mail address where available, and any other means of distance communication enabling the consumer to contact and communicate with the business rapidly and directly;

Amendment 81

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) the **final** price inclusive of taxes, or where the nature of the 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;

fact that such additional charges may be payable;

Amendment 82

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

Text proposed by the Commission

(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;

Amendment 83

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

Text proposed by the Commission

(da) the complaint handling policy and the geographical address to which the consumer can direct any complaints, including where applicable the address of a body dealing with complaints on behalf of the business;

Amendment

Amendment 84

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

Text proposed by the Commission

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

Amendment

Amendment 85

Proposal for a directive

Article 5 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

(e) ***in so far as*** a right of withdrawal, where applicable, ***exists, the conditions and procedure for exercising that right, including the withdrawal period and the name and address of the business to which the withdrawal is to be communicated, and the possible costs of returning the goods; the business may use the model instructions on withdrawal and the model withdrawal form set out in Annex I(A) and I(B) respectively or any other clearly worded statement;***

Amendment 86

Proposal for a directive

Article 5 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) where a right of withdrawal does not apply in accordance with Article 19(1) that the consumer will not benefit from a right of withdrawal;

Amendment 87

Proposal for a directive

Article 5 – paragraph 1 – point e b (new)

Text proposed by the Commission

Amendment

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

Amendment 88

Proposal for a directive

Article 5 – paragraph 1 – point h

Text proposed by the Commission

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

Amendment

(h) the minimum duration of the consumer's and **business**'s obligations under the contract, where applicable;

Amendment 89

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 90

Proposal for a directive

Article 5 – paragraph 1 – point i b (new)

Text proposed by the Commission

Amendment

(ib) the obligation of the consumer for payment in accordance with Article 17(3) where performance of services has begun during the withdrawal period with the consumer's prior express consent, where applicable;

Amendment 91

Proposal for a directive

Article 5 – paragraph 1 – point i c (new)

Text proposed by the Commission

Amendment

(ic) the period of time within which the offer will remain available, where applicable;

Amendment 92

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

Text proposed by the Commission

Amendment

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

Amendment 93

**Proposal for a directive
Article 5 – paragraph 2**

Text proposed by the Commission

Amendment

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

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

Amendment 94

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

Text proposed by the Commission

Amendment

2a. Member States shall not provide for any other formal requirements applicable to the model instructions on withdrawal set out in Annex I(A).

Amendment 95

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

Text proposed by the Commission

Amendment

2b. If the business uses the model instructions on withdrawal set out in Annex I(A) it will comply with the information requirements for distance and off-premises contracts set out in paragraph 1(e).

Amendment 96

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 97

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

Text proposed by the Commission

Amendment

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

Amendment 98

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

Text proposed by the Commission

Amendment

3b. Should the provisions of this Article run counter to other legislative provisions of the Union which regulate special contracts, the latter provisions shall take

precedence and shall govern those special contracts.

Amendment 99

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Without prejudice to Articles 7(2), 13 and 42, the consequences of any breach of Article 5 shall be determined in accordance with the applicable national law, ***save those breaches of a de minimis, technical nature where the effects of the breach under the applicable national law would be disproportionate to the harm actually incurred.*** Member States shall provide in their national laws for effective remedies for any breach of Article 5.

Amendment 100

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

Text proposed by the Commission

Amendment

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

Amendment 101

Proposal for a directive Chapter III – title

Text proposed by the Commission

Amendment

Consumer information and withdrawal right for distance and off-premises

deleted

contracts

Amendment 102

**Proposal for a directive
Article 8**

Text proposed by the Commission

Amendment

Article 8

deleted

Scope

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

Amendment 103

**Proposal for a directive
Article 9**

Text proposed by the Commission

Amendment

Information requirements for distance and off-premises contracts

deleted

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

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

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

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

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

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

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

Amendment 104

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. With respect to off-premises contracts, the information provided for in Article 5 shall be given in ***good time before the consumer is bound by any contract or offer, in so far as this appears appropriate in view of the nature of the contract, in the contract document or on another durable medium*** in plain and intelligible language and be legible in ***textual form***. ***At the consumer's request, the business shall provide the information on paper.***

Amendment 105

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Amendment 106

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall not impose any formal requirements other than those provided for *in paragraphs 1 and 2*.

Amendment

3. Member States shall not impose any formal ***or information*** requirements other than those provided for in *Article 5(1)*. ***This shall be without prejudice to objectively justified requirements which are unrelated to off-premises contracts, in particular regarding health and safety risks.***

Amendment 107

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

1. With respect to distance contracts, the information provided for in *Article 5* shall be given or made available ***in good time before*** the consumer ***is bound by any*** contract ***or offer***, in plain and intelligible language and be legible, in a way appropriate to the means of distance communication used.

Amendment 108

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

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

Amendment

2. If the **business** makes a telephone call to the consumer with a view to concluding a distance contract **by telephone**, **the business** shall disclose **its** identity and, **where applicable**, the **identity of the**

with the consumer.

person on whose behalf it makes the call and the commercial purpose of the call at the beginning of the conversation with the consumer.

Amendment 109

Proposal for a directive Article 11 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 110

Proposal for a directive Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. If a distance contract concluded on the internet places the consumer under an obligation to make a payment, the consumer shall only be bound by the contract if the business:

(a) indicates clearly and prominently the total price including all price components; and

(b) designs its Internet presentation in such a manner that a binding order is only possible after the consumer has

confirmed recognition of the indication required in point (a).

Amendment 111

Proposal for a directive Article 11 – paragraph 4

Text proposed by the Commission

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

Amendment

4. The consumer shall receive confirmation of all the information referred to in **Article 5 in textual form** on a durable medium, in reasonable time after the conclusion of any distance contract, and at the latest at the time of the delivery of the goods or when the performance of the service has begun, unless the information has already been given to the consumer prior to the conclusion of any distance contract on a durable medium.

Amendment 112

Proposal for a directive Article 11 – paragraph 5

Text proposed by the Commission

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

Amendment

5. Member States shall not impose any formal **or information** requirements other than those provided for in **Article 5(1)**. ***This shall be without prejudice to objectively justified requirements which are unrelated to distance contracts, in particular regarding health and safety risks.***

Amendment 113

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

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

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

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

Amendment

The withdrawal period ends 14 days after the latest of the following times:

(a) the time of conclusion of the contract;

(b) if the subject matter of the contract is the delivery of goods, the time when the goods are taken over;

(c) in the case of a mixed-purpose contract, the delivery of goods or the supply of services, whichever is later;

(d) if the subject matter of the contract is the delivery of multiple goods which are to be delivered separately, the time when the last of the goods is taken over;

(e) if the subject matter of the contract is the delivery of a good consisting of multiple lots or pieces, the time when the last lot or piece is taken over;

(f) if the subject matter of the contract is the recurring delivery of goods of the same kind during a defined period of time, the time when the first good is taken over;

Amendment 114

Proposal for a directive Article 12 – paragraph 4

Text proposed by the Commission

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

Amendment

4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period. ***In the case of off-premises contracts, Member States may maintain provisions in their national legislation that prohibit payment within the withdrawal period.***

Amendment 115

Proposal for a directive Article 13

Text proposed by the Commission

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

Amendment

If the ***business*** has not provided the consumer with the information on the right of withdrawal in breach of ***point (e) of Article 5(1) and*** Articles 10(1) and 11(4), the withdrawal period shall expire ***one year from the day referred to in Article 12(2).***

If the business has provided the consumer with the information on the right of withdrawal within one year from the day referred to in Article 12(2) and the withdrawal period shall expire 14 days from the day on which the consumer receives the information.

Amendment 116

Proposal for a directive Article 14

Text proposed by the Commission

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

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

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

Amendment

1. ***Before expiry of the withdrawal period, the*** consumer shall inform the ***business*** of ***his*** decision to withdraw on a durable medium. ***For this purpose, the consumer may either use the model*** withdrawal form set out in Annex I(B) ***or make any other clearly worded statement*** .

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

2. ***The business*** may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to ***submit the model withdrawal form set out in Annex I(B) or any other withdrawal statement, or to*** electronically fill in and submit the form on ***a*** website. The ***business*** shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.

Amendment 117

Proposal for a directive Article 15 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 118

Proposal for a directive Article 16 – title

Text proposed by the Commission

Obligations of the trader in case of withdrawal

Amendment

Reimbursement by the business in case of withdrawal

Amendment 119

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The **business** shall reimburse any payment received from the consumer within **14 days** from the day on which he receives the communication of withdrawal.

Amendment 120

Proposal for a directive Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. If the consumer has expressly opted for a type of delivery other than a standard delivery, the business shall not be required to reimburse the resulting additional costs.

Amendment 121

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

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

Amendment

2. For **distance and off-premises** contracts **for the supply of goods**, the **business** may withhold reimbursement until **it** has received or collected the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the

earliest.

earliest.

Amendment 122

Proposal for a directive Article 17 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

For *distance and off-premises* contracts for the *supply* of goods *where* consumer or at his request, to a third party *has taken over the goods* before the expiration of the withdrawal period, the consumer shall send back the goods or hand them over to the *business* or to a person authorised by the *business* to receive them, within 14 days from the day on which he communicates his withdrawal to the *business*, unless the *business* has offered to collect the goods *itself*.

Amendment 123

Proposal for a directive Article 17 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods. He shall not be liable for diminished value where the *business* has failed to provide notice of the withdrawal right in accordance with *point (e) of Article (5)(1)*.

Amendment 124

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

Text proposed by the Commission

Amendment

2a. For service contracts, the consumer shall bear the costs for services supplied, in full or in part, during the withdrawal period where the business provided the information in accordance with Article 5(1)(ib) and where performance of services has begun during the withdrawal period with the consumer's prior express consent.

Amendment 125

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

Text proposed by the Commission

Amendment

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

Amendment 126

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

Text proposed by the Commission

Amendment

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

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

Amendment 127

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 128

Proposal for a directive

Article 19 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Amendment 129

Proposal for a directive

Article 19 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

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

Amendment 130

Proposal for a directive

Article 19 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the supply of foodstuffs, beverages or other hygienically sensitive goods whose packaging or sealing has already been

opened by the consumer;

Amendment 131

**Proposal for a directive
Article 19 – paragraph 1 – point c b (new)**

Text proposed by the Commission

Amendment

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

Amendment 132

**Proposal for a directive
Article 19 – paragraph 1 – point c c (new)**

Text proposed by the Commission

Amendment

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

Amendment 133

Proposal for a directive Article 19 – paragraph 1 – point c d (new)

Text proposed by the Commission

Amendment

(cd) for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance;

Amendment 134

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

Text proposed by the Commission

Amendment

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

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

Amendment 135

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

Text proposed by the Commission

Amendment

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

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

Amendment 136

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

Text proposed by the Commission

Amendment

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

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

Justification

One of the objectives of the revision of the Consumer Acquis under civil law within the EU, the development and strengthening of consumer protection, also requires the critical analysis and reduction of the myriad of exceptions from the right of withdrawal as well as the clarification of some definition of exceptions. It is their objective justification to question and to take up on the promises of other sectors. Apart from that, these exceptions are always cited in practice as an argument against a right of withdrawal of the consumer and are therefore to their disadvantage.

Amendment 137

Proposal for a directive Article 19 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) contracts concluded by electronic means and performed immediately and fully through the same means of distance communication such as downloading from the Internet, where the performance has begun with the consumer's prior express consent.

Amendment 138

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

(a) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, selected in advance by the consumer by

means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;

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

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

Amendment 139

Proposal for a directive Article 19 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The parties may agree not to apply *paragraph 1*.

Amendment 140

Proposal for a directive Article 20

Excluded distance and off-premises contracts ***deleted***

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

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

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

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

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

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

(a) insurance,

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

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

3. Articles 8 to 19 shall not apply to distance contracts for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.

¹⁶ OJ L 271, 09.10.2002, p. 16.

Amendment 141

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 142

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 143

**Proposal for a directive
Article 21 a (new)**

Text proposed by the Commission

Amendment

Article 21a

Degree of harmonisation

Unless otherwise provided, Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty on the Functioning of the European Union, in the field covered by this Chapter, to ensure a higher level of consumer protection. Member States shall notify those provisions to the Commission which shall make that information public in an easily accessible way.

Amendment 144

Proposal for a directive Article 22 – paragraph 1

Text proposed by the Commission

1. Unless the parties have agreed otherwise, the **trader** shall deliver the goods by **transferring the material possession of the** goods to the consumer or to a third party, other than the carrier and indicated by the consumer, within a **maximum of** thirty days from the day of the conclusion of the contract.

Amendment

1. Unless the parties have agreed otherwise, the **business** shall deliver the goods by **making** the goods **available** to the consumer or to a third party, other than the carrier and indicated by the consumer, within a **reasonable time which in any event shall not be more than** 30 days from the day of the conclusion of the contract.

Amendment 145

Proposal for a directive Article 22 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where the **business** has failed to fulfil **its** obligations to deliver **in time in accordance with paragraph 1**, the consumer shall be entitled **call upon him to make the** delivery within a **period appropriate to the circumstances. If the business fails to deliver the goods within the appropriate time, the consumer shall be entitled to terminate the contract.**

Amendment 146

Proposal for a directive Article 22 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The consumer shall be entitled to terminate the contract where the business has failed to fulfil its obligation to deliver on time in accordance with paragraph 1, where:

- (a) the business has refused to deliver the goods; or*
- (b) the delivery period is essential taking into account all the circumstances attending the conclusion of the contract; or*
- (c) the consumer informs the business, prior to the conclusion of the contract, that delivery by or on a specified date is essential.*

Amendment 147

**Proposal for a directive
Article 22 – paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. In addition to the termination of the contract in accordance with paragraphs 2 and 2a, the consumer may have recourse to other remedies provided by national law.

Amendment 148

**Proposal for a directive
Article 22 – paragraph 2 c (new)**

Text proposed by the Commission

Amendment

2c. Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Article.

Amendment 149

**Proposal for a directive
Article 23 – paragraph 1**

Text proposed by the Commission

Amendment

1. The risk of loss of or damage to the

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.

goods shall pass to the consumer when he or a third party indicated by the consumer has ***taken over*** the goods.

Amendment 150

Proposal for a directive Article 23 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The risk referred to in paragraph 1 shall pass to the consumer ***from*** the time ***when the goods should have been taken over*** if the consumer or a third party indicated by the consumer has failed to ***perform the obligation to take over the goods and such non-performance is not excused due to an impediment.***

Amendment 151

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

Text proposed by the Commission

Amendment

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

Amendment 152

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

Text proposed by the Commission

Amendment

2b. Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Article.

Amendment 153

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The **business** shall deliver the goods **to the consumer** in conformity with the sales contract.

Amendment 154

Proposal for a directive Article 24 – paragraph 2 – introductory part

Text proposed by the Commission

2. Delivered goods shall be presumed to be in conformity with the contract if they satisfy the following conditions:

Amendment

2. Delivered goods shall be presumed to be in conformity with the **sales** contract if they satisfy the following conditions:

Amendment 155

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

Text proposed by the Commission

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

Amendment

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

Justification

Regarding the principle of conformity with the contract, the list of criteria of non-conformity should be strengthened and improved.

Amendment 156

Proposal for a directive Article 24 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 157

**Proposal for a directive
Article 24 – paragraph 4 – introductory part**

Text proposed by the Commission

4. The **trader** shall not be bound by public statements, as referred to in paragraph 2(d) **if he shows that** one of the following situations existed:

Amendment

4. The **business** shall not be bound by public statements, as referred to in paragraph 2(d) **where** one of the following situations existed:

Amendment 158

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

Text proposed by the Commission

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

Amendment

(b) by the time of conclusion of the contract the statement had been corrected **and the consumer can reasonably be expected to have become aware of the correction;**

Amendment 159

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

Text proposed by the Commission

5. Any lack of conformity resulting from

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.

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

Amendment 160

Proposal for a directive Article 24 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Article.

Amendment 161

Proposal for a directive Article 26 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. *As* provided for in paragraphs 2 to 5, where the goods do not conform to the contract, the consumer ***is*** entitled to:

1. ***Under the conditions*** provided for in paragraphs 2 to 5, where the goods do not conform to the contract, the consumer ***shall be*** entitled to:

Amendment 162

Proposal for a directive Article 26 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) have the price reduced,

(b) have the price reduced, ***or***

Amendment 163

Proposal for a directive Article 26 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The **business** shall remedy the lack of conformity by either repair or replacement according to **the consumer's** choice.

Amendment 164

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

Text proposed by the Commission

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

Amendment

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

Amendment 165

Proposal for a directive Article 26 – paragraph 4 – point d

Text proposed by the Commission

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

Amendment

(d) **after repair or replacement** the same defect has reappeared more than once

within a short period of time.

Amendment 166

Proposal for a directive Article 26 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 167

Proposal for a directive Article 27 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 168

Proposal for a directive Article 28 – paragraph 2

Text proposed by the Commission

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

Amendment

2. When the **business** has remedied the lack of conformity by replacement, **it** shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has **taken over** the replaced

replaced goods.

goods.

Amendment 169

Proposal for a directive Article 28 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. When the business has remedied the lack of conformity by repair, the business shall be held liable for the lack of conformity of any spare parts replaced by the business during the remaining duration of its liability for the main good, and always at least six months after the repair.

Amendment 170

Proposal for a directive Article 28 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Amendment 171

Proposal for a directive Article 28 – paragraph 5

Text proposed by the Commission

Amendment

5. Unless proved otherwise, any lack of conformity which becomes apparent within *six months* of the time when the risk passed to the consumer, shall be presumed

5. Unless proved otherwise, any lack of conformity which becomes apparent within *one year* of the time when the risk passed to the consumer, shall be presumed to have

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.

existed at that time unless this presumption is incompatible with the nature of the goods **or** the nature of the lack of conformity

Amendment 172

Proposal for a directive

Article 29 – paragraph 2 – introductory part

Text proposed by the Commission

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

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

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

(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

Amendment

2. The guarantee statement shall be drafted in plain intelligible language and be legible. It shall **also be drafted in the same languages as those in which the goods were offered and shall** include the following:

(a) **the** rights of the consumer, as provided for in Article 26 and **Article 28 and** a clear statement that those rights are not affected by the commercial guarantee, **and**

(b) **the terms** of the commercial guarantee, **in particular those relating to its** duration, **transferability** and territorial scope, the name and address of the guarantor **and, if different from the guarantor, the person to whom any claim is to be made and the procedure by which the claim is to be made,**

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

3. **At the consumer's request, the business shall provide** the guarantee statement in

available in a durable medium.

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

Amendment 173

Proposal for a directive Article 30 – paragraph 1

Text proposed by the Commission

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

Amendment 174

Proposal for a directive Article 30 – paragraph 2

Text proposed by the Commission

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

Amendment 175

Proposal for a directive Article 30 – paragraph 3

textual form on a durable medium.

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

Amendment

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

Amendment

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

Text proposed by the Commission

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

Amendment 176

Proposal for a directive Article 30 a (new)

Text proposed by the Commission

Amendment 177

Proposal for a directive Article 31 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment

Article 30a

Degree of harmonisation

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

Amendment

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

Amendment 178

Proposal for a directive Article 31 – paragraph 4

Text proposed by the Commission

4. Member States shall refrain from imposing any **presentational** requirements **as to the way** the contract terms **are expressed or made available to the consumer**.

Amendment

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

Amendment 179

Proposal for a directive Article 32 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 180

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

Text proposed by the Commission

Amendment

2a. When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the business in accordance with Article 31(1) and (2). A term which has been supplied by the business in breach of the duty of transparency imposed by Article 31(1) and 31(2) may on that ground alone be considered unfair.

Amendment 181

Proposal for a directive
Article 32 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 182

Proposal for a directive
Article 33

Text proposed by the Commission

Amendment

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

Where the **business** claims that a contract term has been individually negotiated, **or that a contract term is compliant with the transparency requirement of Article 31(1) and 31(2)**, the burden of proof shall be

incumbent on him.

Amendment 183

Proposal for a directive Article 34

Text proposed by the Commission

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

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

Amendment

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

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

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

Amendment 184

Proposal for a directive Article 35

Text proposed by the Commission

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

Amendment

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

2. ***Member States may provide in their***

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

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

Amendment 185

Proposal for a directive Article 37

Text proposed by the Commission

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

Amendment

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

Amendment 186

Proposal for a directive Article 38 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 187

Proposal for a directive Article 38 – paragraph 3

Text proposed by the Commission

Amendment

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.

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

Amendment 188

Proposal for a directive Article 39

Text proposed by the Commission

Amendment

Article 39

deleted

Review of the terms in Annexes 2 and 3

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

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

Amendment 189

Proposal for a directive Article 40

Text proposed by the Commission

Amendment

Article 40

deleted

The Committee

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

to as "the Committee").

2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC¹⁷ shall apply, having regard to the provisions of Article 8 thereof.

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

Amendment 190

Proposal for a directive Article 45

Text proposed by the Commission

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

Amendment

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

Amendment 191

Proposal for a directive Article 47 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 192

Proposal for a directive Annex I – part A

A. Information to be provided with the withdrawal form

- 1. The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.***
- 2. A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending the withdrawal form below on a durable medium to the trader referred to in paragraph 1:***

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

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

(c) for distance service contracts:

A. Model instructions on withdrawal

Right of withdrawal

You may withdraw on a durable medium from this contract within a period of 14 days without giving any reason.

The period for withdrawal shall begin [on receipt of the goods ordered]]*¹. The day [on which the goods are received]]*² shall not be counted as part of the period for withdrawal. If the last 14th day of the period for withdrawal falls on a public holiday, a Saturday or a Sunday, the right of withdrawal period shall end with the expiry of the last hour of the following working day.

Notice of withdrawal may be sent at any point before the expiry of the withdrawal period, in which case the period for withdrawal shall be deemed to have been observed if notice of withdrawal is sent before its expiry.

Notice of withdrawal should be sent on a durable medium (for example in the form of a posted letter or an email*³). You may use the model withdrawal form below, although you are not required to do so.

Notice of withdrawal should be sent to the following address:

***[Name and address of business to which the withdrawal is to be communicated]
[where applicable, the email and/or web address of the business which the consumer can use to withdraw from the***

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

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

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

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

contract.]

Effects of withdrawal

*For withdrawal to be valid you must send the goods back or hand them over [name of business] or a person authorised by [name of business] to receive the goods within a period of 14 days of sending your notice of withdrawal, at [our expense]*⁴. , Where the 14th day falls on a public holiday, a Saturday or a Sunday, this period shall end with the expiry of the last hour of the following working day. The day on which you send the notice of withdrawal shall not be counted as part of the period for return of the goods. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter*⁵.*

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

In the case of valid withdrawal, we must reimburse within a period of 14 days any payment you have made to us. The period for reimbursement shall begin when we receive your notice of withdrawal. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. Where the 14th day falls on a public holiday, a

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

Saturday or a Sunday, this period shall end with the expiry of the last hour of the following working day.

*We may refuse to reimburse you until we have [received the returned goods]*⁶*

**⁷*

Advice on alternative wording:

**¹. In the following specific cases, the text in parentheses should read as indicated:*

For distance or off-premises contracts solely for the supply of services: 'from the day of the conclusion of the contract'

For distance or off-premises contracts concerning both the supply of services and the provision of goods: 'on receipt of the goods or from the day when the service is supplied, whichever is later.'

For distance or off-premises contracts concerning the delivery of multiple goods which are to be delivered separately: 'at the time when the last of the goods is taken over'

For distance or off-premises contracts concerning the delivery of a good consisting of multiple lots or pieces: 'at the time when the last lot or piece is taken over'

For distance or off-premises contracts concerning the recurring delivery of goods of the same kind during a defined period of time: 'at the time when the first good is taken over'.

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

Unless provided otherwise for distance or off-premises contracts for the supply of services: 'from the day of the conclusion of the contract or on the day on which the consumer receives a copy of the signed contract on a durable medium, if this is not the day of conclusion of the contract'.

**³ In the case of distance and off-premises contracts, where the business allows the*

consumer to fill in a withdrawal form electronically on a website, additional text should be inserted as follows: : 'or via our website'.

**⁴ If the business has not agreed to bear the cost of returning the goods, the text in parentheses should read as follows: ' at your own expense'.*

**⁵ If the business offers to collect the goods, the following sentence should be added: 'Should you choose to withdraw from this contract [name of business] offers to collect the goods.'*

**⁶ If the business offers to collect the goods from the consumer, the text in parentheses should read as follows: 'collected the goods from you'.*

**⁷ In the case of distance or off-premises contracts concerning the supply of services, the following should be added: 'You will have to bear the costs for services supplied, in full or in part, if performance of services begins during the withdrawal period prior to your express consent'.*

Amendment 193

Proposal for a directive Annex I – part B

Text proposed by the Commission

Amendment

B. Model withdrawal form

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

– To

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

B. Model withdrawal form

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

– To: *(Name of business, business address and, where appropriate, e-mail address)(*)*

– I/We(**) hereby give notice that I/We* withdraw from my/our* contract *of with you for the sale of the following goods(**)/or supply of the following*

- **Ordered on*/received on***
 - Name of consumer(s)
 - Address of consumer(s)
 - **Signature of consumer(s) (only if this form is notified in writing)**
 - Date
- *Delete as appropriate.**

- services(**):**
- **Date contract concluded (***)**
 - **Name of consumer(s) (***)**
 - **Address of consumer(s) (***)**
 - **Consumer('s) Signature of (required only if the form is sent on paper) (***)**
 - Date(***)

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

() Delete where non-applicable.**

(*) To be filled in by the consumer(s) if this form is used for withdrawal from the contract**

Amendment 194

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

Text proposed by the Commission

Amendment

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

Amendment 195

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

Text proposed by the Commission

Amendment

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

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

Amendment 196

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

Text proposed by the Commission

Amendment

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

Amendment 197

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

Text proposed by the Commission

Amendment

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

Amendment 198

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

Text proposed by the Commission

Amendment

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

Amendment 199

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

Text proposed by the Commission

Amendment

(cb) applying contingent charges, such as

penalties for breaching the contract terms, that are clearly disproportionate to the costs incurred by the business due to the breach of terms;

Amendment 200

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 201

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

Text proposed by the Commission

Amendment

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

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

Amendment 202

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

Text proposed by the Commission

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

Amendment

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

Amendment 203

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

Text proposed by the Commission

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

Amendment

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

provided that the business is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contractual relationship;

Amendment 204

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

Text proposed by the Commission

Amendment

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

Amendment 205

**Proposal for a directive
Annex III – paragraph 2**

Text proposed by the Commission

Amendment

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

deleted

Amendment 206

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

Text proposed by the Commission

Amendment

(b) transactions in transferable securities, financial instruments and other products

deleted

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;

Amendment 207

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

Text proposed by the Commission

Amendment

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

Amendment 208

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 209

**Proposal for a directive
Annex III – paragraph 4 – introductory part**

Text proposed by the Commission

Amendment

4. Point 1(k) shall not apply to

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

Amendment 210

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 211

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

Text proposed by the Commission

Amendment

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

deleted

PROCEDURE

Title	Consumer rights
References	COM(2008)0614 – C6-0349/2008 – 2008/0196(COD)
Committee responsible	IMCO
Opinion by Date announced in plenary	JURI 19.10.2009
Rapporteur Date appointed	Diana Wallis 2.9.2009
Discussed in committee	6.10.2009 10.11.2009 29.4.2010 2.9.2010 27.10.2010
Date adopted	20.1.2011
Result of final vote	+: 17 -: 0 0: 5
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Sajjad Karim, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Toine Manders
Substitute(s) under Rule 187(2) present for the final vote	Pablo Arias Echeverría, Lorenzo Fontana, Karin Kadenbach