



**DIRECTORATE GENERAL FOR INTERNAL  
POLICIES**

**POLICY DEPARTMENT**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



***LEGAL AFFAIRS***

**Brussels 17 February 2016**

**Workshop on new rules for contracts in the digital environment**

***Conformity, lack of conformity and remedies in  
contracts for the online and other distance  
sales of tangible goods***

# Proposals and key findings

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- Focus on Proposal COM 2015/635: online and other distance sales of tangible goods
- Rules on contractual remedies already exist: Directive 1999/44 on Sale of consumer goods
- Effective and tangible rights
- Far-reaching implementation

# Current proposal

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For distance contracts only:

1. Maximum-harmonisation of existing consumer rights
  - Hierarchy of remedies: no more free choice
  - Two years-period during which trader can be held liable: no longer period allowed

# Current proposal

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## 2. Change of some substantive rules on contractual remedies

- Reversal of burden of proof of lack of conformity from six months to two years
- Termination also in case of minor defects
- Abolition of notification duty

# Current proposal

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## 3. Clarifications of existing rights

- e.g. on lack of conformity, right to withhold payment, compensation for use, calculation of price reduction, modalities and consequences of termination

# 1. Does the Proposal reduce existing complexity?

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- Traders' ability to sell to consumers based on the same contractual terms?
- Two reasons for doubt:
  1. The Proposal leaves many topics relevant to traders aside (cf. 2011 CESL Proposal)
  2. The Proposal itself adds to fragmentation: only for distance contracts

# Future regulatory framework

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- Remedies for face-to-face-contracts: Consumer Sales Directive (minimum harmonisation) and national law
- Remedies for distance sales: Proposal COM (2015) 635 (mostly maximum harmonisation) and national law
- Remedies for contracts for the supply of digital contents: Proposal COM (2015) 634 (mostly maximum harmonisation)

# Recommendations

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- a) Make face-to-face sales part of this Proposal
- b) Adopt a more elaborate set of provisions, also covering other aspects of consumer sales contracts
- c) Reflect upon the choice of instrument: Regulation or optional instrument out of the question?



## 2. Period during which the trader can be held liable for a lack of conformity

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- Two year-period as maximum-armonisation (Art. 14 of COM 2015/635)
- A major change if the conformity standard is taken seriously
- Durable consumption goods
  - Not bought online?
- Recommendation

### 3. Termination

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- Also in case of minor defects
  - Unlike CSD (and CESL and DCFR)
- How about damages next to termination?
- Recommendation

## 4. Two more positive points

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- No longer possible for Member States to provide that the consumer must inform the seller of the lack of conformity within a period of two months from detection of such a lack.
- Lack of conformity which becomes apparent within two years of delivery of the goods is presumed to have existed at the time of delivery (Art. 8 s. 3 Proposal)

# Presentation by

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