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**A7-0301/2013**

24.9.2013

**\*\*\*I**

## **REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
on a Common European Sales Law  
(COM(2011)0635 – C7-0329/2011 – 2011/0284(COD))

Committee on Legal Affairs

Rapporteurs: Klaus-Heiner Lehne, Luigi Berlinguer

Rapporteurs for the opinion (\*):  
Evelyne Gebhardt, Hans-Peter Mayer, Committee on the Internal Market and  
Consumer Protection

(\*) Associated committee – Rule 50 of the Rules of Procedure

### ***Symbols for procedures***

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

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

### ***Amendments to a draft act***

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

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

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(\*) Associated committee – Rule 50 of the Rules of Procedure



## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a regulation of the European Parliament and of the Council on a  
Common European Sales Law  
(COM(2011)0635 – C7-0329/2011 – 2011/0284(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0635),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0329/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Austrian Federal Council, the Belgian Senate, the German Bundestag and the United Kingdom House of Lords, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 29 March 2012<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Economic and Monetary Affairs (A7-0301/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a regulation**  
**Recital 8**

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<sup>1</sup> OJ C 181, 21.6.2012, p. 75.

*Text proposed by the Commission*

(8) To overcome **these** contract-law-related barriers, parties should have the possibility to agree that **their** contracts should be governed by a single uniform set of contract law rules with the same meaning and interpretation in all Member States, a Common Sales Law. **The** Common European Sales Law should represent an additional option increasing the choice available to parties and open to use whenever jointly considered to be helpful in order to facilitate cross-border trade and reduce transaction and opportunity costs as well as other contract-law-related obstacles to cross-border trade. It should become the basis of a contractual relationship only where parties jointly decide to use it.

*Amendment*

**(8) Contract-law-related barriers prevent consumers and traders from fully exploiting the potential of the internal market and are particularly relevant in the area of distance selling, which should be one of the tangible results of the internal market. In particular, the digital dimension of the internal market is becoming vital for both consumers and traders as consumers increasingly make purchases over the internet and an increasing number of traders sell online. Given that communication and information technology means are constantly developing and becoming increasingly accessible, the growth potential of internet sales is very high. Against this background, and to overcome such contract-law-related barriers, parties should have the possibility to agree that contracts they conclude at a distance, and, in particular, online, should be governed by a single uniform set of contract law rules with the same meaning and interpretation in all Member States, a Common European Sales Law. That Common European Sales Law should represent an additional option for distance selling and, in particular, internet trade, increasing the choice available to parties and open to use whenever jointly considered to be helpful in order to facilitate cross-border trade and reduce transaction and opportunity costs as well as other contract-law-related obstacles to cross-border trade. It should become the basis of a contractual relationship only where parties jointly decide to use it.**

*Justification*

*The changes to the recital mirror the proposed changes to the substantive scope of CESL. CESL, as one set of EU-wide rules, is the ideal tool for distance, in particular online trade which is a rapidly growing area within the internal market.*

## Amendment 2

### Proposal for a regulation Recital 9

#### *Text proposed by the Commission*

(9) This Regulation establishes a Common European Sales Law. It **harmonises** the contract laws of the Member States not by requiring amendments to the **pre-existing** national contract law, but by creating **within each Member State's national law** a second contract law regime for contracts within its scope. This second regime should be identical throughout the Union and exist alongside the pre-existing rules of national contract law. The Common European Sales Law should apply on a voluntary basis, upon an express agreement of the parties, to a cross-border contract.

#### *Amendment*

(9) This Regulation establishes a Common European Sales Law **for distance contracts and in particular for online contracts**. It **approximates** the contract laws of the Member States not by requiring amendments to the **first** national contract-law **regime**, but by creating a second contract-law regime for contracts within its scope. This **directly applicable** second regime **should be an integral part of the legal order applicable in the territory of the Member States. In so far as its scope allows and where parties have validly agreed to use it, the Common European Sales Law should apply instead of the first national contract-law regime within that legal order.** It should be identical throughout the Union and exist alongside the pre-existing rules of national contract law. The Common European Sales Law should apply on a voluntary basis, upon an express agreement of the parties, to a cross-border contract.

## Amendment 3

### Proposal for a regulation Recital 10

#### *Text proposed by the Commission*

(10) The agreement to use the Common European Sales Law should be a choice exercised within the **scope of the** respective national **law** which is **applicable** pursuant to Regulation (EC) No 593/2008 or, in relation to pre-contractual information duties, pursuant to Regulation

#### *Amendment*

(10) The agreement to use the Common European Sales Law should be a choice exercised within the respective national **legal order** which is **determined as the applicable law** pursuant to Regulation (EC) No 593/2008 or, in relation to pre-contractual information duties, pursuant to

(EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Regulation (EC) No 864/2007), or any other relevant conflict of law rule. The agreement to use the Common European Sales Law *should* therefore not amount to, and not be confused with, a choice *of the applicable law* within the meaning of the conflict-of-law rules and should be without prejudice to them. This Regulation will therefore not affect any of the existing conflict of law rules.

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Regulation (EC) No 864/2007), or any other relevant conflict of law rule. The agreement to use the Common European Sales Law *results from a choice between two different regimes within the same national legal order. That choice*, therefore, *does* not amount to, and *should* not be confused with, a choice *between two national legal orders* within the meaning of the conflict-of-law rules and should be without prejudice to them. This Regulation will therefore not affect any of the existing conflict of law rules *such as those contained in Regulation (EC) No 593/2008*.

#### *Justification*

*The changes to the recital are aimed at clarifying the relationship between the Common European Sales Law and the Rome I Regulation.*

## **Amendment 4**

### **Proposal for a regulation Recital 11**

#### *Text proposed by the Commission*

(11) The Common European Sales Law should comprise *of a complete* set of *fully harmonised* mandatory consumer protection rules. In line with Article 114(3) of the Treaty, those rules should guarantee a high level of consumer protection with a view to enhancing consumer confidence in the Common European Sales Law and thus provide consumers with an incentive to enter into cross-border contracts on that basis. The rules should maintain or improve the level of protection that consumers enjoy under Union consumer law.

#### *Amendment*

(11) The Common European Sales Law should comprise a *comprehensive* set of *uniform* mandatory consumer protection rules. In line with Article 114(3) of the Treaty, those rules should guarantee a high level of consumer protection with a view to enhancing consumer confidence in the Common European Sales Law and thus provide consumers with an incentive to enter into cross-border contracts on that basis. The rules should maintain or improve the level of protection that consumers enjoy under Union consumer law. *Furthermore, the adoption of this*



***Regulation should not preclude revision of the Directive on consumer rights, with the aim of providing full high-level harmonisation of consumer protection in the Member States.***

*Justification*

*As constantly claimed from the consumer associations, a revision of the directive on consumer rights should remain the unconditioned objective in order to provide for the highest harmonised consumer protection in all MS.*

**Amendment 5**

**Proposal for a regulation  
Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual-purpose contracts, where the contract is concluded for purposes partly within and partly outside a person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer. In order to determine whether a natural person is acting fully or partly for purposes which come within that person's trade, business, craft or profession, the way in which the person in question behaves towards the contracting party should be taken into account.***

**Amendment 6**

**Proposal for a regulation  
Recital 12**

*Text proposed by the Commission*

*Amendment*

(12) Since the Common European Sales

(12) ***Once there is a valid agreement to***

Law contains a **complete** set of **fully** harmonised mandatory consumer protection rules, there will be no disparities between the laws of the Member States in this area, where the parties have chosen to use the Common European Sales Law. Consequently, Article 6(2) Regulation (EC) No 593/2008, which is predicated on the existence of differing levels of consumer protection in the Member States, has no practical **importance for** the issues covered by the Common European Sales Law.

***use the Common European Sales Law, only the Common European Sales Law should govern the matters falling within its scope.*** Since the Common European Sales Law contains a **comprehensive** set of **uniform** harmonised mandatory consumer protection rules, there will be no disparities between the laws of the Member States in this area, where the parties have chosen to use the Common European Sales Law. Consequently, Article 6(2) of Regulation (EC) No 593/2008, which is predicated on the existence of differing levels of consumer protection in the Member States, has no practical **relevance to** the issues covered by the Common European Sales Law, ***as it would amount to a comparison between the mandatory provisions of two identical second contract-law regimes.***

#### *Justification*

*The changes to the recital are aimed at clarifying the relationship between the Common European Sales Law and the Rome I Regulation.*

### **Amendment 7**

#### **Proposal for a regulation Recital 13**

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

(13) The Common European Sales Law should be available for cross-border contracts, because it is in that context that the disparities between national laws lead to complexity and additional costs and dissuade parties from entering into contractual relationships. The cross-border nature of a contract should be assessed on the basis of the habitual residence of the parties in business-to-business contracts. In a business-to-consumer contract the cross-border requirement should be met where either the general address indicated by the consumer, the delivery address for the goods or the billing address indicated by

##### *Amendment*

(13) The Common European Sales Law should be available for cross-border contracts, because it is in that context that the disparities between national laws lead to complexity and additional costs and dissuade parties from entering into contractual relationships, ***and that distance trade, in particular trade online, has a high potential.*** The cross-border nature of a contract should be assessed on the basis of the habitual residence of the parties in business-to-business contracts. In a business-to-consumer contract the cross-border requirement should be met where either the general address indicated by the

the consumer are located in a Member State, but outside the State where the trader has its habitual residence.

consumer, the delivery address for the goods or the billing address indicated by the consumer are located in a Member State, but outside the State where the trader has its habitual residence.

## **Amendment 8**

### **Proposal for a regulation Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) Cloud computing is developing rapidly and has great potential for growth. The Common European Sales Law provides a coherent set of rules adapted to the distance supply, and in particular the supply online, of digital content and related services. It should be possible for those rules to also apply when digital content or related services are provided using a cloud, in particular when digital content can be downloaded from the seller's cloud or temporarily stored in the provider's cloud.***

#### *Justification*

*The new recital is proposed to clarify which cloud computing contracts are covered by CESL. The Common European Sales Law covers "sales like"-cloud computing contracts as well as some related service contracts, in particular when digital content can be downloaded from the seller's cloud or temporarily stored in the provider's cloud.*

## **Amendment 9**

### **Proposal for a regulation Recital 18**

*Text proposed by the Commission*

*Amendment*

(18) Digital content is often supplied not in exchange for a price but in combination with separate paid goods or services, involving a non-monetary consideration such as giving access to personal data or

(18) Digital content is often supplied not in exchange for a price but in combination with separate paid goods or services, involving a non-monetary consideration such as giving access to personal data or

free of charge in the context of a marketing strategy based on the expectation that the consumer will purchase additional or more sophisticated digital content products at a later stage. In view of this specific market structure and of the fact that defects of the digital content provided may harm the economic interests of consumers irrespective of the conditions under which it has been provided, the availability of the Common European Sales Law should not depend on whether a price is paid for the specific digital content in question.

free of charge in the context of a marketing strategy based on the expectation that the consumer will purchase additional or more sophisticated digital content products at a later stage. In view of this specific market structure and of the fact that defects of the digital content provided may harm the economic interests of consumers irrespective of the conditions under which it has been provided, the availability of the Common European Sales Law should not depend on whether a price is paid for the specific digital content in question.

***However, in such cases, the remedies of the buyer should be limited to damages. On the other hand, the buyer should be able to have recourse to the full range of remedies, except price reduction, even if he is not obliged to pay a price for the supply of digital content, provided that his counter-performance, such as the provision of personal data or other utility having commercial value for the supplier, equals the payment of the price, given that in such cases the digital content is not actually supplied free of charge.***

#### *Justification*

*The changes to the recital reflect the proposed changes to the provisions on the supply of digital content not in exchange for the payment of a price. It seems appropriate to allow the buyer who does not pay money, but makes another counter performance, such as the provision of personal data or other benefit, to have recourse to the full range of remedies, except for price reduction (which is not applicable as no price has been paid).*

### **Amendment 10**

#### **Proposal for a regulation**

##### **Recital 19**

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

(19) With a view to maximising the added value of the Common European Sales Law its material scope should also include certain services provided by the seller that are directly and closely related to specific

###### *Amendment*

(19) With a view to maximising the added value of the Common European Sales Law its material scope should also include certain services provided by the seller that are directly and closely related to specific

goods or digital content supplied on the basis of the Common European Sales Law, and in practice often combined in the same or a linked contract at the same time, most notably repair, maintenance or installation of the goods or the digital content.

goods or digital content supplied on the basis of the Common European Sales Law, and in practice often combined in the same or a linked contract at the same time, most notably repair, maintenance or installation of the goods or the digital content ***or temporary storage of digital content in the provider's cloud.***

#### *Justification*

*The addition to the recital clarifies the relevance of CESL for cloud computing, in particular that related services include storage services.*

### **Amendment 11**

#### **Proposal for a regulation**

##### **Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(19a) The Common European Sales Law may also be used for a contract that is linked to another contract between the same parties that is not a sales contract, a contract for the supply of digital content or a related services contract. The linked contract is governed by the respective national law which is applicable pursuant to the relevant conflict-of-law rule. The Common European Sales Law may also be used for a contract that includes any element other than the sale of goods, the supply of digital content or the provision of related contracts, provided those elements are divisible and their price can be apportioned.***

### **Amendment 12**

#### **Proposal for a regulation**

##### **Recital 22**

*Text proposed by the Commission*

(22) The agreement of the parties to a contract is indispensable for the application of the Common European Sales Law. That agreement should be subject to strict requirements in business-to-consumer transactions. Since, in practice, it will usually be the trader who proposes the use of the Common European Sales Law, consumers must be fully aware of the fact that they are agreeing to the use of rules which are different from those of their pre-existing national law. Therefore, the consumer's consent to use the Common European Sales Law should be admissible only in the form of an explicit statement separate from the statement indicating the agreement to the conclusion of the contract. It should therefore not be possible to offer the use of the Common European Sales Law as a term of the contract to be concluded, particularly as an element of the trader's standard terms and conditions. The trader should provide the consumer with a confirmation of the agreement to use the Common European Sales Law on a durable medium.

*Amendment*

(22) The agreement of the parties to a contract ***to the use of the Common European Sales Law*** is indispensable for the application of the Common European Sales Law. That agreement should be subject to strict requirements in business-to-consumer transactions. Since, in practice, it will usually be the trader who proposes the use of the Common European Sales Law, consumers must be fully aware of the fact that they are agreeing to the use of rules which are different from those of their pre-existing national law. Therefore, the consumer's consent to use the Common European Sales Law should be admissible only in the form of an explicit statement separate from the statement indicating the agreement to the conclusion of the contract. It should therefore not be possible to offer the use of the Common European Sales Law as a term of the contract to be concluded, particularly as an element of the trader's standard terms and conditions. The trader should provide the consumer with a confirmation of the agreement to use the Common European Sales Law on a durable medium.

**Amendment 13**

**Proposal for a regulation**  
**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23a) Where the agreement of the parties to the use of the Common European Sales Law is invalid or where the requirements to provide the standard information notice are not fulfilled, questions as to whether a contract is concluded and on what terms should be determined by the respective national law which is applicable pursuant***

*to the relevant conflict-of-law rules.*

*Justification*

*The new recital serves clarification purposes as the question has been raised what happens in case the agreement of the parties to use the Common European Sales Law is not valid or the standard information notice has not adequately been provided.*

**Amendment 14**

**Proposal for a regulation**  
**Recital 27**

*Text proposed by the Commission*

(27) All the matters of a contractual or non-contractual nature that are not addressed in the Common European Sales Law are governed by the pre-existing rules of the national law outside the Common European Sales Law that is applicable under Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule. These issues include legal personality, the invalidity of a contract arising from lack of capacity, illegality or immorality, the determination of the language of the contract, matters of non-discrimination, representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including the transfer of ownership, intellectual property law *and* the law of torts. **Furthermore**, the issue of whether concurrent contractual and non-contractual liability claims can be pursued together *falls outside the scope of the Common European Sales Law*.

*Amendment*

(27) All the matters of a contractual or non-contractual nature that are not addressed in the Common European Sales Law are governed by the pre-existing rules of the national law outside the Common European Sales Law that is applicable under Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule. These issues include legal personality, the invalidity of a contract arising from lack of capacity, illegality or immorality ***unless the reasons for such illegality or immorality are addressed in the Common European Sales Law***, the determination of the language of the contract, matters of non-discrimination, representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including the transfer of ownership, intellectual property law, the law of torts ***and*** the issue of whether concurrent contractual and non-contractual liability claims can be pursued together. ***In the interest of clarity and legal certainty, the Common European Sales Law should clearly refer to those issues which are, and those which are not, addressed therein.***

## **Amendment 15**

### **Proposal for a regulation Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

*(27a) The unfair commercial practices referred to in Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive')<sup>1</sup> would be covered by the Common European Sales Law in so far as they overlap with rules on contract law, including in particular those relating to unfair commercial practices that can lead to avoidance of a contract due to mistake, fraud, threat or unfair exploitation or to remedies for breach of the duty to provide information. Unfair commercial practices other than those that overlap with rules on contract law should fall outside the scope of the Common European Sales Law.*

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<sup>1</sup> OJ L 149, 11.6.2005, p. 22.

#### *Justification*

*The new recital clarifies the relationship between the Directive 2005/29/EC and CESL: For instance, unfair commercial practices can lead to a mistake of the consumer or constitute even fraud, threat or unfair exploitation, in other cases unfair commercial practices result in the breach of information requirements, for instance concerning the final price. These cases should be covered by CESL. Other unfair commercial practices fall outside the scope, especially if no contract is concluded. The national law to be determined according to general international private law rules applies.*

## **Amendment 16**

### **Proposal for a regulation Recital 29**



*Text proposed by the Commission*

(29) ***Once there is a valid agreement to use the Common European Sales Law, only the Common European Sales Law should govern the matters falling within its scope.*** The rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union legislation. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law. The rules of the Common European Sales Law should be interpreted on the basis of the underlying principles and objectives and all its provisions.

*Amendment*

(29) The rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union legislation. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law. The rules of the Common European Sales Law should be interpreted on the basis of the underlying principles and objectives and all its provisions.

*Justification*

*Consequential change to change in recital 12; the sentence has been moved there.*

**Amendment 17**

**Proposal for a regulation  
Recital 31**

*Text proposed by the Commission*

(31) The principle of good faith and fair dealing should provide guidance on the way parties have to cooperate. As some rules constitute specific manifestations of the general principle of good faith and fair dealing, they should take precedent over the general principle. The general principle should therefore not be used as a tool to amend the specific rights and obligations of parties as set out in the specific rules. The concrete requirements resulting from the principle of good faith and fair dealing should depend, amongst others, on the relative level of expertise of the parties and

*Amendment*

(31) The ***general*** principle of good faith and fair dealing should provide guidance on the way parties have to cooperate. As some rules constitute specific manifestations of the general principle of good faith and fair dealing, they should take precedent over the general principle. The general principle should therefore not be used as a tool to amend the specific rights and obligations of parties as set out in the specific rules. The concrete requirements resulting from the ***general*** principle of good faith and fair dealing should depend, amongst others, on the

should therefore be different in business-to-consumer transactions and in business-to-business transactions. In transactions between traders, good commercial practice in the specific situation concerned should be a relevant factor in this context.

relative level of expertise of the parties and should therefore be different in business-to-consumer transactions and in business-to-business transactions. In transactions between traders, good commercial practice in the specific situation concerned should be a relevant factor in this context. ***The general principle of good faith and fair dealing should set a standard of conduct which ensures an honest, transparent and fair relationship. While it precludes a party from exercising or relying on a right, remedy or defence which that party would otherwise have, the principle as such should not give rise to any general right to damages. Rules of the Common European Sales Law constituting specific manifestations of the general principle of good faith and fair dealing, such as avoidance for fraud or the non-performance of an obligation created by an implied term, can give rise to a right to damages, but only in very specific cases.***

## Amendment 18

### Proposal for a regulation Recital 34

#### *Text proposed by the Commission*

(34) In order to enhance legal certainty by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of the Common European Sales Law or any other provision of this Regulation accessible to the public, the Commission should create a database comprising the final relevant decisions. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission.

#### *Amendment*

(34) In order to enhance legal certainty by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of the Common European Sales Law or any other provision of this Regulation accessible to the public, the Commission should create a database comprising the final relevant decisions. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission. ***A database should be established which is easily accessible, fully systematised and***

*easily searchable. In order to overcome problems relating to different approaches to judgments within the Union and to enable the database to be operated efficiently and economically, judgments should be communicated on the basis of a standard judgment summary which should accompany the judgment. It should be succinct, thus rendering it easily accessible. It should be divided into five sections which should set out the main elements of the judgment communicated, namely: the issue and the relevant Common European Sales Law article; a brief summary of the facts; a short summary of the main arguments; the decision; and the reasons for the decision, clearly stating the principle decided.*

## **Amendment 19**

### **Proposal for a regulation Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

*(34a) A commentary on the Common European Sales Law could be a valuable tool, as it would provide clarity and guidance on that law. Such a commentary should provide a clear and comprehensive exegesis of the articles of the Common European Sales Law together, where appropriate, with an explanation of the policy choices which underpin specific articles. A clear explanation of such choices would enable courts across the Member States to interpret and apply properly the Common European Sales Law, as well as enabling them to fill any gaps. As such, it will facilitate the development of a consistent, uniform application of the Common European Sales Law. The Commission should explore the possibilities of providing for*

*such a commentary.*

## **Amendment 20**

### **Proposal for a regulation**

#### **Recital 34 b (new)**

*Text proposed by the Commission*

*Amendment*

***(34b) An additional obstacle to cross-border trade is the lack of access to efficient and inexpensive redress mechanisms. Therefore, a consumer and a trader concluding a contract on the basis of the Common European Sales Law should consider submitting disputes arising from that contract to an existing alternative dispute resolution entity within the meaning of point (h) of Article 4(1) of Directive 2013/11/EU of the European Parliament and of the Council<sup>1</sup>. This should be entirely without prejudice to the possibility for the parties to initiate proceedings before the competent courts without first having recourse to alternative dispute resolution.***

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<sup>1</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p, 63).

## **Amendment 21**

### **Proposal for a regulation**

#### **Recital 34 c (new)**

*Text proposed by the Commission*

*Amendment*

***(34c) To help facilitate the use of the Common European Sales Law, the***

*Commission should work towards the development of European model contract terms with the assistance of a working group, composed mainly of groups representing consumers and businesses and supported by academics and practitioners. Such model contract terms could usefully complement the Common Sales Law rules when describing the specific features of a given contract, and should take into account the particularities of relevant commercial sectors. They should respond to stakeholders' needs and draw lessons from the initial practical experience of the use of the Common European Sales Law. The model contract terms should be made available to the public as they would provide added value to traders who choose to conclude cross-border contracts using the Common European Sales Law. In order for those model contract terms to effectively accompany the Common European Sales Law, the Commission's work should start as soon as possible.*

## Amendment 22

### Proposal for a regulation Recital 35

#### *Text proposed by the Commission*

(35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to ***extend*** further ***the scope in relation to business-to-business contracts***, market and technological developments in respect of digital content and future developments of the Union acquis.

#### *Amendment*

(35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to ***include*** further ***rules relating to retention of title clauses***, market and technological developments in respect of digital content and future developments of the Union acquis. ***Particular consideration should be given, in addition, to the question whether the limitation to distance contracts, and in particular online contracts, remains***

*appropriate or whether a wider scope, including on-premises contracts, may be feasible.*

#### *Justification*

*Property law currently falls outside the scope of the CESL. As regards retention of title clauses, given their practical importance, a provision clarifying the obligations of the parties is proposed. The proposed amendment takes account of requests to assess, in a future review of the Regulation, the question whether to extend the material scope of the CESL to cover rules relating to the matter of retention of title clauses. A future review should further include considerations as to whether an extension of the scope beyond distance, in particular online contracts, may be feasible.*

### **Amendment 23**

#### **Proposal for a regulation Annex I – Table of contents**

*Text proposed by the Commission*

*Amendment*

*A table of contents is inserted at the beginning of the operative part. It will be adapted in order to reflect the content of the instrument.*

*(See amendment deleting the table of contents at the beginning of the Annex).*

#### *Justification*

*A set of amendments is aimed at merging the "chapeau" regulation with the annex. The division into regulation and annex seems to have created confusion and does not appear necessary.*

### **Amendment 24**

#### **Proposal for a regulation Title I (new) – title**

*Text proposed by the Commission*

*Amendment*

*Title I  
General provisions*

### *Justification*

*A set of amendments is aimed at merging the "chapeau" regulation with the annex. The division into regulation and annex seems to have created confusion and does not appear necessary.*

## **Amendment 25**

### **Proposal for a regulation**

#### **Part -1 (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Part -1: Application of the instrument***

### *Justification*

*A set of amendments is aimed at merging the "chapeau" regulation with the annex. The division into regulation and annex seems to have created confusion and does not appear necessary.*

## **Amendment 26**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The purpose of this Regulation is to improve the conditions for the establishment and the functioning of the internal market by making available a uniform set of contract law rules as set out in Annex I ('the Common European Sales Law'). These rules can be used for cross-border transactions for the sale of goods, for the supply of digital content and for related services where the parties to a contract agree to do so.

1. The purpose of this Regulation is to improve the conditions for the establishment and the functioning of the internal market by making available, ***within the legal order of each Member State***, a uniform set of contract law rules as set out in Annex I ('the Common European Sales Law'). These rules can be used for cross-border transactions for the sale of goods, for the supply of digital content and for related services ***which are conducted at a distance, in particular online***, where the parties to a contract agree to do so.

## Amendment 27

### Proposal for a regulation Article 1 – paragraph 2

*Text proposed by the Commission*

2. This Regulation enables traders to rely on a common set of rules and use the same contract terms for all their cross-border transactions thereby reducing unnecessary costs while providing a high degree of legal certainty.

*Amendment*

2. This Regulation enables traders, ***in particular small or medium-sized enterprises ('SMEs')***, to rely on a common set of rules and use the same contract terms for all their cross-border transactions thereby reducing unnecessary costs while providing a high degree of legal certainty.

*Justification*

*It appears appropriate to clearly articulate the aim of SME protection in Article 1.*

## Amendment 28

### Proposal for a regulation Article 2 – point b

*Text proposed by the Commission*

***(b) 'good faith and fair dealing' means a standard of conduct characterised by honesty, openness and consideration for the interests of the other party to the transaction or relationship in question;***

*Amendment*

***deleted***

*(See amendment for new point fe; the text has been amended)*

*Justification*

*A set of amendments rearranges the definitions in order to group definitions by categories: persons involved, general contract law terms, types of contracts, terms relating to specific types of contract.*

## Amendment 29

### Proposal for a regulation Article 2 – point c



*Text proposed by the Commission*

*Amendment*

**(c) ‘loss’ means economic loss and non-economic loss in the form of pain and suffering, excluding other forms of non-economic loss such as impairment of the quality of life and loss of enjoyment;**

**deleted**

(See amendment for new point fg)

## **Amendment 30**

### **Proposal for a regulation Article 2 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) ‘standard contract terms’ means contract terms which have been drafted in advance for several transactions involving different parties, and which have not been individually negotiated by the parties within the meaning of Article 7 of the Common European Sales Law;**

**deleted**

(See amendment for new point ff)

## **Amendment 31**

### **Proposal for a regulation Article 2 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) ‘trader’ means any natural *or* legal person who is acting for purposes relating to that person's trade, business, craft, or profession;**

**(e) ‘trader’ means any natural *person or any* legal person, *irrespective of whether privately or publicly owned*, who is acting for purposes relating to that person's trade, business, craft or profession *in relation to contracts*;**

## Amendment 32

### Proposal for a regulation Article 2 – point f

*Text proposed by the Commission*

(f) ‘consumer’ means any natural person who is acting for purposes which are outside that person's trade, business, craft, or profession;

*Amendment*

(f) ‘consumer’ means any natural person who is acting for purposes which are outside that person's trade, business, craft, or profession; ***where the contract is concluded for purposes partly within and partly outside that person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person shall also be considered to be a consumer;***

*(See the wording of recital 17 of Directive 2011/83/EU)*

## Amendment 33

### Proposal for a regulation Article 2 – point f a (new)

*Text proposed by the Commission*

*Amendment*

***(fa) 'service provider' means a seller of goods or supplier of digital content who undertakes to provide a customer with a service related to those goods or that digital content;***

*(See amendment for point n)*

## Amendment 34

### Proposal for a regulation Article 2 – point f b (new)

*Text proposed by the Commission*

*Amendment*

***(fb) 'customer' means any person who purchases a related service;***

*(See amendment for point o)*

## **Amendment 35**

### **Proposal for a regulation**

#### **Article 2 – point f c (new)**

*Text proposed by the Commission*

*Amendment*

***(fc) 'creditor' means a person who has a right to performance of an obligation, whether monetary or non-monetary, by another person, the debtor;***

*(See amendment for point w)*

## **Amendment 36**

### **Proposal for a regulation**

#### **Article 2 – point f d (new)**

*Text proposed by the Commission*

*Amendment*

***(fd) 'debtor' means a person who has an obligation, whether monetary or non-monetary, to another person, the creditor;***

*(See amendment for point x)*

## **Amendment 37**

### **Proposal for a regulation**

#### **Article 2 – point f e (new)**

*Text proposed by the Commission*

*Amendment*

***(fe) 'good faith and fair dealing' means a standard of conduct characterised by honesty, openness and, in so far as may be appropriate, reasonable consideration for the interests of the other party to the transaction or relationship in question;***

## **Amendment 38**

### **Proposal for a regulation Article 2 – point f f (new)**

*Text proposed by the Commission*

*Amendment*

*(ff) 'standard contract terms' means contract terms which have been drafted in advance for several transactions involving different parties, and which have not been individually negotiated by the parties within the meaning of Article 7 of the Common European Sales Law;*

*(See amendment for point d)*

## **Amendment 39**

### **Proposal for a regulation Article 2 – point f g (new)**

*Text proposed by the Commission*

*Amendment*

*(fg) 'loss' means economic loss and non-economic loss in the form of pain and suffering, excluding other forms of non-economic loss such as impairment of quality of life and loss of enjoyment;*

*(See amendment for point c)*

## **Amendment 40**

### **Proposal for a regulation Article 2 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

*(ga) 'mandatory rule' means any provision the application of which the parties cannot exclude, or derogate from, or the effect of which they cannot vary;*

*(See amendment for point v)*

## **Amendment 41**

### **Proposal for a regulation Article 2 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

***(gb) 'obligation' means a duty to perform which one party to a legal relationship owes to another party and which that other party is entitled to enforce as such;***

*(See amendment for point y)*

*Justification*

*The addition "and which that other party is entitled to enforce as such" helps to distinguish between obligations and (other) duties.*

## **Amendment 42**

### **Proposal for a regulation Article 2 – point g c (new)**

*Text proposed by the Commission*

*Amendment*

***(gc) 'express' means, in relation to a statement or agreement, that it is made separately from other statements or agreements and by way of active and unequivocal conduct, including by ticking a box or activating a button or similar function;***

*Justification*

*It appears appropriate to add a definition of "express" as this term is used several times throughout the proposal.*

## **Amendment 43**

### **Proposal for a regulation Article 2 – point j – introductory part**

*Text proposed by the Commission*

(j) ‘digital content’ means data which are produced and supplied in digital form, whether or not according to the buyer's specifications, including video, audio, picture or written digital content, digital games, software and digital content which makes it possible to personalise existing hardware or software; it excludes:

*Amendment*

*(Does not affect English version)*

**Amendment 44**

**Proposal for a regulation**

**Article 2 – point m – introductory part**

*Text proposed by the Commission*

(m) ‘related service’ means any service related to goods or digital content, such as installation, maintenance, repair **or any other processing**, provided by the seller of the goods or the supplier of the digital content under the sales contract, the contract for the supply of digital content or a separate related service contract which was concluded at the same time as the sales contract or the contract for the supply of digital content; it excludes:

*Amendment*

(m) ‘related service’ means any service related to goods or digital content, such as **storage or any other processing, including** installation, maintenance **or** repair, provided by the seller of the goods or the supplier of the digital content under the sales contract, the contract for the supply of digital content or a separate related service contract which was concluded at the same time as the sales contract or the contract for the supply of digital content **or provided for, even if only as an option, in the sales contract or in the contract for the supply of digital content**; it excludes:

**Amendment 45**

**Proposal for a regulation**

**Article 2 – point m – point ii**

*Text proposed by the Commission*

**(ii) training services,**

*Amendment*

**deleted**

## **Amendment 46**

### **Proposal for a regulation**

#### **Article 2 – point m – point iv**

*Text proposed by the Commission*

(iv) financial services;

*Amendment*

(iv) financial services, ***including payment services and the issue of electronic money and insurance of any kind, whether for goods and digital content or otherwise;***

## **Amendment 47**

### **Proposal for a regulation**

#### **Article 2 – point n**

*Text proposed by the Commission*

***(n) ‘service provider’ means a seller of goods or supplier of digital content who undertakes to provide a customer with a service related to those goods or that digital content;***

*Amendment*

***deleted***

*(See amendment for point fa)*

## **Amendment 48**

### **Proposal for a regulation**

#### **Article 2 – point o**

*Text proposed by the Commission*

***(o) ‘customer’ means any person who purchases a related service;***

*Amendment*

***deleted***

*(See amendment for point fb)*

## Amendment 49

### Proposal for a regulation Article 2 – point p

#### *Text proposed by the Commission*

(p) ‘distance contract’ means any contract between the trader and the consumer under an organised distance sales scheme concluded without the simultaneous physical presence of the trader or, *in case* the trader is a legal person, a natural person representing the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

#### *Amendment*

(p) ‘distance contract’ means any contract between the trader and the consumer ***or another trader*** under an organised distance sales scheme concluded without the simultaneous physical presence of the trader or, *where* the trader is a legal person, a natural person representing the trader and the consumer ***or the other trader***, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

#### *Justification*

*Consequential change to the limitation of the use of CESL to distance contracts (see amendment for Article 5(1)). The definition of "distance contract" which corresponds to the one used in the acquis should be adapted as regards the personal scope, as CESL should be available to the parties mentioned in Article 7. The substantive characteristics of "distance contract" remain unchanged. If this change is undertaken, it would be advisable to clarify in Chapter 2 and Chapter 4 which follow the Consumer Rights Directive that "distance contract" in that contract means B2C contracts only.*

## Amendment 50

### Proposal for a regulation Article 2 – point q

#### *Text proposed by the Commission*

(q) ‘***off-premises contract***’ means any contract between a trader and a consumer:

***(i) concluded in the simultaneous physical presence of the trader or, where the trader is a legal person, the natural person representing the trader and the consumer in a place which is not the trader's business premises, or concluded on the***

#### *Amendment*

***deleted***



*basis of an offer made by the consumer in the same circumstances; or*

*(ii) concluded on the trader's business premises or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the trader's business premises in the simultaneous physical presence of the trader or, where the trader is a legal person, a natural person representing the trader and the consumer; or*

*(iii) concluded during an excursion organised by the trader or, where the trader is a legal person, the natural person representing the trader with the aim or effect of promoting and selling goods or supplying digital content or related services to the consumer;*

## **Amendment 51**

### **Proposal for a regulation Article 2 – point r**

*Text proposed by the Commission*

*Amendment*

*(r) ‘business premises’ means:*

*deleted*

*(i) any immovable retail premises where a trader carries out activity on a permanent basis, or*

*(ii) any movable retail premises where a trader carries out activity on a usual basis;*

## **Amendment 52**

### **Proposal for a regulation Article 2 – point s**

*Text proposed by the Commission*

(s) ‘commercial guarantee’ means any undertaking by the trader or a producer to the consumer, in addition to legal ***obligations under Article 106 in case of lack*** of conformity to reimburse the price paid or to replace ***or*** repair, or service goods or digital ***content*** in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

*Amendment*

(s) ‘commercial guarantee’ means any undertaking by the trader or a producer ***(the guarantor)*** to the consumer, in addition to ***his*** legal ***obligation relating to the guarantee*** of conformity, to reimburse the price paid or to replace, repair or service goods or digital ***contents*** in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of, the contract;

*Justification*

*Wording of definition should be brought into line with that in the Consumer Rights Directive.*

**Amendment 53**

**Proposal for a regulation**  
**Article 2 – point s a (new)**

*Text proposed by the Commission*

*Amendment*

***(sa) 'repair' means, in the event of lack of conformity, the act of processing non-conforming goods or digital content to bring them into conformity with the contract;***

**Amendment 54**

**Proposal for a regulation**  
**Article 2 – point v**

*Text proposed by the Commission*

*Amendment*

***(v) ‘mandatory rule’ means any provision the application of which the parties***

***deleted***

*cannot exclude, or derogate from or the effect of which they cannot vary;*

*(See amendment for point ga)*

## **Amendment 55**

### **Proposal for a regulation Article 2 – point w**

*Text proposed by the Commission*

*Amendment*

*(w) ‘creditor’ means a person who has a right to performance of an obligation, whether monetary or non-monetary, by another person, the debtor;* **deleted**

*(See amendment for point fc)*

## **Amendment 56**

### **Proposal for a regulation Article 2 – point x**

*Text proposed by the Commission*

*Amendment*

*(x) ‘debtor’ means a person who has an obligation, whether monetary or non-monetary, to another person, the creditor;* **deleted**

*(See amendment for point fd)*

## **Amendment 57**

### **Proposal for a regulation Article 2 – point y**

*Text proposed by the Commission*

*Amendment*

*(y) ‘obligation’ means a duty to perform which one party to a legal relationship owes to another party.* **deleted**

*(See amendment for point gb)*

## Amendment 58

### Proposal for a regulation Article 2 – point y a (new)

*Text proposed by the Commission*

*Amendment*

*(ya) 'free of charge' means free of the costs necessarily incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials.*

## Amendment 59

### Proposal for a regulation Article 3

*Text proposed by the Commission*

*Amendment*

The parties may agree that the Common European Sales Law governs their cross-border contracts for the sale of goods, for the supply of digital content and for the provision of related services within the territorial, material and personal scope as set out in Articles 4 to 7.

The parties may agree, ***subject to the requirements laid down in Articles 8 and 9***, that the Common European Sales Law governs their cross-border contracts for the sale of goods, for the supply of digital content and for the provision of related services within the territorial, material and personal scope as set out in Articles 4 to 7.

*Justification*

*Clarification.*

## Amendment 60

### Proposal for a regulation Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Common European Sales Law may be used for cross-border contracts.

1. The Common European Sales Law may be used for ***distance contracts which are*** cross-border contracts.

## Amendment 61

### Proposal for a regulation

#### Article 5 – paragraph 1 – introductory part

*Text proposed by the Commission*

The Common European Sales Law may be used for:

*Amendment*

The Common European Sales Law may be used for ***distance contracts, including online contracts, which are:***

## Amendment 62

### Proposal for a regulation

#### Article 5 – paragraph 1 – point b

*Text proposed by the Commission*

(b) contracts for the supply of digital content whether ***or not*** supplied on a tangible medium which can be stored, processed or accessed, and re-used by the user, irrespective of whether the digital content is supplied in exchange for the payment of a price.

*Amendment*

(b) contracts for the supply of digital content, whether supplied on a tangible medium ***or through any other means,*** which can be stored, processed or accessed, and re-used by the user, irrespective of whether the digital content is supplied in exchange for the payment of a price ***or in exchange for a counter-performance other than the payment of a price, or is not supplied in exchange for any other counter-performance.***

## Amendment 63

### Proposal for a regulation

#### Article 6 – title

*Text proposed by the Commission*

***Exclusion of mixed-purpose contracts and contracts linked to a consumer credit***

*Amendment*

***Linked contracts and mixed-purpose contracts***

## Amendment 64

### Proposal for a regulation Article 6 – paragraph 1

*Text proposed by the Commission*

1. The Common European Sales Law may **not** be used for ***mixed-purpose contracts including*** any elements other than the sale of goods, the supply of digital content **and** the provision of related services within the meaning of Article 5.

*Amendment*

1. The Common European Sales Law may **also** be used for:

***(a) cases where a contract governed by the Common European Sales Law is linked to a contract other than a sales contract, a contract for the supply of digital content or a related service contract, or***

***(b) cases where a contract includes any elements other than the sale of goods, the supply of digital content or the provision of related services within the meaning of Article 5, provided those elements are divisible and their price can be apportioned.***

## Amendment 65

### Proposal for a regulation Article 6 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. In the cases referred to in point (a) of paragraph 1, the linked contract shall be governed by the otherwise applicable law.***

## **Amendment 66**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 b – introductory wording and point a (new)**

*Text proposed by the Commission*

*Amendment*

***1b. In the cases referred to in point (a) of paragraph 1, and***

***(a) where, in the context of the contract governed by the Common European Sales Law, either of the parties exercises any right, remedy or defence, or that contract is invalid or not binding, the national law applicable to the linked contract shall determine the effects on the linked contract;***

## **Amendment 67**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 b – point b (new)**

*Text proposed by the Commission*

*Amendment*

***(b) where, in the context of the linked contract, either of the parties exercises any right, remedy or defence, or that contract is invalid or not binding under the national law applicable to that contract, the obligations of the parties under the contract governed by the Common European Sales Law shall be unaffected unless a party would not have concluded that contract governed by the Common European Sales Law but for the linked contract, or would have done so only on fundamentally different contract terms, in which case that party shall be entitled to terminate the contract governed by the Common European Sales Law.***

## **Amendment 68**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1c. In the cases referred to in point (b) in paragraph 1, the other elements included in the contract shall be deemed to have been agreed upon under a linked contract.***

*Justification*

*The proposed text clarifies that where a mixed purpose contract includes an element which does not fall within the scope of the Common European Sales Law, e.g. transport services or a service hotline, this element will be treated as a linked contract.*

## **Amendment 69**

### **Proposal for a regulation**

#### **Article 6 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The Common European Sales Law may not be used for contracts between a trader and a consumer where the trader grants or promises to grant to the consumer credit in the form of a deferred payment, loan or other similar financial accommodation. The Common European Sales Law may be used for contracts between a trader and a consumer where goods, digital content or related services of the same kind are supplied on a continuing basis and the consumer pays for such goods, digital content or related services for the duration of the supply by means of instalments.***      ***deleted***

## **Amendment 70**

### **Proposal for a regulation**

#### **Article 7**



*Text proposed by the Commission*

Article 7

Parties to the contract

**1.** The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader.

***Where all the parties to a contract are traders, the Common European Sales Law may be used if at least one of those parties is a small or medium-sized enterprise ('SME').***

**2. For the purposes of this Regulation, an SME is a trader which**

***(a) employs fewer than 250 persons; and***

***(b) has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME which has its habitual residence in a Member State whose currency is not the euro or in a third country, the equivalent amounts in the currency of that Member State or third country.***

**Amendment 71**

**Proposal for a regulation**

**Article 8 – paragraph 2**

*Text proposed by the Commission*

2. In relations between a trader and a consumer the agreement on the use of the Common European Sales Law shall be valid only if the consumer's consent is given by an explicit statement which is separate from the statement indicating the agreement to conclude a contract. The trader shall provide the consumer with a confirmation of that agreement on a durable medium.

*Amendment*

Article 7

Parties to the contract

The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader.

*Amendment*

2. In relations between a trader and a consumer the agreement on the use of the Common European Sales Law shall be valid only if the consumer's consent is given by an explicit statement which is separate from the statement indicating the agreement to conclude a contract ***and if the requirements under Article 9 are fulfilled.*** The trader shall provide the consumer with a confirmation of that agreement on a durable medium.

## Amendment 72

### Proposal for a regulation Article 8 – paragraph 3

#### *Text proposed by the Commission*

3. In relations between a trader and a consumer the Common European Sales Law may not be chosen partially, but only in its entirety.

#### *Amendment*

3. In relations between a trader and a consumer the Common European Sales Law may not be chosen partially, but only in its entirety. ***In relations between traders, the Common European Sales Law may be chosen partially, provided that exclusion of the respective provisions is not prohibited therein.***

#### *Justification*

*It appears necessary to clarify that the Common European Sales Law can be chosen partially in B2B contracts, but that the parties still cannot escape the mandatory rules of the CESL.*

## Amendment 73

### Proposal for a regulation Article 11 – paragraph 1

#### *Text proposed by the Commission*

Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules. ***Provided that the contract was actually concluded, the Common European Sales Law shall also govern the compliance with and remedies for failure to comply with the pre-contractual information duties.***

#### *Amendment*

***1.*** Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules, ***instead of the contract-law regime that would, in the absence of such an agreement, govern the contract within the legal order determined as the applicable law.***

#### *Justification*

*The amendment makes clear that the Common European Sales Law qualifies as second regime within the legal order of each Member State. It is part of a set of amendments clarifying the relationship of the Common European Sales Law with the Rome I Regulation.*

## **Amendment 74**

### **Proposal for a regulation**

#### **Article 11 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where the parties enter into negotiations, or otherwise take preparatory steps for the conclusion of a contract, with reference to the Common European Sales Law, the Common European Sales Law shall also govern compliance with, and remedies for, failure to comply with the pre-contractual duty to provide information, and other matters that are relevant prior to the conclusion of a contract.***

***The application of the Common European Sales Law as referred to in the first subparagraph shall be without prejudice to the law applicable under the relevant conflict-of-laws rules, where the trader has also made reference to other legal regimes.***

#### *Justification*

*The proposed text stipulates that the CESL should govern the pre-contractual phase from the point where the parties refer to the CESL during negotiations, as opposed to the solution chosen by the Commission proposal according to which pre-contractual information duties contained in the CESL only apply where a contract is actually concluded, i.e. retrospectively. The second subparagraph clarifies that only where a trader leaves open whether it is prepared to contract under the CESL or under the otherwise applicable law, it must comply with both sets of standards.*

## **Amendment 75**

### **Proposal for a regulation**

#### **Article 11 a (new) – paragraph 1**

*Text proposed by the Commission*

*Amendment*

#### ***Article 11a***

***Matters covered by the Common European Sales Law***

***1. The Common European Sales Law addresses in its rules the following matters:***

***(a) pre-contractual duties to provide information;***

***(b) the conclusion of a contract including formal requirements;***

***(c) the right of withdrawal and its consequences;***

***(d) avoidance of the contract as a result of mistake, fraud, threat or unfair exploitation and the consequences of such avoidance;***

***(e) interpretation;***

***(f) contents and effects, including those of the relevant contract;***

***(g) the assessment and the effects of unfairness of contract terms;***

***(h) the rights and obligations of the parties;***

***(i) remedies for non-performance;***

***(j) restitution after avoidance or termination or in the case of a non-binding contract;***

***(k) prescription and preclusion of rights;***

***(l) sanctions available in the event of breach of the obligations and duties arising under its application.***

## **Amendment 76**

### **Proposal for a regulation**

#### **Article 11 a (new) – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Matters not addressed in the Common European Sales law are governed by the relevant rules of the national law applicable under Regulations (EC) No***

*593/2008 and (EC) No 864/2007 or any other relevant conflict-of-law rule. Such matters include:*

- (a) legal personality;*
- (b) the invalidity of a contract arising from lack of capacity, illegality or immorality, except where the grounds giving rise to illegality or immorality are addressed in the Common European Sales Law;*
- (c) determination of the language of the contract;*
- (d) matters of non-discrimination;*
- (e) representation;*
- (f) plurality of debtors and creditors and change of parties, including assignment;*
- (g) set-off and merger;*
- (h) the creation, acquisition or transfer of immovable property or of rights in immovable property;*
- (i) intellectual property law; and*
- (j) the law of torts, including the issue of whether concurrent contractual and non-contractual liability claims can be pursued together.*

## **Amendment 77**

### **Proposal for a regulation**

#### **Article 11 a (new) – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. This Article is without prejudice to any mandatory rules of a non-Member State which may be applicable according to the relevant rules governing the conflict of laws.***

## **Amendment 78**

### **Proposal for a regulation Article 14**

*Text proposed by the Commission*

*Amendment*

#### **Article 14**

*deleted*

#### **Communication of judgments applying this Regulation**

**1. Member States shall ensure that final judgments of their courts applying the rules of this Regulation are communicated without undue delay to the Commission.**

**2. The Commission shall set up a system which allows the information concerning the judgments referred to in paragraph 1 and relevant judgements of the Court of Justice of the European Union to be consulted. That system shall be accessible to the public.**

*(See amendment for Article 186a; the text has been amended)*

## **Amendment 79**

### **Proposal for a regulation Article 15**

*Text proposed by the Commission*

*Amendment*

#### **Article 15**

*deleted*

#### **Review**

**1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, in particular on the level of acceptance of the Common European Sales Law, the extent to which its provisions have given rise to litigation and on the state of play concerning differences in the level of consumer protection between the Common**

*European Sales Law and national law.  
That information shall include a  
comprehensive overview of the case law of  
the national courts interpreting the  
provisions of the Common European  
Sales Law.*

*2. By ... [5 years after the date of  
application of this Regulation], the  
Commission shall present to the  
European Parliament, the Council and  
the Economic and Social Committee a  
detailed report reviewing the operation of  
this Regulation, and taking account of,  
amongst others, the need to extend the  
scope in relation to business-to-business  
contracts, market and technological  
developments in respect of digital content  
and future developments of the Union  
acquis.*

*(See amendment for Article 186b)*

## **Amendment 80**

### **Proposal for a regulation Article 16**

*Text proposed by the Commission*

*Amendment*

#### **Article 16**

**deleted**

#### **Entry into force and application**

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

*2. It shall apply from [ 6 months after its  
the entry into force].*

*This Regulation shall be binding in its  
entirety and directly applicable in the  
Member States.*

*(See amendment for Article 186f)*

## Amendment 81

### Proposal for a regulation Table of contents

*Text proposed by the Commission*

*Amendment*

***The table of contents is deleted.***

*(See amendment inserting the table of contents at the beginning of operative part).*

## Amendment 82

### Proposal for a regulation Title II (new) – title

*Text proposed by the Commission*

*Amendment*

#### ***Title II***

***Provisions of the Common European  
Sales Law***

#### *Justification*

*A set of amendments is aimed at merging the "chapeau" regulation with the annex. The division into regulation and annex seems to have created confusion and does not appear necessary.*

## Amendment 83

### Proposal for a regulation Annex I – Article 2 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Breach of this duty may preclude the party in breach from exercising or relying on a right, remedy or defence which that party would otherwise have, ***or may make the party liable for any loss thereby caused to the other party.***

2. Breach of this duty may preclude the party in breach from exercising or relying on a right, remedy or defence which that party would otherwise have, ***but shall not give rise directly to remedies for non-performance of an obligation.***

#### *Justification*

*The amendment makes clear that the Common European Sales Law qualifies as second*



*regime within the legal order of each Member State. It is part of a set of amendments clarifying the relationship of the Common European Sales Law with the Rome I Regulation.*

## **Amendment 84**

### **Proposal for a regulation Annex I – Article 9 – title**

*Text proposed by the Commission*

*Amendment*

***Mixed-purpose contracts***

***Contracts including the provision of  
related services***

*Justification*

*In order to better distinguish between cases falling under this provision and those falling under Article 6 of the proposed CESL Regulation, the title has been changed.*

## **Amendment 85**

### **Proposal for a regulation Annex I – Article 10 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. This Article applies in relation to the giving of notice for any purpose under the rules of the Common European Sales Law and the contract.*** 'Notice' includes the communication of any statement which is intended to have legal effect or to convey information for a legal purpose.

1. 'Notice' includes the communication of any statement which is intended to have legal effect or to convey information for a legal purpose.

*Justification*

*Simplification of wording. The first sentence does not appear necessary as the general application of the provision can already be derived from the fact that it is situated in the Chapter of general provisions.*

## **Amendment 86**

### **Proposal for a regulation Annex I – Article 11 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. The provisions of this Article apply in relation to the computation of time for any purpose under the Common European Sales Law.*** ***deleted***

*Justification*

*Simplification. The first paragraph does not appear necessary as the general application of the provision can already be derived from the fact that it is situated in the Chapter of general provisions.*

## **Amendment 87**

**Proposal for a regulation**  
**Annex I – Article 11 – paragraph 1 a(new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where a period expressed in days, weeks, months or years is to be calculated from a specified event, action or time, the day during which the event occurs, the action takes place or the specified time arrives shall not be considered as falling within the period in question.***

*(See amendment for paragraph 3.)*

*Justification*

*It is proposed to change the order of the paragraphs in line with Regulation No (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, which contains the general rules on computation of time in EU law.*

## **Amendment 88**

**Proposal for a regulation**  
**Annex I – Article 11 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Where a period expressed in days, weeks, months or years is to be calculated*** ***deleted***

*from a specified event, action or time the day during which the event occurs, the action takes place or the specified time arrives does not fall within the period in question.*

*(See amendment for paragraph 1a.)*

## **Amendment 89**

### **Proposal for a regulation**

#### **Annex I – Article 11 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Where a person sends another person a document which sets a period of time within which the addressee has to reply or take other action but does not state when the period is to begin, then, in the absence of indications to the contrary, the period is calculated from the moment the document reaches the addressee.** **deleted**

*(See amendment for paragraph 7a.)*

## **Amendment 90**

### **Proposal for a regulation**

#### **Annex I – Article 11 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**7a. Where a person sends another person a document which sets a period of time within which the addressee has to reply or take other action but does not state when that period is to begin, then, in the absence of indications to the contrary, the period shall be calculated from the moment the document reaches the addressee.**

*(See amendment for paragraph 6; the text has been amended)*

## **Amendment 91**

### **Proposal for a regulation**

#### **Annex I – Article 12 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Articles 59 to 65 apply with appropriate adaptations to the interpretation of unilateral statements indicating intention.** *deleted*

*(See amendment for Article 58(3a))*

## **Amendment 92**

### **Proposal for a regulation**

#### **Annex I – Article 12 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The rules on defects in consent in Chapter 5 apply with appropriate adaptations to unilateral statements indicating intention.** *deleted*

*(See amendment for Article -48(2))*

## **Amendment 93**

### **Proposal for a regulation**

#### **Annex I – Article 13 – title**

*Text proposed by the Commission*

*Amendment*

Duty to provide information **when concluding a distance or off-premises contract**

Duty to provide information

## **Amendment 94**

### **Proposal for a regulation**

#### **Annex I – Article 13 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

*Amendment*

1. A trader concluding a ***distance contract or off-premises*** contract has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer:

1. A trader concluding a contract has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer:

**Amendment 95**

**Proposal for a regulation**

**Annex I – Article 13 – paragraph 3 – introductory wording**

*Text proposed by the Commission*

*Amendment*

3. ***For a distance contract, the*** information required by this Article must:

3. ***The*** information required by this Article must:

**Amendment 96**

**Proposal for a regulation**

**Annex I – Article 13 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. ***For an off-premises contract, the information required by this Article must:***

***deleted***

***(a) be given on paper or, if the consumer agrees, on another durable medium; and***

***(b) be legible and in plain, intelligible language.***

**Amendment 97**

**Proposal for a regulation**

**Annex I – Article 13 – paragraph 5 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) concluded by means of an automatic vending machine or automated commercial premises;* *deleted*

#### **Amendment 98**

##### **Proposal for a regulation**

##### **Annex I – Article 13 – paragraph 5 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) an off-premises contract if the price or, where multiple contracts were concluded at the same time, the total price of the contracts does not exceed EUR 50 or the equivalent sum in the currency agreed for the contract price.* *deleted*

#### **Amendment 99**

##### **Proposal for a regulation**

##### **Annex I – Article 13 – paragraph 5 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) in accordance with the laws of Member States, established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope.*

## **Amendment 100**

### **Proposal for a regulation Annex I – Article 17 – title**

*Text proposed by the Commission*

*Amendment*

Information about rights of withdrawal  
*when concluding a distance or off-  
premises contract*

Information about rights of withdrawal

## **Amendment 101**

### **Proposal for a regulation Annex I – Article 18**

*Text proposed by the Commission*

*Amendment*

*Article 18*

*deleted*

*Off-premises contracts: additional  
information requirements and  
confirmation*

*1. The trader must provide the consumer  
with a copy of the signed contract or the  
confirmation of the contract, including  
where applicable, the confirmation of the  
consumer's consent and acknowledgment  
as provided for in point (d) of Article  
40(3) on paper or, if the consumer agrees,  
on a different durable medium.*

*2. Where the consumer wants the  
provision of related services to begin  
during the withdrawal period provided for  
in Article 42(2), the trader must require  
that the consumer makes such an express  
request on a durable medium.*

## **Amendment 102**

### **Proposal for a regulation Annex I – Article 19 – title**

*Text proposed by the Commission*

*Amendment*

***Distance contracts: additional*** information and other requirements

***Additional*** information and other requirements

### **Amendment 103**

#### **Proposal for a regulation Annex I – Article 20**

*Text proposed by the Commission*

*Amendment*

#### ***Article 20***

***deleted***

***Duty to provide information when concluding contracts other than distance and off-premises contracts***

***1. In contracts other than distance and off-premises contracts, a trader has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer, if that information is not already apparent from the context:***

***(a) the main characteristics of the goods, digital content or related services to be supplied, to an extent appropriate to the medium of communication and to the goods, digital content or related services;***

***(b) the total price and additional charges and costs, in accordance with Article 14(1);***

***(c) the identity of the trader, such as the trader's trading name, the geographical address at which it is established and its telephone number;***

***(d) the contract terms in accordance with points (a) and (b) of Article 16;***

***(e) where applicable, the existence and the conditions of the trader's after-sale services, commercial guarantees and***



*complaints handling policy;*

*(f) where applicable, the functionality, including applicable technical protection measures of digital content; and*

*(g) where applicable, any relevant interoperability of digital content with hardware and software which the trader is aware of or can be expected to have been aware of.*

**2. This Article does not apply where the contract involves a day-to-day transaction and is performed immediately at the time of its conclusion.**

#### **Amendment 104**

##### **Proposal for a regulation**

##### **Annex I – Article 24 – paragraph 3 – point e**

*Text proposed by the Commission*

(e) the *contract terms*.

*Amendment*

(e) the *terms on the basis of which the trader is prepared to conclude the contract*.

#### **Amendment 105**

##### **Proposal for a regulation**

##### **Annex I – Article 24 – paragraph 4**

*Text proposed by the Commission*

4. The trader must ensure that the *contract* terms referred to in point (e) of paragraph 3 are made available in alphabetical or other intelligible characters and on a durable medium by means of any support which permits reading, recording of the information contained in the text and its reproduction in tangible form.

*Amendment*

4. *Without prejudice to any stricter requirements for a trader dealing with a consumer under Section 1*, the trader must ensure that the terms referred to in point (e) of paragraph 3 are made available in alphabetical or other intelligible characters and on a durable medium by means of any support which permits reading, recording of the information contained in the text and its reproduction in tangible form.

## Amendment 106

### Proposal for a regulation

#### Annex I – Article 24 – paragraph 5

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

5. The trader must acknowledge by electronic means and without undue delay the receipt of an offer or an acceptance sent by the other party.

##### *Amendment*

5. The trader must acknowledge by electronic means and without undue delay the receipt of an offer or an acceptance sent by the other party. ***Such acknowledgement shall display the content of the offer or of the acceptance.***

## Amendment 107

### Proposal for a regulation

#### Annex I – Article 29 – paragraph 1

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

1. A party which has failed to comply with any duty imposed by this Chapter is liable for any loss caused to the other party by such failure.

##### *Amendment*

1. A party which has failed to comply with any duty imposed by this Chapter is liable ***under Chapter 16*** for any loss caused to the other party by such failure.

## Amendment 108

### Proposal for a regulation

#### Annex I – Article 30 – paragraph 2

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

2. Agreement is reached by acceptance of an offer. ***Acceptance may be made explicitly or by other statements or conduct.***

##### *Amendment*

2. Agreement is reached by acceptance of an offer.

##### *Justification*

*Simplification of wording. Article 34(1) already indicates that acceptance may be made by any form of statement or conduct.*

## Amendment 109

### Proposal for a regulation

#### Annex I – Article 31 – paragraph 1 – point b

*Text proposed by the Commission*

(b) it has sufficient content and certainty for there to be a contract.

*Amendment*

(b) it has sufficient content and certainty for there to be a contract. ***In relations between a trader and a consumer, an offer shall only be considered to have sufficient content and certainty if it contains an object, a quantity or duration, and a price.***

*Justification*

*For B2C contracts, it appears appropriate to clarify what is the minimum content of an offer.*

## Amendment 110

### Proposal for a regulation

#### Annex I – Article 34 – paragraph 2

*Text proposed by the Commission*

2. Silence or inactivity does not in itself constitute acceptance.

*Amendment*

2. Silence or inactivity does not in itself constitute acceptance. ***In particular, in cases of unsolicited delivery of goods, supply of digital content or provision of related services, the absence of a response from the consumer shall not constitute acceptance.***

## Amendment 111

### Proposal for a regulation

#### Annex I – Article 38 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. In relations between a trader and a consumer, a reply by the offeree which states or implies additional or different***

*contract terms shall in any event  
constitute a rejection and a new offer.*

## **Amendment 112**

### **Proposal for a regulation Annex I – Chapter 4 – title**

*Text proposed by the Commission*

*Amendment*

Right to withdraw *in distance and off-  
premises contracts between traders and  
consumers*

Right to withdraw

## **Amendment 113**

### **Proposal for a regulation Annex I – Article 40 – paragraph 2 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

*(ia) a contract which, in accordance with  
the laws of Member States, is established  
by a public office-holder who has a  
statutory obligation to be independent and  
impartial and who must ensure, by  
providing comprehensive legal  
information, that the consumer only  
concludes the contract on the basis of  
careful legal consideration and with  
knowledge of its legal scope.*

## **Amendment 114**

### **Proposal for a regulation Annex I – Article -48 (new)**

*Text proposed by the Commission*

*Amendment*

*Article -48*

*Scope*

- 1. This Chapter shall apply to the avoidance of a contract on account of defects in consent and similar defects.*
- 2. The rules laid down in this Chapter shall apply, with appropriate adaptations, to the avoidance of an offer, acceptance or other unilateral statement indicating intention, or equivalent conduct.*

*(For paragraph 2, see amendment for Article 12(4))*

*Justification*

*Clarification.*

## **Amendment 115**

### **Proposal for a regulation**

#### **Annex I – Article 48 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different contract terms *and the other party knew or could be expected to have known this*; and

(a) the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different contract terms; and

*Justification*

*It is not appropriate to bind a party to its mistakes, e.g. typographical errors, by requiring co-responsibility of the other party.*

## **Amendment 116**

### **Proposal for a regulation**

#### **Annex I – Article 48 – paragraph 1 – point b – point i**

*Text proposed by the Commission*

*Amendment*

(i) caused the mistake;

(i) caused the mistake; *or*

## **Amendment 117**

### **Proposal for a regulation**

## Annex I – Article 48 – paragraph 1 – point b – point ii

### *Text proposed by the Commission*

(ii) caused the contract to be concluded *in* mistake by failing to comply with any pre-contractual information duty under Chapter 2, Sections 1 to 4;

### *Amendment*

(ii) caused the contract to be concluded *by* mistake by failing to comply with any pre-contractual information duty under Chapter 2, Sections 1 to 4; **or**

## Amendment 118

### Proposal for a regulation

#### Annex I – Article 49 – paragraph 3 – introductory part

### *Text proposed by the Commission*

3. In determining whether good faith and fair dealing require a party to disclose particular information, regard ***should*** be ***had*** to all the circumstances, including:

### *Amendment*

3. In determining whether good faith and fair dealing require a party to disclose particular information, regard ***is to*** be ***had*** to all the circumstances, including:

### *Justification*

*The wording is brought in line with Article 23(2) (on disclosure of information about goods and related services) which contains a comparable catalogue.*

## Amendment 119

### Proposal for a regulation

#### Annex I – Article 49 – paragraph 3 – point e

### *Text proposed by the Commission*

(e) the ***apparent*** importance of the information to the other party; and

### *Amendment*

(e) the ***likely*** importance of the information to the other party; and

### *Justification*

*The wording is brought in line with Article 23(2) (on disclosure of information about goods and related services) which contains a comparable catalogue. There is no reason why the threshold for the importance of the information to the other party should be higher here.*

## Amendment 120

### Proposal for a regulation

## **Annex I – Article 50 a (new)**

*Text proposed by the Commission*

*Amendment*

### **Article 50a**

#### **Third parties**

***1. Where a third party for whose acts a person is responsible or who, with that person's assent, is involved in the making of a contract:***

***(a) causes a mistake, or knows of, or could be expected to know of, a mistake, or***

***(b) is guilty of fraud or threats or unfair exploitation,***

***remedies under this Chapter shall be available as if the behaviour or knowledge had been that of the person with responsibility or giving assent.***

***2. Where a third party for whose acts a person is not responsible and who does not have the person's assent to be involved in the making of a contract is guilty of fraud or threats, remedies under this Chapter shall be available if that person knew or could reasonably be expected to have known of the relevant facts, or at the time of avoidance did not act in reliance on the contract.***

#### *Justification*

*A rule on mistakes, fraud, threats or unfair exploitation committed by third parties was missing.*

## **Amendment 121**

### **Proposal for a regulation Annex I – Article 55**

*Text proposed by the Commission*

*Amendment*

A party who has the right to avoid a contract under this Chapter or who had such a right before it was lost by the effect

A party who has the right to avoid a contract under this Chapter or who had such a right before it was lost by the effect

of time limits or confirmation is entitled, whether or not the contract is avoided, to damages from the other party for loss suffered as a result of the mistake, fraud, threats or unfair exploitation, provided that the other party knew or could be expected to have known of the relevant circumstances.

of time limits or confirmation is entitled, whether or not the contract is avoided, to damages ***under Chapter 16*** from the other party for loss suffered as a result of the mistake, fraud, threats or unfair exploitation, provided that the other party knew or could be expected to have known of the relevant circumstances.

## **Amendment 122**

### **Proposal for a regulation Annex I – Article 58 – paragraph 2**

#### *Text proposed by the Commission*

2. Where one party intended an expression used in the contract to have a particular meaning, and at the time of the conclusion of the contract the other party was aware, or could be expected to have been aware, of that intention, the expression is to be interpreted in the way intended by the first party.

#### *Amendment*

2. Where one party intended an expression used in the contract ***or equivalent conduct*** to have a particular meaning, and at the time of the conclusion of the contract the other party was aware, or could be expected to have been aware, of that intention, the expression ***or equivalent conduct*** is to be interpreted in the way intended by the first party.

## **Amendment 123**

### **Proposal for a regulation Annex I – Article 58 – paragraph 3 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***3a. Expressions used in a contract shall be interpreted in the light of the contract as a whole.***

*(See amendment for Article 60; the text has been amended)*

#### *Justification*

*A set of amendment is aimed at reshuffling the provisionson interpretation in order to make this chapter easier to read and to handle.*



## Amendment 124

### Proposal for a regulation

#### Annex I – Article 58 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***3b. The rules in this Chapter shall apply to the interpretation of an offer, acceptance or other unilateral statement indicating intention, or equivalent conduct, with appropriate adaptations.***

*(See amendment for Article 12(3); the text has been amended)*

## Amendment 125

### Proposal for a regulation

#### Annex I – Article 59 – point a

*Text proposed by the Commission*

*Amendment*

(a) the circumstances in which it was concluded, ***including the preliminary negotiations***;

(a) the circumstances in which it was concluded;

## Amendment 126

### Proposal for a regulation

#### Annex I – Article 59 – point b

*Text proposed by the Commission*

*Amendment*

(b) the conduct of the parties, ***even*** subsequent to the conclusion of the contract;

(b) the conduct of the parties, ***prior, during and*** subsequent to the conclusion of the contract;

*Justification*

*Clarification of wording.*

## Amendment 127

### Proposal for a regulation

#### Annex I – Article 59 – point c

*Text proposed by the Commission*

*Amendment*

(c) the interpretation which ***has already been given by the parties*** to expressions which are identical to or similar to those used in the contract;

(c) the interpretation which ***the parties have previously given*** to expressions which are identical to or similar to those used in the contract;

*Justification*

*Clarification of wording.*

## **Amendment 128**

### **Proposal for a regulation Annex I – Article 60**

*Text proposed by the Commission*

*Amendment*

***Article 60***

***deleted***

***Reference to contract as a whole***

***Expressions used in a contract are to be interpreted in the light of the contract as a whole.***

*(See amendment for Article 58(3a))*

## **Amendment 129**

### **Proposal for a regulation Annex I – Article 61 – second paragraph**

*Text proposed by the Commission*

*Amendment*

***Where a contract document in the consumer's national language has been used, that version shall be considered as the authoritative one. The parties may not, to the detriment of the consumer, exclude the application of this paragraph or derogate from or vary its effects.***

## **Amendment 130**

### **Proposal for a regulation Annex I – Article 61 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 61a**

***Preference for interpretation which gives effect to contract terms***

***An interpretation which gives effect to contract terms shall prevail over one which does not.***

*(See amendment for Article 63)*

## **Amendment 131**

### **Proposal for a regulation Annex I – Article 61 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 61b**

***Interpretation in favour of consumers***

***1. Where there exists any doubt about the meaning of a contract term in a contract between a trader and a consumer, the interpretation most favourable to the consumer shall prevail unless the term in question was supplied by the consumer.***

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

*(See amendment for Article 64)*

## **Amendment 132**

### **Proposal for a regulation Annex I – Article 62 – title**

*Text proposed by the Commission*

*Amendment*

***Preference for individually negotiated contract terms***

***Contract terms which are not individually negotiated***

## **Amendment 133**

### **Proposal for a regulation**

#### **Annex I – Article 62 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where, despite Article 61b, there exists doubt about the meaning of a contract term which has not been individually negotiated within the meaning of Article 7, an interpretation of the term against the party who supplied it shall prevail.***

*(See amendment for Article 65)*

#### *Justification*

*Article 65 has been integrated into Article 62 as it appeared clearer and easier to read when all provisions on interpretation of not individually negotiated contract terms are grouped in one Article. The wording has been clarified.*

## **Amendment 134**

### **Proposal for a regulation**

#### **Annex I – Article 63**

*Text proposed by the Commission*

*Amendment*

***Article 63***

***deleted***

***Preference for interpretation which gives contract terms effect***

***An interpretation which renders the contract terms effective prevails over one which does not.***

*(See amendment for Article 61a)*

## **Amendment 135**

### **Proposal for a regulation Annex I – Article 64**

*Text proposed by the Commission*

*Amendment*

#### **Article 64**

**deleted**

#### ***Interpretation in favour of consumers***

- 1. Where there is doubt about the meaning of a contract term in a contract between a trader and a consumer, the interpretation most favourable to the consumer shall prevail unless the term was supplied by the consumer.***
- 2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.***

*(See amendment for Article 61b)*

## **Amendment 136**

### **Proposal for a regulation Annex I – Article 65**

*Text proposed by the Commission*

*Amendment*

#### **Article 65**

**deleted**

#### ***Interpretation against supplier of a contract term***

***Where, in a contract which does not fall under Article 64, there is doubt about the meaning of a contract term which has not been individually negotiated within the meaning of Article 7, an interpretation of the term against the party who supplied it shall prevail.***

*(See amendment for Article 62(1a))*

## Amendment 137

### Proposal for a regulation

#### Annex I – Title II – Part III – Chapter 7 – section 1 (new) – title

*Text proposed by the Commission*

*Amendment*

#### *Section 1: General provisions*

## Amendment 138

### Proposal for a regulation

#### Annex I – Article 67 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Usages and practices do not bind the parties to the extent to which they conflict with ***contract terms which have been individually negotiated*** or any mandatory rules of the Common European Sales Law.

3. Usages and practices do not bind the parties to the extent to which they conflict with ***the agreement of the parties*** or any mandatory rules of the Common European Sales Law.

*Justification*

*Clarification.*

## Amendment 139

### Proposal for a regulation

#### Annex I – Article 68 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Any contract term implied under paragraph 1 is, as far as possible, to be such as to give effect to what the parties would probably have agreed, ***had they provided for the matter.***

2. Any contract term implied under paragraph 1 is, as far as possible, to be such as to give effect to what the parties would probably have agreed.

*Justification*

*Simplification of wording.*

## Amendment 140

### Proposal for a regulation

#### Annex I – Article 69 – paragraph 1

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

1. Where the trader makes a statement before the contract is concluded, either to the other party or publicly, about the characteristics of what is to be supplied by that trader under the contract, the statement is incorporated as a term of the contract unless:

(a) the other party was aware, or could be expected to have been aware when the contract was concluded that the statement was incorrect or could not otherwise be relied on as such a term; **or**

(b) the other party's decision to conclude the contract could not have been influenced by the statement.

##### *Amendment*

1. Where the trader, ***or a person engaged in advertising or marketing for the trader,*** makes a statement before the contract is concluded, either to the other party or publicly, about the characteristics of what is to be supplied by that trader under the contract, the statement is incorporated as a term of the contract unless ***the trader shows that:***

(a) the other party was aware, or could be expected to have been aware when the contract was concluded, that the statement was incorrect or could not otherwise be relied on as such a term;

***(aa) the statement had been corrected by the time of conclusion of the contract; or***

(b) the other party's decision to conclude the contract could not have been influenced by the statement.

## Amendment 141

### Proposal for a regulation

#### Annex I – Article 69 – paragraph 2

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

***2. For the purposes of paragraph 1, a statement made by a person engaged in advertising or marketing for the trader is regarded as being made by the trader.***

##### *Amendment*

***deleted***

## Amendment 142

### Proposal for a regulation

#### Annex I – Article 69 – paragraph 3

*Text proposed by the Commission*

3. Where the other party is a consumer then, for the purposes of paragraph 1, a public statement made by or on behalf of a producer or other person in earlier links of the chain of transactions leading to the contract is regarded as being made by the trader unless the trader, at the time of conclusion of the contract, did not know and could not be expected to have known of it.

*Amendment*

3. Where the other party is a consumer then, for the purposes of paragraph 1, a public statement made by or on behalf of a producer or other person in earlier links of the chain of transactions leading to the contract is regarded as being made by the trader unless the trader ***shows that***, at the time of conclusion of the contract, ***the trader*** did not know and could not be expected to have known of it.

## Amendment 143

### Proposal for a regulation

#### Annex I – Article 70

*Text proposed by the Commission*

*Amendment*

#### *Article 70*

*deleted*

#### *Duty to raise awareness of not individually negotiated contract terms*

***1. Contract terms supplied by one party and not individually negotiated within the meaning of Article 7 may be invoked against the other party only if the other party was aware of them, or if the party supplying them took reasonable steps to draw the other party's attention to them, before or when the contract was concluded.***

***2. For the purposes of this Article, in relations between a trader and a consumer contract terms are not sufficiently brought to the consumer's attention by a mere reference to them in a contract document, even if the consumer***



*signs the document.*

**3. The parties may not exclude the application of this Article or derogate from or vary its effects.**

*(See amendment for paragraph 76a, the text has been amended)*

#### **Amendment 144**

##### **Proposal for a regulation Annex I – Article 71**

*Text proposed by the Commission*

*Amendment*

##### **Article 71**

**deleted**

##### ***Additional payments in contracts between a trader and a consumer***

***1. In a contract between a trader and a consumer, a contract term which obliges the consumer to make any payment in addition to the remuneration stated for the trader's main contractual obligation, in particular where it has been incorporated by the use of default options which the consumer is required to reject in order to avoid the additional payment, is not binding on the consumer unless, before the consumer is bound by the contract, the consumer has expressly consented to the additional payment. If the consumer has made the additional payment, the consumer may recover it.***

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

*(See amendment for paragraph 76b)*

#### **Amendment 145**

##### **Proposal for a regulation Annex I – Article 74 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The parties may not exclude the application of this Article or derogate from or vary its effects.

**2. *In relations between a trader and a consumer***, the parties may not, ***to the detriment of the consumer***, exclude the application of this Article or derogate from or vary its effects.

*Justification*

*In order not to overly limit freedom of contract in B2B transaction, Article 74 should be only mandatory in B2C transactions.*

## **Amendment 146**

### **Proposal for a regulation**

#### **Annex I – Title II – Part III – Chapter 7 – Section 2 (new)– title**

*Text proposed by the Commission*

*Amendment*

***Section 2: Specific provisions governing contracts between traders and consumers***

## **Amendment 147**

### **Proposal for a regulation**

#### **Annex I – Article 76 a (new) – title**

*Text proposed by the Commission*

*Amendment*

#### ***Article 76a***

***Duty to raise awareness of contract terms which have not been individually negotiated***

## **Amendment 148**

### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***1. Contract terms supplied by a trader and not individually negotiated within the meaning of Article 7 may be invoked against a consumer only if the consumer was aware of them, or if the trader took reasonable steps to draw the consumer's attention to them, before or when the contract was concluded.***

*(See amendment for paragraph 70(1))*

*Justification*

*It appears sufficient to only provide for an obligation to raise awareness of not individually negotiated contract terms in B2C contracts. This takes account of concerns raised for the application of this rule also to B2B.*

#### **Amendment 149**

#### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 2 (new)**

*Text proposed by the Commission*

*Amendment*

***2. For the purposes of this Article, contract terms are not sufficiently brought to the consumer's attention unless they are:***

***(a) presented in a way which is suitable to attract the attention of a consumer to their existence; and***

***(b) given or made available to a consumer by a trader in a manner which provides the consumer with an opportunity to comprehend them before the contract is concluded.***

*(See amendment for paragraph 70(2), the text has been amended)*

*Justification*

*It has been criticized that Article 70 (2) only stipulates which behaviour is not sufficient in order to sufficiently bring the contract terms to the consumer's attention. The newly proposed*

*text aims at describing what needs to be done in order to fulfil this duty: a trader who supplies not individually negotiated contract terms can only invoke these terms against the consumer if he has presented them in a way which is suitable to make the consumer aware of their existence, and which allows the consumer to understand them before the conclusion of the contract.*

## **Amendment 150**

### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 3 (new)**

*Text proposed by the Commission*

*Amendment*

***3. Contract terms shall not be considered as having been sufficiently brought to the consumer's attention by a mere reference to them in a contract document, even if the consumer signs that document.***

*(See amendment for Article 70(2))*

## **Amendment 151**

### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 4 (new)**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*See amendment for paragraph 70(3)*

## **Amendment 152**

### **Proposal for a regulation**

#### **Annex I – Article 76 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 76b**

***Additional payments in contracts between  
a trader and a consumer***

***1. In a contract between a trader and a consumer, a contract term which obliges the consumer to make any payment in addition to the remuneration stated for the trader's main contractual obligation, in particular where it has been incorporated by the use of default options which the consumer is required to reject in order to avoid the additional payment, shall not be binding on the consumer unless, before the consumer is bound by the contract, the consumer has expressly consented to the additional payment. If the consumer makes the additional payment without having expressly consented to it, the consumer may recover it.***

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

*(See amendment for paragraph 71)*

**Amendment 153**

**Proposal for a regulation**

**Annex I – Article 80 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Section 2 does not apply to the definition of the main subject matter of the contract, or to the appropriateness of the price to be paid in so far as the trader has complied with the duty of transparency set out in Article 82.***

***deleted***

### *Justification*

*The aim of deleting paragraph 2 of Article 80 is to extend unfairness control to 'core terms' ('main terms'). This is the most far reaching improvement of consumer protection. In most MS, the courts cannot control the fairness of 'core' terms (including price), but in some Member States they can, generally (see the 'big general clause', Article 36 of the Scandinavian contract law act) or in specific contexts (see for mortgage contracts in Spain, the facts of the case CJEU, Caja de Madrid).*

### **Amendment 154**

#### **Proposal for a regulation Annex I – Article 82**

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

Where a trader supplies contract terms ***which have not been individually negotiated with the consumer within the meaning of Article 7***, it has a duty to ensure that they are drafted and communicated in plain, intelligible language.

##### *Amendment*

Where a trader supplies contract terms, it has a duty to ensure that they are drafted and communicated in plain, ***clear and*** intelligible language.

### **Amendment 155**

#### **Proposal for a regulation Annex I – Article 83 – paragraph 1**

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

1. In a contract between a trader and a consumer, a contract term supplied by the trader ***which has not been individually negotiated within the meaning of Article 7*** is unfair for the purposes of this Section if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, contrary to good faith and fair dealing.

##### *Amendment*

1. In a contract between a trader and a consumer, a contract term supplied by the trader is unfair for the purposes of this Section if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, contrary to good faith and fair dealing.

## **Amendment 156**

### **Proposal for a regulation**

#### **Annex I – Article 83 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) whether it is of such a surprising nature that the consumer could not have expected the proposed term;***

## **Amendment 157**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) inappropriately exclude or limit the remedies available to the consumer against the trader or a third party for non-performance by the trader of obligations under the contract;***

## **Amendment 158**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) restrict the evidence available to the consumer or impose on the consumer a burden of proof which legally lies with the trader;***

## **Amendment 159**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) enable a trader to alter contract terms unilaterally without a valid reason which is specified in the contract; this does not affect contract terms under which a trader reserves the right to alter unilaterally the terms of a contract of indeterminate duration, provided that the trader is required to inform the consumer of the alteration with reasonable notice, and that the consumer is free to terminate the contract at no cost to the consumer;*

## **Amendment 160**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

*(fb) enable a trader to alter unilaterally, without a valid reason, any characteristics of the goods, digital content or related services to be provided or any other features of performance;*

## **Amendment 161**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point f c (new)**

*Text proposed by the Commission*

*Amendment*

*(fc) allow a trader to demand a higher price for his services than that which was fixed when the contract was concluded,*



*unless the contract also allows for a price reduction if price change requirements have been agreed upon, the circumstances required for a price change are set out in the contract and are objectively justified and a price change cannot be brought about arbitrarily by the trader;*

## **Amendment 162**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

*(ga) oblige a consumer to perform all his obligations under the contract where the trader fails to perform its own;*

## **Amendment 163**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

*(gb) entitle a trader to withdraw from or terminate the contract within the meaning of Article 8 on a discretionary basis without giving the same right to the consumer, or entitle a trader to keep money paid for related services not yet supplied in the event that the trader withdraws from or terminates the contract;*

## **Amendment 164**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

*(ha) impose an excessive burden on the consumer in order to terminate a contract of indeterminate duration;*

## **Amendment 165**

### **Proposal for a regulation Annex I – Article 85 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) restrict the evidence available to the consumer or impose on the consumer a burden of proof which should legally lie with the trader;*

*deleted*

## **Amendment 166**

### **Proposal for a regulation Annex I – Article 85 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) inappropriately exclude or limit the remedies available to the consumer against the trader or a third party for non-performance by the trader of obligations under the contract;*

*deleted*

## **Amendment 167**

### **Proposal for a regulation Annex I – Article 85 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) consider specific consumer behaviour equivalent to the issue or non-issue of a statement, unless the significance of the*

*consumer's behaviour is specifically pointed out to him at the beginning of the period intended for this purpose and the consumer has an appropriate length of time in which to make an explicit statement;*

## **Amendment 168**

### **Proposal for a regulation Annex I – Article 85 – point f**

*Text proposed by the Commission*

*Amendment*

*(f) entitle a trader to withdraw from or terminate the contract within the meaning of Article 8 on a discretionary basis without giving the same right to the consumer, or entitle a trader to keep money paid for related services not yet supplied in the case where the trader withdraws from or terminates the contract;*

*deleted*

## **Amendment 169**

### **Proposal for a regulation Annex I – Article 85 – point i**

*Text proposed by the Commission*

*Amendment*

*(i) enable a trader to alter contract terms unilaterally without a valid reason which is specified in the contract; this does not affect contract terms under which a trader reserves the right to alter unilaterally the terms of a contract of indeterminate duration, provided that the trader is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contract at no cost to the consumer;*

*deleted*

## Amendment 170

### Proposal for a regulation Annex I – Article 85 – point j

*Text proposed by the Commission*

*Amendment*

*(j) enable a trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or related services to be provided or any other features of performance;*

*deleted*

## Amendment 171

### Proposal for a regulation Annex I – Article 85 – point k

*Text proposed by the Commission*

*Amendment*

(k) provide that the price of goods, digital content or related services is to be determined at the time of delivery or supply, *or allow a trader to increase the price without giving the consumer the right to withdraw 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;*

(k) provide that the price of goods, digital content or related services is to be determined at the time of delivery or supply;

## Amendment 172

### Proposal for a regulation Annex I – Article 85 – point l

*Text proposed by the Commission*

*Amendment*

*(l) oblige a consumer to perform all their obligations under the contract where the trader fails to perform its own;*

*deleted*

## Amendment 173

### Proposal for a regulation Annex I – Article 85 – point n

#### *Text proposed by the Commission*

(n) allow a trader, 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 trader must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to reject performance;

#### *Amendment*

(n) allow a trader, 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 trader must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to reject performance, ***and without the consumer having expressly required the supply of an equivalent;***

## Amendment 174

### Proposal for a regulation Annex I – Article 85 – point v

#### *Text proposed by the Commission*

***(v) impose an excessive burden on the consumer in order to terminate a contract of indeterminate duration;***

#### *Amendment*

***deleted***

## Amendment 175

### Proposal for a regulation Annex I – Article 86 – paragraph 1 – point b

#### *Text proposed by the Commission*

(b) it is of such a nature that its use grossly deviates from ***good*** commercial practice, contrary to good faith and fair dealing.

#### *Amendment*

(b) it is of such a nature that its use grossly deviates from ***customary*** commercial practice, contrary to good faith and fair dealing.

## Amendment 176

### Proposal for a regulation

#### Annex I – Article 88 – paragraph 3

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

3. The party who is unable to perform has a duty to ensure that notice of the impediment and of its effect on the ability to perform reaches the other party without undue delay after the first party becomes, or could be expected to have become, aware of these circumstances. The other party is entitled to damages for any loss resulting from the breach of this duty.

##### *Amendment*

3. The party who is unable to perform has a duty to ensure that notice of the impediment and of its effect on the ability to perform reaches the other party without undue delay after the first party becomes, or could be expected to have become, aware of these circumstances. The other party is entitled to damages ***under Chapter 16*** for any loss resulting from the breach of this duty.

## Amendment 177

### Proposal for a regulation

#### Annex I – Article 89 – paragraph 3 – point c

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

(c) the aggrieved party did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances.

##### *Amendment*

(c) the aggrieved party, ***relying on the change of circumstances***, did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances.

## Amendment 178

### Proposal for a regulation

#### Annex I – Article 91 – paragraph 1 – point b

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

(b) transfer the ownership of the goods, including the tangible medium on which the digital content is supplied;

##### *Amendment*

(b) ***transfer or undertake to*** transfer the ownership of the goods, including the tangible medium on which the digital content is supplied;

### *Justification*

*The addition clarifies, with a view to the newly inserted Article 91a on retention of title, that ownership does not have to be transferred immediately (which would rule out any retention of title).*

### **Amendment 179**

#### **Proposal for a regulation Annex I – Article 91 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 91a**

##### **Retention of title**

***If a retention of title clause has been agreed, the seller shall not be obliged to transfer ownership of the goods until the buyer has fulfilled the obligation to pay the price as agreed.***

### *Justification*

*The addition of a retention-of-title clause follows a practical need. The newly proposed wording clarifies that retention of title clauses can be agreed upon when parties agree to apply CESL to their contract. Similarly to Article 9 of the Late Payments Directive, the proposed text is confined to the obligation side of a retention-of-title clause, while substantive property law remains outside of its scope.*

### **Amendment 180**

#### **Proposal for a regulation Annex I – Article 93 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) in the case of a consumer sales contract or a contract for the supply of digital content ***which is a distance or off-premises contract, or in which the seller has undertaken to arrange carriage to the buyer***, the consumer's place of residence at the time of the conclusion of the contract;

(a) in the case of a consumer sales contract or a contract ***between a trader and a consumer*** for the supply of digital content, the consumer's place of residence at the time of the conclusion of the contract;

## Amendment 181

### Proposal for a regulation

#### Annex I – Article 94 – paragraph 1 – point a

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

(a) in the case of a consumer sales contract or a contract for the supply of digital content ***which is a distance or off-premises contract or in which the seller has undertaken to arrange carriage to the buyer***, by transferring the physical possession or control of the goods or the digital content to the consumer;

##### *Amendment*

(a) in the case of a consumer sales contract or a contract ***between a trader and a consumer*** for the supply of digital content, by transferring the physical possession or control of the goods or the digital content to the consumer;

## Amendment 182

### Proposal for a regulation

#### Annex I – Article 95 – paragraph 1

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

1. Where the time of delivery cannot be otherwise determined, the goods or the digital content must be delivered ***without undue delay*** after the ***conclusion of the contract***.

##### *Amendment*

1. Where the time of delivery cannot be otherwise determined, the goods or the digital content must be delivered ***within a reasonable time*** after the ***contract was concluded***.

##### *Justification*

*The proposed change aligns the provision with Article 33(c) CISG. The provision for B2C contracts in paragraph 2 which fixes a deadline for delivery of 30 days remains unchanged.*

## Amendment 183

### Proposal for a regulation

#### Annex I – Article 98

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

##### ***Article 98***

##### ***Effect on passing of risk***

##### ***The effect of delivery on the passing of***

##### *Amendment*

##### ***deleted***



*risk is regulated by Chapter 14.*

*Justification*

*The provision states the obvious and is not necessary.*

**Amendment 184**

**Proposal for a regulation**

**Annex I – Article 99 – paragraph 3**

*Text proposed by the Commission*

3. In a **consumer sales** contract, any agreement derogating from the requirements of Articles 100, 102 **and 103** to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods or the digital content and accepted the goods or the digital content as being in conformity with the contract when concluding it.

*Amendment*

3. In a contract **between a trader and a consumer**, any agreement derogating from the requirements of Articles 100, **101 and** 102 to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods or the digital content and accepted the goods or the digital content as being in conformity with the contract when concluding it.

**Amendment 185**

**Proposal for a regulation**

**Annex I – Article 100 – point g**

*Text proposed by the Commission*

(g) possess such qualities and performance capabilities as the buyer may expect. When determining what the **consumer** may expect of the digital content regard is to be had to whether or not the digital content was supplied in exchange for the payment of a price.

*Amendment*

(g) possess such qualities and performance capabilities as the buyer may expect, **including appearance and the absence of defects**. When determining what the **buyer** may expect of the digital content, regard is to be had to whether or not the digital content was supplied in exchange for the payment of a price **or any counter-performance**.

## Amendment 186

### Proposal for a regulation

#### Annex I – Article 102 – paragraphs 3 and 4

*Text proposed by the Commission*

3. ***In contracts between businesses, paragraph 2*** does not apply where the buyer knew or could be expected to have known of the rights or claims based on intellectual property at the time of the conclusion of the contract.

4. In contracts between a trader and a consumer, ***paragraph 2 does not apply where*** the consumer knew of the rights or claims based on intellectual property at the time of the conclusion of the contract.

*Amendment*

3. ***Paragraph 2*** does not apply where

***(a) in contracts between traders,*** the buyer knew or could be expected to have known of the rights or claims based on intellectual property at the time of the conclusion of the contract;

***(b) in contracts between a trader and a consumer,*** the consumer knew of the rights or claims based on intellectual property at the time of the conclusion of the contract.

*Justification*

*Simplification of the structure of the Article.*

## Amendment 187

### Proposal for a regulation

#### Annex I – Article 103

*Text proposed by the Commission*

***Article 103***

***Limitation on conformity of digital content***

***Digital content is not considered as not conforming to the contract for the sole reason that updated digital content has become available after the conclusion of the contract.***

*Amendment*

***deleted***

### *Justification*

*The provision tends to mislead rather than clarify. Article 100 is the general provision applicable to determining conformity or non-conformity.*

## **Amendment 188**

### **Proposal for a regulation Annex I – Article 104**

#### *Text proposed by the Commission*

***In a contract between traders***, the seller is not liable for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew ***or*** could not have been unaware of the lack of conformity.

#### *Amendment*

The seller is not liable for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew ***of that lack of conformity. In a contract between traders, that also applies if the buyer*** could not have been unaware of the lack of conformity.

### *Justification*

*A buyer who unreservedly concludes a sale contract despite being aware of the condition of the item to be purchased cannot subsequently claim that the item is not in conformity. This prohibition of contradictory behaviour applies equally to both traders and consumers. The scope of Article 104 should therefore be extended.*

## **Amendment 189**

### **Proposal for a regulation Annex I – Article 105 – paragraph 2**

#### *Text proposed by the Commission*

2. In a ***consumer sales*** contract, any lack of conformity which becomes apparent within six months of the time when risk passes to the buyer is presumed to have existed at that time unless this is incompatible with the nature of the goods or digital content or with the nature of the lack of conformity.

#### *Amendment*

2. In a contract ***between a trader and a consumer***, any lack of conformity which becomes apparent within six months of the time when risk passes to the buyer is presumed to have existed at that time unless this is incompatible with the nature of the goods or digital content or with the nature of the lack of conformity.

## Amendment 190

### Proposal for a regulation

#### Annex I – Article 105 – paragraph 4

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

4. Where the digital content must be subsequently updated by the trader, the trader must ensure that the digital content remains in conformity with the contract throughout the duration of the contract.

##### *Amendment*

4. Where the digital content must be subsequently updated by the trader, ***or where the trader supplies its components separately***, the trader must ensure that the digital content remains in conformity with the contract throughout the duration of the contract.

## Amendment 191

### Proposal for a regulation

#### Annex I – Article 106 – paragraph 1 – introductory part

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

1. In the case of non-performance of an obligation by the seller, the buyer may do any of the following:

##### *Amendment*

1. In the case of non-performance of an obligation by the seller, the buyer may, ***where the specific requirements for the respective remedies are met***, do any of the following:

## Amendment 192

### Proposal for a regulation

#### Annex I – Article 106 – paragraph 3 – point a

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

(a) the buyer's rights are not subject to cure by the seller; ***and***

##### *Amendment*

(a) the buyer's rights are not subject to cure by the seller, ***except where they relate to goods or digital content which are manufactured, produced or modified in accordance with the consumer's specifications or which are clearly***

*personalised; or*

## Amendment 193

### Proposal for a regulation

#### Annex I – Article 107

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

Limitation of remedies for digital content not supplied in exchange for a price

Where digital content is not supplied in exchange for ***the payment of a price***, the buyer may not resort to the remedies referred to in points (a) to (d) of Article 106(1). The buyer may only claim damages under point (e) of Article 106 (1) for loss or damage caused to the buyer's property, including hardware, software and data, by the lack of conformity of the supplied digital content, except for any gain of which the buyer has been deprived by that damage.

##### *Amendment*

Limitation of remedies for digital content not supplied in exchange for ***payment of a price or any other counter-performance***

***- 1. Where digital content is supplied in exchange for a counter-performance other than the payment of a price, the buyer may resort to any of the remedies referred to in Article 106(1) except for price reduction under point (d) thereof.***

***1.*** Where digital content is not supplied in exchange for ***any counter-performance***, the buyer may not resort to the remedies referred to in points (a) to (d) of Article 106(1). The buyer may only claim damages under point (e) of Article 106 (1) for loss or damage caused to the buyer's property, including hardware, software and data, by the lack of conformity of the supplied digital content, except for any gain of which the buyer has been deprived by that damage.

##### *Justification*

*CESL also covers cases where digital content is not supplied for the payment of a price (Article 5(b)). Article 107 as proposed, however, limits the remedies of the buyer too much and does not take account of cases where the buyer does not pay money but still has to make a counter performance, such as the provision of personal data. Paragraph 1 allows recourse in these cases to all remedies under CESL, except for price reduction (as no money has been paid). Paragraph 2 maintains the limitation of the remedies to damages, but only for cases where digital content was supplied really for free.*

## Amendment 194

### Proposal for a regulation

#### Annex I – Article 109 – paragraph 4 – point -a (new)

*Text proposed by the Commission*

*Amendment*

*(-a) where the buyer is a consumer, the buyer's remedies are not subject to cure by the seller under point (a) of Article 106(3);*

## Amendment 195

### Proposal for a regulation

#### Annex I – Article 109 – paragraph 5

*Text proposed by the Commission*

*Amendment*

5. The seller has a reasonable period of time to effect cure.

5. The seller has a reasonable period of time to effect cure. ***In contracts between a trader and a consumer, that reasonable period shall not exceed 30 days.***

## Amendment 196

### Proposal for a regulation

#### Annex I – Article 109 – paragraph 7

*Text proposed by the Commission*

*Amendment*

7. Notwithstanding cure, the buyer retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

7. Notwithstanding cure, the buyer retains the right to claim damages ***under Chapter 16*** for delay as well as for any harm caused or not prevented by the cure.

## Amendment 197

### Proposal for a regulation

#### Annex I – Article 110 – paragraphs 1 and 2

*Text proposed by the Commission*

1. The buyer is entitled to require performance of the seller's obligations.

***2. The performance which may be required includes the remedying free of charge of a performance which is not in conformity with the contract.***

*Amendment*

1. The buyer is entitled to require performance of the seller's obligations, ***which includes the remedying, free of charge, of a performance which is not in conformity with the contract.***

*Justification*

*Simplification of the structure of the provision.*

**Amendment 198**

**Proposal for a regulation**

**Annex I – Article 111 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Where, in a consumer sales contract, the trader is required to remedy a lack of conformity pursuant to Article ***110(2)*** the consumer may choose between repair and replacement unless the option chosen would be unlawful or impossible or, compared to the other option available, would impose costs on the seller that would be disproportionate taking into account:

*Amendment*

1. Where, in a consumer sales contract, the trader is required to remedy a lack of conformity pursuant to Article ***110***, the consumer may choose between repair and replacement unless the option chosen would be unlawful or impossible or, compared to the other option available, would impose costs on the seller that would be disproportionate taking into account:

**Amendment 199**

**Proposal for a regulation**

**Annex I – Article 111 – paragraph 2**

*Text proposed by the Commission*

2. If the consumer has required the remedying of the lack of conformity by repair or replacement pursuant to paragraph 1, the consumer may resort to other remedies only if the trader has not completed repair or replacement within a reasonable time, not exceeding 30 days.  
***However, the consumer may withhold performance during that time.***

*Amendment*

2. If the consumer has required the remedying of the lack of conformity by repair or replacement pursuant to paragraph 1, the consumer may resort to other remedies only if:

*(a) the trader has not completed repair or replacement within a reasonable time, not exceeding 30 days;*

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

*(c) the same fault has occurred again following repair or replacement.*

**Amendment 200**

**Proposal for a regulation**

**Annex I – Article 113 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. In a contract between a trader and a consumer, the entire performance may be withheld, unless such withholding is disproportionate to the significance of the lack of conformity.***

**Amendment 201**

**Proposal for a regulation**

**Annex I – Article 119**



*Text proposed by the Commission*

1. The buyer loses the right to terminate under this Section if notice of termination is not given within ***a reasonable time*** from when the right arose or the buyer became, or could be expected to have become, aware of the non-performance, whichever is later.

2. Paragraph 1 does not apply:

***(a) where the buyer is a consumer; or***

***(b) where no performance at all has been rendered.***

*Amendment*

1. The buyer loses the right to terminate under this Section if notice of termination is not given within ***two months*** from when the right arose or the buyer became, or, ***if the buyer is a trader that buyer*** could be expected to have become, aware of the non-performance, whichever is later.

2. Paragraph 1 does not apply where no performance at all has been rendered.

**Amendment 202**

**Proposal for a regulation**

**Annex I – Article 120 – paragraph 3**

*Text proposed by the Commission*

3. A buyer who reduces the price cannot also recover damages for the loss thereby compensated but remains entitled to damages for any further loss suffered.

*Amendment*

3. A buyer who reduces the price cannot also recover damages ***under Chapter 16*** for the loss thereby compensated but remains entitled to damages for any further loss suffered.

**Amendment 203**

**Proposal for a regulation**

**Annex I – Article 121 – paragraph 1**

*Text proposed by the Commission*

1. In a contract between traders the buyer is expected to examine the goods, or cause them to be examined, within as short a period as is reasonable not exceeding 14 days from the date of delivery of the goods, supply of digital content or provision of

*Amendment*

1. In a contract between traders the buyer is expected to examine the goods ***or digital content***, or cause them to be examined, within as short a period as is reasonable not exceeding 14 days from the date of delivery of the goods, supply of digital

related services.

content or provision of related services.

## Amendment 204

### Proposal for a regulation

#### Annex I – Article 122 – paragraph 1 – subparagraph 1

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

1. In a contract between traders the buyer may not rely on a lack of conformity if the buyer does not give notice to the seller within a reasonable time specifying the nature of the lack of conformity.

##### *Amendment*

1. In a contract between traders the buyer may not rely on a lack of conformity if the buyer does not give notice to the seller within a reasonable time specifying the nature of the lack of conformity. ***However, the buyer may still reduce the price or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.***

##### *Justification*

*The addition corresponds to Article 44 CISG.*

## Amendment 205

### Proposal for a regulation

#### Annex I – Article 123 – paragraph 2

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

2. Point (a) of paragraph 1 does not apply to contracts for the supply of digital content where the digital content is not supplied in exchange for the payment of a price.

##### *Amendment*

***2. For contracts for the supply of digital content:***

***(a)*** point (a) of paragraph 1 does not apply where the digital content is not supplied in exchange for the payment of a price;

***(b)*** point (b) of paragraph 1 does not apply where the digital content is not supplied on a tangible medium.

##### *Justification*

*It appears appropriate to provide for an exception from the buyer's obligation to take delivery*

*in cases of digital content not supplied on a tangible medium. Such digital content might cause harm to the buyer; and the seller does not incur any storage costs. Thus the buyer should not be obliged to take delivery.*

## **Amendment 206**

### **Proposal for a regulation**

#### **Annex I – Article 127 – paragraph 4**

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

4. Where the seller accepts payment by a third party in circumstances not covered by paragraphs 1 or 2 the buyer is discharged from liability to the seller but the seller is liable to the buyer for any loss caused by that acceptance.

##### *Amendment*

4. Where the seller accepts payment by a third party in circumstances not covered by paragraphs 1 or 2 the buyer is discharged from liability to the seller but the seller is liable to the buyer ***under Chapter 16*** for any loss caused by that acceptance.

## **Amendment 207**

### **Proposal for a regulation**

#### **Annex I – Article 131 – paragraph 1 – introductory part**

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

1. In the case of a non-performance of an obligation by the buyer, the seller may do any of the following:

##### *Amendment*

1. In the case of a non-performance of an obligation by the buyer, the seller may, ***where the specific criteria for the respective remedies are met***, do any of the following:

## **Amendment 208**

### **Proposal for a regulation**

#### **Annex I – Article 131 – paragraph 2**

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

2. If the buyer's non-performance is excused, the seller may resort to any of the remedies referred to in paragraph 1 except ***requiring performance and*** damages.

##### *Amendment*

2. If the buyer's non-performance is excused, the seller may resort to any of the remedies referred to in paragraph 1 except damages.

## *Justification*

*The change mirrors the adaptation made to Article 106(4).*

### **Amendment 209**

#### **Proposal for a regulation**

#### **Annex I – Article 142 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Except where the contract is a distance or off-premises contract, paragraphs 1 and 2 do not apply where the consumer fails to perform the obligation to take over the goods or the digital content and the non-performance is not excused under Article 88. In this case, the risk passes at the time when the consumer, or the third party designated by the consumer, would have acquired the physical possession of the goods or obtained the control of the digital content if the obligation to take them over had been performed.*

*deleted*

### **Amendment 210**

#### **Proposal for a regulation**

#### **Annex I – Article 143 – title**

*Text proposed by the Commission*

*Amendment*

*Time when risk passes*

*Passing of risk in contracts between traders*

### **Amendment 211**

#### **Proposal for a regulation**

#### **Annex I – Article 143 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. Paragraph 1 is subject to Articles 144, 145 and 146.*

*2. If the goods or the digital content are placed at the buyer's disposal and the*

*buyer is aware of this, the risk passes to the buyer at the time when the goods or digital content should have been taken over, unless the buyer was entitled to withhold taking of delivery pursuant to Article 113.*

*If the goods or the digital content are placed at the buyer's disposal at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods or digital content are placed at the buyer's disposal at that place.*

*(See amendment for Article 144)*

#### *Justification*

*The provisions of section 3 have been merged into one Article in the interest of simplification.*

## **Amendment 212**

### **Proposal for a regulation**

#### **Annex I – Article 143 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. In a contract of sale which involves the carriage of goods, regardless of whether the seller is authorised to retain documents controlling the disposition of the goods:***

***(a) if the seller is not bound to hand over the goods at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract;***

***(b) if the seller is bound to hand over the goods to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place.***

*(See amendment for Article 145; structure has been changed)*

## Amendment 213

### Proposal for a regulation

#### Annex I – Article 143 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

***2b. Where goods are sold in transit the risk passes to the buyer as from the time when the goods were handed over to the first carrier or when the contract is concluded, depending on the circumstances. Risk does not pass to the buyer if, at the time of conclusion of the contract, the seller knew, or could be expected to have known, that the goods had been lost or damaged and did not disclose this to the buyer.***

*(See amendment for Article 146; text has been amended)*

## Amendment 214

### Proposal for a regulation

#### Annex I – Article 144

*Text proposed by the Commission*

*Amendment*

#### ***Article 144***

***deleted***

#### ***Goods placed at buyer's disposal***

***1. If the goods or the digital content are placed at the buyer's disposal and the buyer is aware of this, the risk passes to the buyer at the time when the goods or digital content should have been taken over, unless the buyer was entitled to withhold taking of delivery pursuant to Article 113.***

***2. If the goods or the digital content are placed at the buyer's disposal at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods or digital content are placed at the buyer's disposal at that place.***

*(See amendment for Article 143(2))*

## **Amendment 215**

### **Proposal for a regulation Annex I – Article 145**

*Text proposed by the Commission*

*Amendment*

#### **Article 145**

***deleted***

#### ***Carriage of the goods***

***1. This Article applies to a contract of sale which involves carriage of goods.***

***2. If the seller is not bound to hand over the goods at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract.***

***3. If the seller is bound to hand over the goods to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place.***

***4. The fact that the seller is authorised to retain documents controlling the disposition of the goods does not affect the passing of the risk.***

*(See amendment for Article 143(3))*

## **Amendment 216**

### **Proposal for a regulation Annex I – Article 146**

*Text proposed by the Commission*

*Amendment*

#### **Article 146**

***deleted***

#### ***Goods sold in transit***

***1. This Article applies to a contract of sale which involves goods sold in transit.***

***2. The risk passes to the buyer as from the time the goods were handed over to the first carrier. However, if the circumstances so indicate, the risk passes to the buyer when the contract is concluded.***

***3. If at the time of the conclusion of the contract the seller knew or could be expected to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.***

*(See amendment for Article 143(4))*

#### **Amendment 217**

##### **Proposal for a regulation Annex I – Article 150 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. A service provider may entrust performance to another person, unless personal performance by the service provider is required.

*(Does not affect the English version.)*

#### **Amendment 218**

##### **Proposal for a regulation Annex I – Article 155 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

(e) to claim damages.

(e) to claim damages ***under Chapter 16.***

#### **Amendment 219**

##### **Proposal for a regulation Annex I – Article 155 – paragraph 2**



*Text proposed by the Commission*

2. Without prejudice to paragraph 3, the customer's remedies are subject to a right of the service provider to cure ***whether or not the customer is a consumer.***

*Amendment*

2. Without prejudice to paragraph 3, the customer's remedies are subject to a right of the service provider to cure.

**Amendment 220**

**Proposal for a regulation**

**Annex I – Article 155 – paragraph 5 – point a**

*Text proposed by the Commission*

***(a) in relation to the right of the service provider to cure, in contracts between a trader and a consumer, the reasonable period under Article 109 (5) must not exceed 30 days;***

*Amendment*

***deleted***

**Amendment 221**

**Proposal for a regulation**

**Annex I – Article 155 – paragraph 5 – point b**

*Text proposed by the Commission*

***(b) in relation to the remedying of a non-conforming performance Articles 111 and 112 do not apply; and***

*Amendment*

***deleted***

**Amendment 222**

**Proposal for a regulation**

**Annex I – Article 157 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) to claim interest on the price or damages.

*Amendment*

(d) to claim interest on the price or damages ***under Chapter 16.***

## Amendment 223

### Proposal for a regulation Annex I – Article 172 – title

*Text proposed by the Commission*

*Amendment*

Restitution **on** avoidance **or termination**

Restitution **in the event of** avoidance,  
**termination or invalidity**

#### *Justification*

*A set of amendments is aimed at redrafting the restitution chapter as a number of shortcomings have been identified. The proposals aim at achieving more consistent and balanced results and at completing and clarifying the provisions as well as providing practical solutions for the supply of digital content, in particular where it has been supplied against a counter performance other than the payment of a price.*

## Amendment 224

### Proposal for a regulation Annex I – Article 172 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Where a contract is avoided or terminated by either party, each party is obliged to return what that party ('the recipient') has received from the other party.

1. Where a contract **or part of a contract** is avoided or terminated by either party **or is invalid or not binding for reasons other than avoidance or termination**, each party is obliged to return what that party ('the recipient') has received from the other party **under the contract affected or part thereof**.

#### *Justification*

*Clarifications for partial avoidance or termination (cf. Article 117) and for cases in which a contract is invalid or not binding because the seller has not complied with a certain obligation or a specific requirement was not fulfilled (e.g. Articles 19(4), 25(2), 71(1), 72(3), 79(2), 167(3) and 170(1)).*

## Amendment 225

### Proposal for a regulation Annex I – Article 172 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Restitution shall be made without undue delay and in any event not later than 14 days from receipt of the notice of avoidance or termination. Where the recipient is a consumer, this deadline shall be considered met if the consumer takes the necessary steps before the period of 14 days has expired.***

*Justification*

*Clarification as regards time of restitution. The proposed solution corresponds to the provisions on the exercise of a right of withdrawal (Article 44(1) and 45(1), in line with the Consumer Rights Directive).*

#### **Amendment 226**

##### **Proposal for a regulation**

##### **Annex I – Article 172 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The recipient bears the cost of returning what was received.***

*Justification*

*Clarification as regards cost of restitution. The proposed solution corresponds to the provisions on the exercise of a right of withdrawal (Article 44(2), in line with the Consumer Rights Directive).*

#### **Amendment 227**

##### **Proposal for a regulation**

##### **Annex I – Article 172 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***2c. A party may withhold the performance of an obligation to return, where that party has a legitimate interest in doing so, for instance where this is necessary in order to ascertain the existence of a lack***

*of conformity.*

*Justification*

*Clarification.*

## **Amendment 228**

**Proposal for a regulation**

**Annex I – Article 172 – paragraph 2 d (new)**

*Text proposed by the Commission*

*Amendment*

***2d. In the case of non-performance of an obligation to return or to pay under this Chapter by one party, the other party may claim damages under Articles 159 to 163.***

*Justification*

*Clarification.*

## **Amendment 229**

**Proposal for a regulation**

**Annex I – Article 172 a (new) – title**

*Text proposed by the Commission*

*Amendment*

***Article 172a***

***Returning digital content and returning the counter-performance in the case of supply of digital content***

## **Amendment 230**

**Proposal for a regulation**

**Annex I – Article 172 a (new) – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Digital content shall only be considered returnable where:***

***(a) the digital content was supplied on a***

*tangible medium and the medium is still sealed or the seller did not seal it before delivery; or*

*(b) it is otherwise clear that the recipient who sends back a tangible medium cannot have retained a usable copy of the digital content; or*

*(c) the seller can, without significant effort or expense, prevent any further use of the digital content on the part of the recipient, for instance by deleting the recipient's user account.*

#### *Justification*

*Digital content should be considered as returnable where it cannot be further used on the part of the buyer, including cases where a tangible medium is still sealed, where the buyer could not have retained a usable copy (e.g. content still blocked through a technical protection measure or delivered with a defect making it impossible to use it) or where the seller can, without significant effort or expense, prevent any further use of the digital content by the buyer (e.g. by deleting the recipient's user account). In all these cases the buyer should not have to pay for the monetary value.*

### **Amendment 231**

#### **Proposal for a regulation**

#### **Annex I – Article 172 a (new) – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The recipient of digital content supplied on a tangible medium which is returnable in accordance with points (a) and (b) of paragraph 1 shall be considered to have fulfilled the obligation to return by sending back the tangible medium.***

#### *Justification*

*Clarification what the recipient of returnable digital content supplied on a tangible medium has to do in order to fulfil his obligation for restitution (e.g. send back the CD).*

### **Amendment 232**

#### **Proposal for a regulation**

## **Annex I – Article 172 a (new) – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Where digital content is supplied in exchange for a counter-performance other than the payment of a price, such as the provision of personal data, and that counter-performance cannot be returned, the recipient of the counter-performance shall refrain from further use of what was received, for instance by deleting received personal data. The consumer shall be informed of the deletion of personal data.***

## **Amendment 233**

### **Proposal for a regulation**

#### **Annex I – Article 173 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Where what was received, including fruits where relevant, cannot be returned, ***or, in a case of digital content whether or not it was supplied on a tangible medium,*** the recipient must pay its monetary value. Where the return is possible but would cause unreasonable effort or expense, the recipient may choose to pay the monetary value, provided that this would not harm the other party's proprietary interests.

1. Where what was received, including fruits where relevant, cannot be returned, the recipient must pay its monetary value. Where the return is possible but would cause unreasonable effort or expense, the recipient may choose to pay the monetary value, provided that this would not harm the other party's proprietary interests.

*Justification*

*The deleted part of the provision is not necessary if the new Article 172a is introduced.*

## **Amendment 234**

### **Proposal for a regulation**

#### **Annex I – Article 173 – paragraph 5**

**5. Where the recipient has obtained a substitute in money or in kind in exchange for goods or digital content when the recipient knew or could be expected to have known of the ground for avoidance or termination, the other party may choose to claim the substitute or the monetary value of the substitute. A recipient who has obtained a substitute in money or kind in exchange for goods or digital content when the recipient did not know and could not be expected to have known of the ground for avoidance or termination may choose to return the monetary value of the substitute or the substitute.** **deleted**

*Justification*

Paragraph 5 is deleted as it leads to random results if a buyer who cannot return the goods (e.g. they were stolen, given away as a gift or totally destroyed) has to pay the full monetary value of the goods (paragraph 1) whereas a the buyer who has sold the goods faith below market value only has to return the proceeds of the sale (paragraph 5). In both cases the buyer should have to pay the monetary value.

**Amendment 235**

**Proposal for a regulation  
Annex I – Article 173 – paragraph 6**

**6. In the case of digital content which is not supplied in exchange for the payment of a price, no restitution will be made.**

**6. Where the digital content is not supplied in exchange for the payment of a price, but for a counter-performance other than the payment of a price or without counter-performance, and the digital content cannot be considered as returnable under Article 172a(1), the recipient of the digital content does not have to pay its monetary value.**

### *Justification*

*Necessary clarification. If a buyer has obtained digital content without having paid a money price he should, in a restitution situation, not be obliged to pay its monetary value now.*

#### **Amendment 236**

##### **Proposal for a regulation**

##### **Annex I – Article 173 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. Without prejudice to Article 172a(3), where the digital content is supplied in exchange for a counter-performance other than the payment of a price and that counter-performance cannot be returned, the recipient of the counter-performance does not have to pay its monetary value.***

### *Justification*

*Necessary clarification. Very often it is not possible to return what was received in exchange for digital content and it is also difficult, sometimes impossible, to establish the monetary value of the counter-performance. In such a case the most appropriate solution for balancing the rights of the parties is that no party to the contract has to pay monetary value of what it has received. This should be obviously without prejudice to the obligation of the recipient of the counter-performance under Article 172a(3) to refrain from further using what he has obtained (e.g. the personal data).*

#### **Amendment 237**

##### **Proposal for a regulation**

##### **Annex I – Article 174 – title**

*Text proposed by the Commission*

*Amendment*

Payment for use and interest on money  
received

Payment for use and interest on money  
received ***and diminution in value***

#### **Amendment 238**

##### **Proposal for a regulation**

##### **Annex I – Article 174 – paragraphs 1 to 1b**



*Text proposed by the Commission*

1. A recipient who has made use of goods must pay the other party the monetary value of that use for any period where:

- (a) the recipient caused the ground for avoidance or termination;
- (b) the recipient, prior to the start of that period, was aware of the ground for avoidance or termination; or
- (c) having regard to the nature of the goods, the nature and amount of the use and the availability of remedies other than termination, it would be inequitable to allow the recipient the free use of the goods for that period.

*Amendment*

1. A recipient who has made use of goods ***or digital content*** must pay the other party the monetary value of that use for any period where:

- (a) the recipient caused the ground for avoidance or termination;
- (b) the recipient, prior to the start of that period, was aware of the ground for avoidance or termination; or
- (c) having regard to the nature of the goods ***or digital content***, the nature and amount of the use and the availability of remedies other than termination, it would be inequitable to allow the recipient the free use of the goods ***or digital content*** for that period.

**Amendment 239**

**Proposal for a regulation**

**Annex I – Article 174 – paragraph 3**

*Text proposed by the Commission*

3. For the purposes of this Chapter, a recipient is not obliged to pay for use of goods received or interest on money received in any circumstances other than those set out in paragraphs 1 and 2.

*Amendment*

3. For the purposes of this Chapter, a recipient is not obliged to pay for use of goods ***or digital content*** received or interest on money received in any circumstances other than those set out in paragraphs 1, ***1a*** and 2.

**Amendment 240**

**Proposal for a regulation**

**Annex I – Article 174 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The recipient is liable under Articles 159 to 163 for any diminution in the value***

*of the goods, the digital content or their fruits to the extent that the diminishment in value exceeds depreciation through regular use.*

*Justification*

*This provision is proposed as it leads to random results if a buyer who cannot return the goods – e.g. because they were stolen, given away as a gift or totally destroyed – has to pay the full monetary value of the goods (Article 173(1)), whereas where the goods are severely damaged and therefore significantly diminished in value but nevertheless returnable, the buyer needs only to return the damaged goods (Article 172(1) and (2)). The buyer should have to pay damages also in the latter case.*

**Amendment 241**

**Proposal for a regulation**

**Annex I – Article 174 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. The payment for use or diminution in value shall not exceed the price agreed for the goods or the digital content.***

*Justification*

*As no party should benefit from restitution, payment for use or diminished value are restricted to the price agreed for the goods or the digital content.*

**Amendment 242**

**Proposal for a regulation**

**Annex I – Article 174 – paragraph 3 c (new)**

*Text proposed by the Commission*

*Amendment*

***3c. Where the digital content is not supplied in exchange for the payment of a price, but for a counter-performance other than the payment of a price or without any counter-performance, the recipient of the digital content does not have to pay for use or diminished value.***

### *Justification*

*Necessary clarification. When digital content was supplied not in exchange for a price, it could not be expected from a recipient to pay for use or diminished value.*

## **Amendment 243**

### **Proposal for a regulation**

#### **Annex I – Article 174 – paragraph 3 d (new)**

*Text proposed by the Commission*

*Amendment*

***3d. Without prejudice to Article 172a(3), where the digital content is supplied in exchange for a counter-performance other than the payment of a price, the recipient of the counter-performance does not have to pay for use or diminished value of what was received.***

### *Justification*

*Necessary clarification. The proposed provision strikes a balance between the interests on the seller and the buyer. Where the buyer is not obliged to pay for use or for diminished value, the seller should also not be obliged to do so. This should be obviously without prejudice to the obligation of the recipient of the counter-performance under Article 172a(3) to refrain from further using what he has obtained (e.g. the personal data).*

## **Amendment 244**

### **Proposal for a regulation**

#### **Annex I – Article 175 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Where a recipient has incurred expenditure on goods or digital content, the recipient is entitled to compensation to the extent that the expenditure benefited the other party provided that the expenditure was made when the recipient did not know and could not be expected to know of the ground for avoidance or termination.

1. Where a recipient has incurred expenditure on goods or digital content ***or the fruits thereof***, the recipient is entitled to compensation to the extent that the expenditure benefited the other party, provided that the expenditure was made when the recipient did not know, and could not be expected to know, of the ground for avoidance or termination.

*Justification*

*Clarification.*

**Amendment 245**

**Proposal for a regulation**

**Annex I – Article 175 – paragraph 2**

*Text proposed by the Commission*

2. A recipient who knew or could be expected to know of the ground for avoidance or termination is entitled to compensation only for expenditure that was necessary to protect the goods or the digital content from being lost or diminished in value, provided that the recipient had no opportunity to ask the other party for advice.

*Amendment*

2. A recipient who knew or could be expected to know of the ground for avoidance or termination is entitled to compensation only for expenditure that was necessary to protect the goods or the digital content, ***or the fruits thereof***, from being lost or diminished in value, provided that the recipient had no opportunity to ask the other party for advice.

*Justification*

*Clarification.*

**Amendment 246**

**Proposal for a regulation**

**Annex I – Article 177**

*Text proposed by the Commission*

In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Chapter or derogate from or vary its effects.

*Amendment*

In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Chapter, or derogate from or vary its effects, ***before notice of avoidance or termination is given.***

*Justification*

*Parties should be allowed to derogate from the restitution rules after the notice of avoidance or termination is given. This could be important for them in order to reach an amicable settlement.*

## **Amendment 247**

### **Proposal for a regulation Annex I – Article 177 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 177a**

##### **Commercial guarantees**

*1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. In the absence of a guarantee statement, or if the guarantee statement is less advantageous than advertised, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee.*

*2. The guarantee statement shall be drafted in plain, intelligible language and shall be legible. It shall be drafted in the language of the contract concluded with the consumer and shall include the following:*

*(a) a statement of the rights of the consumer, as provided for in Chapter 11, 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 against whom any claim is to be made and the procedure by which the claim is to be made.*

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

*4. At the consumer's request, the trader shall make the guarantee statement*

*available in a durable medium.*

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

## **Amendment 248**

### **Proposal for a regulation Annex I – Article 178**

#### *Text proposed by the Commission*

A right to enforce performance of an obligation, and any right ancillary to such a right, is subject to prescription by the expiry of a period of time in accordance with this Chapter.

#### *Amendment*

A right to enforce performance of an obligation, and any right ancillary to such a right, ***including the right to any remedy for non-performance except withholding performance***, is subject to prescription by the expiry of a period of time in accordance with this Chapter.

#### *Justification*

*Clarification that remedies for non-performance are subject to prescription. The wording is in line with Article 185 which however only regulates the effects of prescription. The rules on prescription do not concern commercial guarantees as defined in Article 2(s).*

## **Amendment 249**

### **Proposal for a regulation Annex I – Article 179 – paragraph 2**

#### *Text proposed by the Commission*

2. The long period of prescription is ***ten*** years or, in the case of a right to damages for personal injuries, thirty years.

#### *Amendment*

2. The long period of prescription is ***six*** years or, in the case of a right to damages for personal injuries, thirty years.

## **Amendment 250**

### **Proposal for a regulation Annex I – Article 179 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Prescription takes effect when either of the two periods has expired, whichever is the earlier.***

## **Amendment 251**

### **Proposal for a regulation Annex I – Article -181**

*Text proposed by the Commission*

*Amendment*

#### ***Article -181***

***Suspension in the case of repair or replacement***

***1. Where a lack of conformity is remedied by repair or replacement, the running of the short period of prescription is suspended from the time when the creditor has informed the debtor of the lack of conformity.***

***2. Suspension lasts until the time when the non-conforming performance has been remedied.***

## **Amendment 252**

### **Proposal for a regulation Annex I – Article 183 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 183a***

***Suspension in cases of force majeure***

***1. The running of the short period of prescription shall be suspended for the period during which the creditor is prevented from pursuing proceedings to assert the right by an impediment which is***

*beyond the creditor's control and which the creditor could not reasonably have been expected to avoid or overcome.*

*2. Paragraph 1 shall apply only if the impediment arises, or subsists, within the last six months of the prescription period.*

*3. Where the duration or nature of the impediment is such that it would be unreasonable to expect the creditor to take proceedings to assert the right within the part of the period of prescription which has still to run after the suspension comes to an end, the period of prescription shall not expire before six months have passed after the impediment was removed.*

#### *Justification*

*Addition of a general force majeure rule in line with Article III.-7.303 DCFR. Article 183 (Creditor's incapacity) and the general principle of good faith and fair dealing do not appear sufficient to avoid unreasonably harsh results of impediments preventing the timely initiation of proceedings under Article 181. As the provision is only applicable to the short period of prescription, the effect on legal certainty is limited.*

#### **Amendment 253**

##### **Proposal for a regulation Title III (new) – title**

*Text proposed by the Commission*

*Amendment*

##### **Title III Flanking measures**

#### **Amendment 254**

##### **Proposal for a regulation Annex I – Article 186 a (new) – paragraph 1**

*Text proposed by the Commission*

*Amendment*

##### **Article 186a Communication of judgments applying**



*this Regulation*

***1. Member States shall ensure that final judgments of their courts applying the rules of this Regulation are communicated without undue delay to the Commission.***

## **Amendment 255**

### **Proposal for a regulation**

#### **Annex I – Article 186 a (new) – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The Commission shall set up a system which allows the information concerning the judgments referred to in paragraph 1 and relevant judgements of the Court of Justice of the European Union to be consulted. That system shall be accessible to the public. It shall be fully systematised and easily searchable.***

*Justification*

*The database is an important tool to promote a common understanding an application of the CESL. Recourse to it should therefore be easy and user-friendly.*

## **Amendment 256**

### **Proposal for a regulation**

#### **Annex I – Article 186 a (new) – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Judgments which are communicated under paragraph 1 shall be accompanied by a standard judgment summary comprising the following sections:***

- (a) the issue and the relevant article(s) of the Common European Sales Law;***
- (b) a brief summary of the facts;***
- (c) a brief summary of the main arguments;***

- (d) the decision; and*
- (e) the reasons for the decision, clearly stating the principle decided.*

#### *Justification*

*In order to overcome the different approaches to judgments from across the EU and to enable the database to be operated efficiently and with economy, a model standard judgment summary should be introduced which can then be incorporated into the database with minimal editing. This summary should accompany the judgment. It should be succinct, thus rendering it easily accessible and minimising translation costs, and should have the content as proposed.*

### **Amendment 257**

#### **Proposal for a regulation Annex I – Article 186 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186b**

##### ***Alternative dispute resolution***

- 1. In contracts between a consumer and a trader, parties are encouraged to consider submitting disputes arising from a contract for which they have agreed to use the Common European Sales Law to an ADR entity within the meaning of point (h) of Article 4(1) of Directive 2013/11/EU.***
- 2. This Article shall not exclude or restrict the parties' right to refer their case at any moment to a court or tribunal instead of submitting their dispute to an ADR entity.***

#### *Justification*

*An additional obstacle to cross-border trade consists in the lack of access to efficient and inexpensive redress mechanisms. The new Directive on consumer ADR laudably ensures EU-wide coverage of ADR. When using the Common European Sales Law, in particular traders should consider to commit to resolving disputes arising from that contract through an existing alternative dispute resolution entity as defined in Article 4(e) of the Directive on consumer ADR. This should be without prejudice to the parties' access to justice.*

## **Amendment 258**

### **Proposal for a regulation Annex I – Article 186 c (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186c**

##### **Development of 'European model contract terms'**

- 1. As soon as possible and at the latest within three months of the entry into force of this Regulation, the Commission shall set up an expert group to assist it in developing 'European model contract terms' based on, and complementary to, the Common European Sales Law, and to foster its practical application.***
- 2. The Commission shall endeavour, with the assistance of the expert group, to present first European model contract terms within [xxx] of the entry into force of this Regulation.***
- 3. The expert group shall comprise members representing, in particular, the interests of users of the Common Sales Law within the Union. It may decide to set up specialist sub-groups to consider separate areas of commercial activity.***

#### *Justification*

*The need to produce EU-wide standard model contracts in parallel to the CESL must be reiterated. Standard model contracts – in particular owing to Article 6(2) of the Rome I Regulation – would not work in the current legal setting. The rapporteurs are convinced that such model contracts, available off-the-shelf, will be crucial for the success of the CESL, and urge the Commission to start working on them as soon as possible and in parallel to the ongoing legislative process. They believe that an express reference thereto is needed in the operative text.*

## **Amendment 259**

### **Proposal for a regulation Title IV (new) – title**

*Text proposed by the Commission*

*Amendment*

***Title IV***

***Final provisions***

**Amendment 260**

**Proposal for a regulation  
Annex I – Article 186 d (new)**

*Text proposed by the Commission*

*Amendment*

***Article 186d***

***Review***

***1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, covering in particular the level of acceptance of the Common European Sales Law, the extent to which its provisions have given rise to litigation and the state of play concerning differences in the level of consumer protection between the Common European Sales Law and national law. That information shall include a comprehensive overview of the case-law of the national courts interpreting the provisions of the Common European Sales Law.***

***2. By ... [5 years after the date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a detailed report reviewing the operation of this Regulation, and taking account of, inter alia, the need to extend the scope of the Common European Sales Law in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.***

*Particular consideration shall further be given to whether the limitation in respect of distance, and in particular online contracts, remains appropriate or whether it may be feasible to widen its scope to cover, inter alia, on-premises contracts.*

*(See amendment for Article 15; the text has been amended)*

## **Amendment 261**

### **Proposal for a regulation Annex I – Article 186 e (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186e**

#### **Amendment to Regulation (EC) No 2006/2004**

*In the Annex to Regulation (EC) No  
2006/2004<sup>1</sup>, the following point shall be  
added:*

*'18. Regulation of the European  
Parliament and of the Council on a  
Common European Sales Law (OJ L \*\*\*,  
\*\*\*, p. \*\*).'*

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<sup>1</sup> *Regulation (EC) No 2006/2004 of the  
European Parliament and of the Council  
of 27 October 2004 on cooperation  
between national authorities responsible  
for the enforcement of consumer  
protection laws (the Regulation on  
consumer protection cooperation) (OJ L  
364, 9.12.2004, p. 1).*

#### *Justification*

*Regulation 2006/2004/EC establishes a system of cooperation between national consumer authorities, with the aim of ensuring compliance with harmonised consumer protection legislation. As the Common European Sales law includes a complete set of fully harmonised mandatory consumer protection rules, the Regulation should also be covered by Regulation 2006/2004/EC.*

## **Amendment 262**

### **Proposal for a regulation Annex I – Article 186 f (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186f**

##### **Entry into force and application**

**1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.**

**2. It shall apply from [ 6 months after its the entry into force].**

**This Regulation shall be binding in its entirety and directly applicable in the Member States.**

*(See amendment for Article 16)*

## **Amendment 263**

### **Proposal for a regulation Annex I – Appendix 1 – point 5 – point b – indent 4**

*Text proposed by the Commission*

*Amendment*

***– If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense."***

***deleted***

## **Amendment 264**

### **Proposal for a regulation Annex II – Your rights before signing the contract**

*Text proposed by the Commission*

The trader has to give you the important information on the contract, for instance on the product and its price including all taxes and charges and his contact details. ***The information has to be more detailed when you buy something outside the trader's shop or if you do not meet the trader personally at all, for instance if you buy online or by telephone.*** You are entitled to damages if this information is incomplete or wrong.

*Amendment*

The trader has to give you the important information on the contract, for instance on the product and its price including all taxes and charges and his contact details. You are entitled to damages if this information is incomplete or wrong.

# EXPLANATORY STATEMENT

## **I. Introduction**

The Commission's proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (CESL) (COM(2011)0635) is a ground-breaking initiative of key importance for consumers and businesses in the internal market. It is the fruit of the European contract law initiative – targeted at addressing internal market problems created by diverging national contract laws – which has been under discussion for many years, with Parliament repeatedly giving guidance and support<sup>1</sup>, most recently in its 2011 resolution on the Commission's Green Paper<sup>2</sup>.

Following their working document of October 2012, your co-rapporteurs are now presenting their joint amendments in a draft report. They would like to stress that this document is not an exhaustive paper, but identifies those points that your rapporteurs wish to put forward for further discussion, and presents them in amendment form.

Your rapporteurs wish, in particular, to thank the European Law Institute for its statement on the project<sup>3</sup>, as well as the experts and stakeholders who provided input at the events organised by the Legal Affairs Committee and Policy Department C in 2012<sup>4</sup>, which were all valuable sources for the rapporteurs' work.

This explanatory statement highlights the main changes proposed in the draft report. Detailed justifications have been provided for the individual amendments.

## **II. Issues**

In general, your rapporteurs aim at improving the text so as to be more user-friendly, clearer and more coherent with the *acquis*.

### **1. Structure**

The division of the proposal into a "chapeau" regulation and an annex has caused much confusion. Your rapporteurs therefore propose to merge regulation and annex, so as to obtain one consolidated and integrated instrument.

Your rapporteurs are also aware that more profound changes to the structure of the CESL

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<sup>1</sup> European Parliament resolutions of 26 May 1989 (OJ C 158, 26.6.1989, p. 400), of 6 May 1994 (OJ C 205, 25.7.1994, p. 518), of 15 November 2001 (OJ 140 E, 13.6.2002, p. 538), of 2 September 2003 (OJ C 76 E, 25.3.2004, p. 95), of 23 March (OJ C 292 E, 1.12.2006, p. 109), of 7 September 2006 (OJ C 305 E, 14.12.2006, p. 247), of 12 December 2007 (OJ C 323 E, 18.12.2008, p. 364), of 3 September 2008 (OJ C 295 E, 4.12.2009, p. 31).

<sup>2</sup> European Parliament resolution of 8 June 2011 on policy options for progress towards a European Contract Law for consumers and businesses (P7\_TA-PROV(2011)0262).

<sup>3</sup>[http://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/S-2-2012\\_Statement\\_on\\_the\\_Proposal\\_for\\_a\\_Regulation\\_on\\_a\\_Common\\_European\\_Sales\\_Law.pdf](http://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/S-2-2012_Statement_on_the_Proposal_for_a_Regulation_on_a_Common_European_Sales_Law.pdf).

<sup>4</sup><http://www.europarl.europa.eu/committees/en/juri/events.html#menuzone>.



have been advocated. More specifically, it has been said that Part IV on obligations and the remedies of the parties could benefit from restructuring in order to enhance user-friendliness. Your rapporteurs could indeed imagine a structure that groups at least the buyer's and seller's obligations and the buyer's and seller's remedies. However, after reflection, and in order to facilitate work on the draft report and the amendments that will be tabled, they have refrained from proposing such far-reaching rearrangements within the text. Where it seemed feasible to improve the structure within smaller units, be it within a provision or a section or chapter, the corresponding proposals have been made.

## 2. Scope

Whether the CESL should be limited to online or distance transactions remains a difficult question. After careful consideration, your rapporteurs propose at this stage to offer CESL for distance contracts only. The term "distance contracts" has been proposed as it is already used in the acquis (Distance Selling Directive, Distance Marketing of Financial Services Directive, Consumer Rights Directive). The main area targeted is the rapidly growing internet sales sector, where the idea of an optional instrument met robust support, even from circles more reluctant towards a broader use of such instrument. It is obvious that the CESL, as one set of EU-wide rules, is the ideal tool for online trade. The draft report seeks to open up debate on this. It deliberately does not provide for a full adaptation of CESL to distance trade. This would require further work and analysis, the results of which could be fed into the ongoing legislative process. However, some elements have already been added at this stage with a view to the use of the CESL in distance contracts, for instance with regard to digital content and cloud computing.

As for the substantive scope, your rapporteurs have put forward a more practical and user-friendly solution for mixed-purpose contracts and contracts with a credit element.

## 3. Relationship with the Rome I Regulation

As the relationship with the Rome I Regulation, in particular Article 6, is a crucial issue for the functioning of the CESL, your rapporteurs have attempted to clarify this issue through drafting changes both to the recitals and to the articles. The aim is, firstly, to clearly qualify the CESL as a second regime within the legal order of each Member State (see amendments to Article 1 and Article 11(1)); secondly, to make it crystal clear that the agreement to use the CESL is not to be confused with a choice between two legal orders, but is a "choice between two different regimes within the same national legal order" (see amendments to Recital 10). Thirdly, your rapporteurs felt it necessary to elaborate more on why Article 6(2) of the Rome I Regulation has no practical relevance, i.e. "as it would amount to a comparison between the mandatory provisions of two identical second contract law regimes" (see amendment to Recital 12).

## 4. References to national law

Your rapporteurs believe that it is important, in the interest of clarity and legal certainty, to stipulate clearly within the operative part of CESL which areas are covered, and also to provide a list of issues that are not covered (see amendment introducing a new Article 11a). As regards the matters covered, adaptations might prove necessary in the further course of the legislative procedure, particularly if the streamlining of CESL towards distance contracts, in particular online contracts, so requires.

## 5. Good faith and fair dealing

The rapporteurs believe that the principle of good faith and fair dealing is an important tool to find equitable solutions on a case-by-case basis. However, they have carefully considered concerns that have been raised, including but not only from a common law perspective, where this principle is not known. They therefore propose changes and clarifications to the definition (see amendment to Article 2(b)) and to the expression of the general principle as such (see amendment to Article 2 of Annex I). The definition originally proposed has been read as preventing the parties from driving a hard bargain, which raised concerns in particular in B2B contracts. In order to clarify that this is not intended, the proposed wording stipulates that no party should abuse its rights, which should be in the spirit of "good faith and fair dealing". The change is also relevant for Article 86 on B2B unfairness controls and should mitigate the related concern that parties to a contract might not be allowed to follow their own interests when they negotiate. Furthermore, the rapporteurs believe that the principle of good faith and fair dealing within the CESL should be limited to the so-called "shield" function of that principle only, i.e. precluding a party in breach from exercising or relying on a right, remedy or defence, and the so-called "sword" function, i.e. a right to damages, should be deleted.

## 6. Remedies of the buyer

Your rapporteurs have carefully considered the system of consumer remedies put forward by the CESL. One of the main issues is that of a better balance as regards the free choice of remedies, bearing in mind the absence of cure by the seller, the absence of a requirement to give notice of termination with a certain time and the general principle of the absence of payment for use. They wish to recall the very high level of consumer protection offered by CESL, which goes beyond the *acquis*, and in particular the Consumer Sales Directive. That level matches almost entirely, or even goes beyond, national laws, which is important as avoiding the application of Article 6(2) of the Rome I Regulation (see above under 3.) appears desirable only if its objective – to guarantee that the consumer is as protected as he would be under his own law – is ensured in a different way. On the other hand, the provision in Article 174(1)(c) of the Annex which, by allowing a claim for use where free use would be "inequitable", appears to be intended as corrective in abuse cases concerning termination without payment for use, is not clear and may ultimately deter consumers from exercising their rights. It seems preferable, also in the interest of consumers, to have clear rules, whilst maintaining in principle the level of consumer protection provided.

Against this background, your rapporteurs wished to put up for discussion three alternatives in order to provide a better balance between the consumer's right to termination and the seller's right to cure, which is justified also in order to limit the described uncertainties. The rapporteurs wished to underline that these options were proposed for consideration alternatively and by no means cumulatively.

- As a first alternative, one could introduce a deadline of 6 months after the risk has passed to the buyer, after the expiry of which the buyer would have to accept cure (see option for an amendment to Article 106(3)(a)(ii)). The rapporteurs are aware that the Consumer Sales Directive, in its Article 5(2), provides for an option for Member States to introduce a notification requirement as from two months from detection, and that this option was not used by all Member States. On the other hand, a case could be made for strongly privileging the first six months after delivery in which the buyer in any case benefits from a reversal of the burden of proof as concerns the existence of

the non-conformity at the time of delivery. A limitation of the free choice of remedies for the period after those six months could be seen as being of limited effect, as in any case it becomes more difficult for the buyer to prove non-conformity after 6 months.

- As a second alternative, a requirement could be introduced that the consumer must give notice of termination within a reasonable time after he first became aware of non-performance. Afterwards, the right of termination would be lost, and the consumer would have to have recourse to other, less extensive rights, such as replacement or repair. It is true that this represents a restriction as regards the termination rights of the consumer. On the other hand, the case could be made that it would be in any case in the interest of the consumer to exercise his right of termination at his earliest convenience after he became aware of the non-performance, especially since his capacity to prove non-performance deteriorates over time.
- As a third alternative, finally, an obligation could be introduced for the consumer to pay for use in cases where he terminates the contract (as opposed to cases of avoidance, where the reason for bringing an end to the contract seems to be less in one party's sphere, see amendment to Article 174(1) to (1b)). Under this option, the consumer would still have a free choice of remedies, but the seller would be able to claim payment for the use of the goods if the buyer decides to terminate the contract instead of invoking his less extensive rights, i.e. replacement or repair. In practice this means that, when a certain period has elapsed since the delivery of the goods, it becomes economically more reasonable for the buyer to invoke one of the other remedies (e.g. repair or replacement or reduction of the price). It has to be acknowledged though that the calculation of use is not always straightforward.

Your rapporteurs attempted to openly summarise the merits and drawbacks they saw in each of these options and invited discussion on this basis. The result of the discussion led to the adoption of the second alternative with an important modification: the words "reasonable time" have been replaced by a fixed time limit of two months.

## 7. Restitution

Your rapporteurs have put forward a proposal for reformulation and restructuring of the restitution rules. The aim is to provide a solution which strikes a viable balance between both sides, so that it is clear and foreseeable for consumers what they have to pay or return so that they may be confident in exercising their rights.

## 8. Digital content

As regards digital content, your rapporteurs propose, in particular, a solution to cases where digital content is not paid for with money, but e.g. with personal data. The protection of the buyer is extended in these cases, as he should have the full range of remedies available to him (except for price reduction, as he did not pay money). Furthermore, specific provisions for restitution are proposed for these cases.

## 9. Prescription

Your rapporteurs are aware that the 10-year prescription period has triggered critical reactions, whereas others, including the Commission, explain that its practical relevance is

limited. In order to mitigate concerns, and whilst agreeing that the practical effects for the long period are limited, your rapporteurs propose a six-year period, which they believe to be an adequate solution in the light of the existing long prescription periods in the Member States. They have proposed some additional clarifications to the prescription chapter.

#### 10. Flanking measures

Your rapporteurs have proposed a number of additional provisions in order to anchor flanking measures in the operative part of the text: this concerns the database of judgments, the link with alternative dispute resolution, as well as the elaboration of EU-wide standard model contracts.

### **C. Conclusion**

It is the view of your rapporteurs that the CESL has huge potential advantages for consumers and businesses in the internal market, in particular in the digital era, and offers an opportunity that should not be missed. Your rapporteurs invite colleagues to give further consideration to the amendments put forward as those amendments, in their view, could ensure the success of this instrument. They also look forward debating these matters further.



11.7.2013

## **OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION (\*)**

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law  
(COM(2011)0635 – C7-0329/2011 – 2011/0284(COD))

Rapporteur (\*): Evelyne Gebhardt, Hans-Peter Mayer

(\*) Associated committee – Rule 50 of the Rules of Procedure

### **SHORT JUSTIFICATION**

#### **1. Introduction**

On 11 October 2011 the Commission submitted a proposal for a regulation on a Common European Sales Law (CESL). The objective of the proposal is to improve the establishment and the functioning of the internal market by facilitating cross-border trade for businesses and consumers. It seeks to achieve this objective by means of a Common European Sales Law, a self-standing uniform set of contract law rules including provisions to protect consumers in connection with the sale of goods and digital contents, which is to be considered as a second, optional contract law regime within the national law of each Member State.

In view of the proposal's significance for consumer protection, the Committee on the Internal Market and Consumer Protection (IMCO) has a particularly important role to play. Accordingly the committee is not simply issuing an opinion for the Committee on Legal Affairs (JURI) as the committee responsible under the Rule 50 'associated committees' procedure, but is itself solely responsible in many areas.

As in the committee responsible, so in the IMCO committee two co-rapporteurs were appointed, who have worked closely together in preparing the opinion (including by holding a public hearing and by ordering a quality check on the Commission's impact assessment).

A legal text regulating the rights and duties of two contracting parties should be as clear and precise as possible. This is particularly important when it relates to consumers; scope for differing interpretations should be avoided as far as possible. Consistency with existing rules, particularly the Consumer Rights Directive, also needs to be ensured. Accordingly the co-

rapporteurs proposed a number of amendments to clarify the terminology used and align it with existing definitions. Joint amendments are also tabled concerning the contractual conformity of digital contents, the term ‘free of charge’, and the offer of cure on the termination of the contract.

## **2. Justification for substantial amendments**

### **Unsuitability of optional instruments in consumer law**

There are fundamental doubts concerning the suitability of the Commission proposal. In consumer contract law, given the asymmetry of information between the parties, the consumer has a particular need for protection and must be able to rely on a high level of protection in the conclusion of sales contracts. Particularly in the field of cross-border online trade, the European legislator therefore has a duty to create reliable rules by the approximation of national law. In the past the bulk of this work was done by Directive 2011/83/EU and similar legislation. Creating an additional, optional instrument, and effectively placing the decision on the choice of instrument in the hands of the trader, would complicate the legal situation and would disadvantage the consumer in particular. The legal uncertainty which could be created by the introduction of an optional sales law represents an avoidable risk for the operation of the single market. The co-rapporteur shares the concerns of a number of experts that, in the absence of case law, it would take many years before the European Court of Justice had given final rulings on the interpretative issues raised by the Common European Sales Law. Furthermore, an optional instrument would be a departure from the existing successful formula of harmonisation.

### **Criticism of the Commission's Impact Assessment**

The committee is not convinced by the calculation of the transaction costs and assumptions concerning consumer confidence in the Commission's impact assessment. For example, neither the harmonisation effects of the recently adopted Directive 2011/83/EU nor the legislation on alternative dispute resolution mechanisms (ADR and ODR) are taken into account. Accordingly, at the suggestion of one of the co-rapporteurs, a questionnaire was submitted to the European Parliament's IA Unit by the two committees responsible, JURI and IMCO, with a view to carrying out a quality check on the Commission's impact assessment. The results were presented on 22 January 2012 in the JURI committee and largely confirm the co-rapporteur's misgivings. The analysis highlights methodological failings which seriously detract from the meaningfulness of the impact assessment and call into question its value, even taking into account that there is as yet no generally accepted model for calculating transaction costs.

### **Minimum harmonisation of aspects of performance, related services and digital contents**

The committee is therefore unable to support the Commission proposal for an optional CESL. Nevertheless it is convinced of the need for common European rules in the field of consumer contract law. As an alternative to the optional sales law it therefore recommends that the existing, successful process of harmonising EU consumer contract law should be continued and completed. The adoption of Directive 2011/83/EU has left few areas of consumer contract law to be modernised by this proposal for a directive. Account also needs to be taken of

developments in online trade by including contracts on digital contents. The committee also takes the view that related services should also be included because of their close links to the sales contract.



## AMENDMENTS

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

### Amendment 1

#### Proposal for a regulation Title

*Text proposed by the Commission*

**REGULATION** OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
*on a Common European Sales Law*

*Amendment*

**DIRECTIVE** OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
*on the harmonisation of certain aspects of  
the obligation relating to the guarantee of  
conformity in connection with consumer  
sales contracts, related services and  
digital content*

#### *Justification*

*The Commission proposal should be turned into a directive on minimum harmonisation of certain aspects of the obligation relating to the guarantee of conformity in connection with consumer sales contracts, related services and digital content. In terms of substance, this is an extension of Directive 2011/83/EU. In the interests of legal certainty, matters already regulated in Directive 2011/83/EU should not be addressed by this text.*

### Amendment 2

#### Proposal for a regulation Recital 1

*Text proposed by the Commission*

(1) There are still considerable bottlenecks to cross-border economic activity that prevent the internal market from exploiting its full potential for growth and job creation. ***Currently, only one in ten traders in the Union exports goods within the Union and the majority of those who***

*Amendment*

(1) There are still considerable bottlenecks to cross-border economic activity that prevent the internal market from exploiting its full potential for growth and job creation. Of ***all the*** obstacles to cross-border trade, tax regulations, administrative requirements, delivery

*do, only export to a small number of Member States. From the range of obstacles to cross-border trade including tax regulations, administrative requirements, difficulties in delivery, language and culture, traders consider the difficulty in finding out the provisions of a foreign contract law among the top barriers in business-to-consumer transactions and in business-to-business transactions. This also leads to disadvantages for consumers due to limited access to goods. Different national contract laws therefore deter the exercise of fundamental freedoms, such as the freedom to provide goods and services, and represent a barrier to the functioning and continuing establishment of the internal market. They also have the effect of limiting competition, particularly in the markets of smaller Member States.*

difficulties, language and culture *have been identified as the greatest barriers. In spite of recently adopted Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights<sup>1</sup>, which harmonises the main aspects of distance contracts, there are still a number of differences between national provisions of consumer contract law. Those differences can be regarded as barriers to the functioning and continuing establishment of the internal market.*

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<sup>1</sup>OJ. L 304, 22.11.2011, p. 64.

#### *Justification*

*The directive should be structured as follows:*

*Chapter 1: Scope and definitions*

*Chapter 2: Conformity and the consumer's remedies*

*Chapter 3: Commercial guarantees*

*Chapter 4: Related services*

*Chapter 5: General provisions*

### **Amendment 3**

#### **Proposal for a regulation**

##### **Recital 2**

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

(2) Contracts are the indispensable legal tool for every economic transaction. *However, the need for traders to identify or negotiate the applicable law, to find out about the provisions of a foreign*

###### *Amendment*

(2) Contracts are the indispensable legal tool for every economic transaction. *It is therefore necessary to complement Directive 2011/83/EU by updating the legal provisions governing certain aspects*

*applicable law often involving translation, to obtain legal advice to make themselves familiar with its requirements and to adapt their contracts to different national laws that may apply in cross-border dealings makes cross-border trade more complex and costly compared to domestic trade. Contract-law-related barriers are thus a major contributing factor in dissuading a considerable number of export-oriented traders from entering cross-border trade or expanding their operations into more Member States. Their deterrent effect is particularly strong for small and medium-sized enterprises (SME) for which the costs of entering multiple foreign markets are often particularly high in relation to their turnover.* As a consequence, traders miss out on cost savings they could achieve if it were possible to market goods and services on the basis of one uniform contract law for all their cross-border transactions and, in the online environment, one single web-site.

*of the obligation relating to the guarantee of conformity in connection with consumer sales contracts, related services and digital content. This updating process should take account of the needs of the digital economy and the relevant rulings of the Court of Justice of the European Union.*

#### **Amendment 4**

#### **Proposal for a regulation**

#### **Recital 3**

*Text proposed by the Commission*

*Amendment*

*(3) Contract law related transaction costs which have been shown to be of considerable proportions and legal obstacles stemming from the differences between national mandatory consumer protection rules have a direct effect on the functioning of the internal market in relation to business-to-consumer transactions. Pursuant to Article 6 of Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Regulation (EC) No*

*deleted*

593/2008), whenever a trader directs its activities to consumers in another Member State the consumer protection provisions of the Member State of the consumer's habitual residence that provide a higher level of protection and cannot be derogated from by agreement by virtue of that law will apply, even where another applicable law has been chosen by the parties. Therefore, traders need to find out in advance whether the consumer's law provides higher protection and ensure that their contract is in compliance with its requirements. In addition, in e-commerce, web-site adaptations which need to reflect mandatory requirements of applicable foreign consumer contract laws entail further costs. The existing harmonisation of consumer law at Union level has led to a certain approximation in some areas. However the differences between Member States' laws remain substantial; existing harmonisation leaves Member States a broad range of options on how to comply with the requirements of Union legislation and where to set the level of consumer protection.

**Amendment 5**  
**Proposal for a regulation**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*(3a) A person should also be considered as a consumer in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract.*

*Justification*

*Wording taken over from Recital 17 of the Consumer Rights Directive.*

**Amendment 6**

**Proposal for a regulation  
Recital 3 b (new)**

*Text proposed by the Commission*

*Amendment*

*(3b) In the frame of the revision of the consumer acquis started in 2004 by the European Commission's Green Paper, the recently adopted Directive 2011/83/EU deals with the most important contract law related areas of consumer distance and doorstep selling transactions. Directive 2011/83/EU will be operational as of mid-2014 and will provide a uniform legal framework for business-to-consumer transactions and in particular for business-to-consumer e-commerce.*

**Amendment 7**

**Proposal for a regulation  
Recital 3 c (new)**

*Text proposed by the Commission*

*Amendment*

*(3c) Approximating consumer contract law through legal harmonization on a high level of protection which applies to all market players is the most appropriate approach to strengthen consumer confidence in cross-border transactions and to facilitate Union wide trade.*

**Amendment 8**

**Proposal for a regulation  
Recital 3 d (new)**

*(3d) The consumer acquis needs to be updated in order to face the challenges of societal and economic developments included the digital economy. Consumers need a framework of solid rights for purchasing safely and on fair conditions within the Single Market. Directive 2011/83/EU provided a review of consumer protection rules mainly in relation to specific selling methods, namely distance and door-step selling. The field of legal guarantees is highly important to consumers and business alike and requires further approximation and modernization which is provided by this Directive.*

## **Amendment 9**

### **Proposal for a regulation**

#### **Recital 4**

*(4) The contract-law-related barriers which prevent traders from fully exploiting the potential of the internal market also work to the detriment of consumers. Less cross-border trade results in fewer imports and less competition. Consumers may be disadvantaged by a limited choice of goods at higher prices both because fewer foreign traders offer their products and services directly to them and also indirectly as a result of restricted cross-border business-to-business trade at the wholesale level. While cross-border shopping could bring substantial economic advantages in terms of more and better offers, many consumers are also reluctant to engage in cross-border shopping, because of the uncertainty*

*(4) By bringing the established body of European consumer law up to date with regard to the legal obligation relating to the guarantee of conformity, related services and digital content, a high level of consumer protection will be ensured.*

*about their rights. Some of the main consumer concerns are related to contract law, for instance whether they would enjoy adequate protection in the event of purchasing defective products. As a consequence, a substantial number of consumers prefer to shop domestically even if this means they have less choice or pay higher prices.*

## **Amendment 10**

### **Proposal for a regulation Recital 5**

*Text proposed by the Commission*

*Amendment*

*(5) In addition, those consumers who want to benefit from price differences between Member States by purchasing from a trader from another Member State are often hindered due to a trader's refusal to sell. While e-commerce has greatly facilitated the search for offers as well as the comparison of prices and other conditions irrespective of where a trader is established, orders by consumers from abroad are very frequently refused by traders which refrain from entering into cross-border transactions.*

*deleted*

## **Amendment 11**

### **Proposal for a regulation Recital 6**

*Text proposed by the Commission*

*Amendment*

*(6) Differences in national contract laws therefore constitute barriers which prevent consumers and traders from reaping the benefits of the internal market. Those contract-law-related barriers would be significantly reduced if*

*deleted*

*contracts could be based on a single uniform set of contract law rules irrespective of where parties are established. Such a uniform set of contract law rules should cover the full life cycle of a contract and thus comprise the areas which are the most important when concluding contracts. It should also include fully harmonised provisions to protect consumers.*

## **Amendment 12**

### **Proposal for a regulation Recital 7**

*Text proposed by the Commission*

*Amendment*

*(7) The differences between national contract laws and their effect on cross-border trade also serve to limit competition. With a low level of cross-border trade, there is less competition, and thus less incentive for traders to become more innovative and to improve the quality of their products or to reduce prices. Particularly in smaller Member States with a limited number of domestic competitors, the decision of foreign traders to refrain from entering these markets due to costs and complexity may limit competition, resulting in an appreciable impact on choice and price levels for available products. In addition, the barriers to cross-border trade may jeopardise competition between SME and larger companies. In view of the significant impact of the transaction costs in relation to turnover, an SME is much more likely to refrain from entering a foreign market than a larger competitor.*

*deleted*



## Amendment 13

### Proposal for a regulation Recital 8

*Text proposed by the Commission*

*Amendment*

***(8) To overcome these contract-law-related barriers, parties should have the possibility to agree that their contracts should be governed by a single uniform set of contract law rules with the same meaning and interpretation in all Member States, a Common Sales Law. The Common European Sales Law should represent an additional option increasing the choice available to parties and open to use whenever jointly considered to be helpful in order to facilitate cross-border trade and reduce transaction and opportunity costs as well as other contract-law-related obstacles to cross-border trade. It should become the basis of a contractual relationship only where parties jointly decide to use it.***

***deleted***

## Amendment 14

### Proposal for a regulation Recital 9

*Text proposed by the Commission*

*Amendment*

***(9) This Regulation establishes a Common European Sales Law. It harmonises the contract laws of the Member States not by requiring amendments to the pre-existing national contract law, but by creating within each Member State's national law a second contract law regime for contracts within its scope. This second regime should be identical throughout the Union and exist alongside the pre-existing rules of national contract law. The Common European Sales Law should apply on a***

***(9) This Directive provides a minimum set of rules making up the legal framework for certain aspects of the sale of consumer goods and digital content, legal obligations relating to guarantees of conformity and related-services contracts. This Directive therefore harmonises the contract law of Member States without preventing them from maintaining or introducing stricter national provisions in the areas harmonised by this Directive in order to guarantee a high level of consumer protection.***

*voluntary basis, upon an express agreement of the parties, to a cross-border contract.*

## **Amendment 15**

### **Proposal for a regulation Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) For the purchase of second hand goods, Article 7 (1) of Directive 1999/44 on Consumer Sales stipulates that Member States can allow traders to reduce the guarantee period to one year. Given the increasing importance of the second-hand market for European consumers in this time of economic crisis and given the need to promote more sustainable consumption, a reduction of the legal guarantee to one year is no longer justified. The guarantee period for second hand goods should rather be assessed on the base of the definition of requirements for the conformity of the goods or digital content as provided for in this Directive.***

#### *Justification*

*Article 7 (1) of Directive 1999/44 on Consumer Sales stipulates that Member States can allow traders to reduce the guarantee period to one year. This is neither necessary as we can see from those Member States who have not made use of this option nor desirable in the context of sustainable consumption. Thus this regulatory option is not maintained in this directive.*

## **Amendment 16**

### **Proposal for a regulation Recital 9 b (new)**

*Text proposed by the Commission*

*Amendment*

***(9b) The rules on legal guarantees have***

*an important role to play in promoting suitable products and are relevant in the context of the EU strategy on Integrated Product Policy. In order to promote sustainable consumption, consumers' confidence in products developed on the basis of the standards laid down in the eco-design legislation, it is necessary to ensure that the consumer counts on guarantee rights thorough the life cycle of the eco-designed product. This period of time should be established in reference to the implemented measures of Directive 2009/158/EC which requires an assessment of the life expectance of the product.*

#### **Amendment 17**

#### **Proposal for a regulation**

#### **Recital 10**

*Text proposed by the Commission*

*Amendment*

*(10) The agreement to use the Common European Sales Law should be a choice exercised within the scope of the respective national law which is applicable pursuant to Regulation (EC) No 593/2008 or, in relation to pre-contractual information duties, pursuant to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Regulation (EC) No 864/2007), or any other relevant conflict of law rule. The agreement to use the Common European Sales Law should therefore not amount to, and not be confused with, a choice of the applicable law within the meaning of the conflict-of-law rules and should be without prejudice to them. This Regulation will therefore not affect any of the existing conflict of law rules.*

*deleted*

## Amendment 18

### Proposal for a regulation Recital 11

*Text proposed by the Commission*

(11) ***The Common European Sales Law should comprise of a complete set of fully harmonised mandatory consumer protection rules.*** In line with Article 114(3) of the Treaty, those rules should guarantee a high level of consumer protection with a view to enhancing consumer confidence ***in the Common European Sales Law*** and thus provide consumers with an incentive to enter into cross-border contracts ***on that basis***. The rules should maintain or improve the level of protection that consumers enjoy under Union consumer law.

*Amendment*

(11) In line with Article 114(3) of the Treaty, those rules should guarantee a high level of consumer protection with a view to enhancing consumer confidence and thus provide consumers with an incentive to enter into cross-border contracts. The rules should maintain or improve the ***existing*** level of protection that consumers enjoy under Union consumer law.

## Amendment 19

### Proposal for a regulation Recital 12

*Text proposed by the Commission*

(12) ***Since the Common European Sales Law contains a complete set of fully harmonised mandatory consumer protection rules, there will be no disparities between the laws of the Member States in this area, where the parties have chosen to use the Common European Sales Law. Consequently, Article 6(2) Regulation (EC) No 593/2008, which is predicated on the existence of differing levels of consumer protection in the Member States, has no practical importance for the issues covered by the Common European Sales***

*Amendment*

***deleted***

*Law.*

## **Amendment 20**

### **Proposal for a regulation Recital 13**

*Text proposed by the Commission*

*Amendment*

*(13) The Common European Sales Law should be available for cross-border contracts, because it is in that context that the disparities between national laws lead to complexity and additional costs and dissuade parties from entering into contractual relationships. The cross-border nature of a contract should be assessed on the basis of the habitual residence of the parties in business-to-business contracts. In a business-to-consumer contract the cross-border requirement should be met where either the general address indicated by the consumer, the delivery address for the goods or the billing address indicated by the consumer are located in a Member State, but outside the State where the trader has its habitual residence.*

*deleted*

## **Amendment 21**

### **Proposal for a regulation Recital 14**

*Text proposed by the Commission*

*Amendment*

*(14) The use of the Common European Sales Law should not be limited to cross-border situations involving only Member States, but should also be available to facilitate trade between Member States and third countries. Where consumers from third countries are involved, the agreement to use the Common European*

*deleted*

*Sales Law, which would imply the choice of a foreign law for them, should be subject to the applicable conflict-of-law rules.*

## **Amendment 22**

### **Proposal for a regulation Recital 15**

*Text proposed by the Commission*

*Amendment*

*(15) Traders engaging in purely domestic as well as in cross-border trade transactions may also find it useful to make use of a single uniform contract for all their transactions. Therefore Member States should be free to decide to make the Common European Sales Law available to parties for use in an entirely domestic setting.*

*deleted*

## **Amendment 23**

### **Proposal for a regulation Recital 16**

*Text proposed by the Commission*

*Amendment*

*(16) The Common European Sales Law should be available in particular for the sale of movable goods, including the manufacture or production of such goods, as this is the economically single most important contract type which could present a particular potential for growth in cross-border trade, especially in e-commerce.*

*deleted*

## **Amendment 24**

### **Proposal for a regulation**

## Recital 17

### *Text proposed by the Commission*

(17) In order to reflect the increasing importance of the digital economy, the scope of ***the Common European Sales Law*** should also cover contracts for the supply of digital content. The transfer of digital content for storage, processing or access, and repeated use, such as a music download, has been growing rapidly and holds a great potential for further growth but is still surrounded by a considerable degree of legal diversity and uncertainty. ***The Common European Sales Law*** should therefore cover the supply of digital content irrespective of whether or not that content is supplied on a tangible medium.

### *Amendment*

(17) In order to reflect the increasing importance of the digital economy, the scope of ***this Directive*** should also cover contracts for the supply of digital content. The transfer of digital content for storage, processing or access, and repeated use, such as a music download, has been growing rapidly and holds a great potential for further growth but is still surrounded by a considerable degree of legal diversity and uncertainty. ***This Directive*** should therefore cover the supply of digital content irrespective of whether or not that content is supplied on a tangible medium.

## Amendment 25

### Proposal for a regulation

## Recital 18

### *Text proposed by the Commission*

(18) Digital content is often supplied not in exchange for a price but in combination with separate paid goods or services, involving a non-monetary consideration such as giving access to personal data or free of charge in the context of a marketing strategy based on the expectation that the consumer will purchase additional or more sophisticated digital content products at a later stage. In view of this specific market structure and of the fact that defects of the digital content provided may harm the economic interests of consumers irrespective of the conditions under which it has been provided, the ***availability of the Common European Sales Law*** should not depend on whether a price is paid for the specific digital content in question.

### *Amendment*

(18) Digital content is often supplied not in exchange for a price but in combination with separate paid goods or services, involving a non-monetary consideration such as giving access to personal data or free of charge in the context of a marketing strategy based on the expectation that the consumer will purchase additional or more sophisticated digital content products at a later stage. In view of this specific market structure and of the fact that defects of the digital content provided may harm the economic interests of consumers irrespective of the conditions under which it has been provided, the ***protection for the consumer which is ensured by this Directive*** should not depend on whether a price is paid for the specific digital content

in question.

## Amendment 26

### Proposal for a regulation Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

*(18a) While Directive 2011/83/EU lays down provisions on the passing of risk in respect of goods, it remains necessary to complement those provisions by similar provisions on digital content, too, and, in the process, take account of the specific features of those products.*

## Amendment 27

### Proposal for a regulation Recital 19

*Text proposed by the Commission*

*Amendment*

(19) With a view to maximising the added value of the *Common European Sales Law* its material scope should also include certain services *provided by the seller* that are directly and closely related to specific goods or digital content *supplied on the basis of the Common European Sales Law*, and in practice often combined in the same or a linked contract at the same time, *most notably repair, maintenance or installation of the goods or the digital content.*

(19) With a view to maximising the added value of *updating existing provisions on the legal obligation relating to the guarantee of conformity, the* material scope *of this Directive* should also include certain services that are directly and closely related to specific goods or digital content and in practice often combined in the same or a linked contract at the same time.

## Amendment 28

### Proposal for a regulation Recital 20



*Text proposed by the Commission*

*Amendment*

**(20) *The Common European Sales Law should not cover any related contracts by which the buyer acquires goods or is supplied with a service, from a third party. This would not be appropriate because the third party is not part of the agreement between the contracting parties to use the rules of the Common European Sales Law. A related contract with a third party should be governed by the respective national law which is applicable according pursuant to Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule.***

**(20) *Should the good, related service or digital content concerned not conform to the contract, consumers should be able to choose from the various remedies which this Directive guarantees them. Consumers should be entitled to require traders to remedy the lack of conformity through certain actions, which may take the form of repair or replacement, a reduction in purchase price, withholding of the consumer's own performance, withdrawal from the contract, or damages. It should be possible, where appropriate, to combine some of these remedies.***

## **Amendment 29**

### **Proposal for a regulation Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

**(20a) *Member States may provide in their national laws that the reimbursement to the consumer may be reduced to take account of the use the consumer has had of the goods or the digital content except if the termination takes place within six months after the risk has passed to the consumer and provided that it would be inequitable to allow the consumer the free use of the goods or digital content after that period of time, taking account the nature and amount of the use and the availability of other remedies other than termination.***

## **Amendment 30**

### **Proposal for a regulation**

## Recital 21

*Text proposed by the Commission*

*Amendment*

*(21) In order to tackle the existing internal market and competition problems in a targeted and proportionate fashion, the personal scope of the Common European Sales Law should focus on parties who are currently dissuaded from doing business abroad by the divergence of national contract laws with the consequence of a significant adverse impact on cross-border trade. It should therefore cover all business-to consumer transactions and contracts between traders where at least one of the parties is an SME drawing upon Commission Recommendation 2003/361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. This should, however, be without prejudice to the possibility for Member States to enact legislation which makes the Common European Sales Law available for contracts between traders, neither of which is an SME. In any case, in business-to-business transactions, traders enjoy full freedom of contract and are encouraged to draw inspiration from the Common European Sales Law in the drafting of their contractual terms.*

*deleted*

## Amendment 31

**Proposal for a regulation**

### Recital 22

*Text proposed by the Commission*

*Amendment*

*(22) The agreement of the parties to a contract is indispensable for the application of the Common European Sales Law. That agreement should be subject to strict requirements in business-to-consumer transactions. Since, in*

*deleted*

*practice, it will usually be the trader who proposes the use of the Common European Sales Law, consumers must be fully aware of the fact that they are agreeing to the use of rules which are different from those of their pre-existing national law. Therefore, the consumer's consent to use the Common European Sales Law should be admissible only in the form of an explicit statement separate from the statement indicating the agreement to the conclusion of the contract. It should therefore not be possible to offer the use of the Common European Sales Law as a term of the contract to be concluded, particularly as an element of the trader's standard terms and conditions. The trader should provide the consumer with a confirmation of the agreement to use the Common European Sales Law on a durable medium.*

## **Amendment 32**

### **Proposal for a regulation Recital 23**

*Text proposed by the Commission*

*Amendment*

*(23) In addition to being a conscious choice, the consent of a consumer to the use of the Common European Sales Law should be an informed choice. The trader should therefore not only draw the consumer's attention to the intended use of the Common European Sales Law but should also provide information on its nature and its salient features. In order to facilitate this task for traders, thereby avoiding unnecessary administrative burdens, and to ensure consistency in the level and the quality of the information communicated to consumers, traders should supply consumers with the standard information notice provided for in this Regulation and thus readily*

*deleted*

*available in all official languages in the Union. Where it is not possible to supply the consumer with the information notice, for example in the context of a telephone call, or where the trader has failed to provide the information notice, the agreement to use the Common European Sales Law should not be binding on the consumer until the consumer has received the information notice together with the confirmation of the agreement and has subsequently expressed consent.*

### **Amendment 33**

#### **Proposal for a regulation Recital 24**

*Text proposed by the Commission*

*Amendment*

*(24) In order to avoid a selective application of certain elements of the Common European Sales Law, which could disturb the balance between the rights and obligations of the parties and adversely affect the level of consumer protection, the choice should cover the Common European Sales Law as a whole and not only certain parts of it.*

*deleted*

### **Amendment 34**

#### **Proposal for a regulation Recital 25**

*Text proposed by the Commission*

*Amendment*

*(25) Where the United Nations Convention on Contracts for the International Sale of Goods would otherwise apply to the contract in question, the choice of the Common European Sales Law should imply an agreement of the contractual parties to*

*deleted*

*exclude that Convention.*

## **Amendment 35**

### **Proposal for a regulation Recital 26**

*Text proposed by the Commission*

*Amendment*

*(26) The rules of the Common European Sales Law should cover the matters of contract law that are of practical relevance during the life cycle of the types of contracts falling within the material and personal scope, particularly those entered into online. Apart from the rights and obligations of the parties and the remedies for non-performance, the Common European Sales Law should therefore govern pre-contractual information duties, the conclusion of a contract including formal requirements, the right of withdrawal and its consequences, avoidance of the contract resulting from a mistake, fraud, threats or unfair exploitation and the consequences of such avoidance, interpretation, the contents and effects of a contract, the assessment and consequences of unfairness of contract terms, restitution after avoidance and termination and the prescription and preclusion of rights. It should settle the sanctions available in case of the breach of all the obligations and duties arising under its application.*

*deleted*

## **Amendment 36**

### **Proposal for a regulation Recital 27**

*Text proposed by the Commission*

*Amendment*

*(27) All the matters of a contractual or*

*(27) All the matters of a contractual or*

non-contractual nature that are not addressed in *the Common European Sales Law* are governed by the pre-existing rules of *the* national law *outside the Common European Sales Law that is applicable under Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule. These issues include legal personality, the invalidity of a contract arising from lack of capacity, illegality or immorality, the determination of the language of the contract, matters of non-discrimination, representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including the transfer of ownership, intellectual property law and the law of torts. Furthermore, the issue of whether concurrent contractual and non-contractual liability claims can be pursued together falls outside the scope of the Common European Sales Law.*

non-contractual nature that are not addressed in *this Directive* are governed by the pre-existing rules of national law.

#### **Amendment 37**

#### **Proposal for a regulation Recital 28**

*Text proposed by the Commission*

*Amendment*

*(28) The Common European Sales Law should not govern any matters outside the remit of contract law. This Regulation should be without prejudice to the Union or national law in relation to any such matters. For example, information duties which are imposed for the protection of health and safety or environmental reasons should remain outside the scope of the Common European Sales Law. This Regulation should further be without prejudice to the information requirements of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal*

*deleted*

*market.*

## **Amendment 38**

### **Proposal for a regulation Recital 29**

*Text proposed by the Commission*

*Amendment*

*(29) Once there is a valid agreement to use the Common European Sales Law, only the Common European Sales Law should govern the matters falling within its scope. The rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union legislation. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law. The rules of the Common European Sales Law should be interpreted on the basis of the underlying principles and objectives and all its provisions.*

*deleted*

## **Amendment 39**

### **Proposal for a regulation Recital 30**

*Text proposed by the Commission*

*Amendment*

*(30) Freedom of contract should be the guiding principle underlying the Common European Sales Law. Party autonomy should be restricted only where and to the extent that this is indispensable, in particular for reasons of consumer protection. Where such a necessity exists, the mandatory nature of the rules in*

*deleted*

*question should be clearly indicated.*

#### **Amendment 40**

##### **Proposal for a regulation Recital 31**

*Text proposed by the Commission*

*Amendment*

*(31) The principle of good faith and fair dealing should provide guidance on the way parties have to cooperate. As some rules constitute specific manifestations of the general principle of good faith and fair dealing, they should take precedent over the general principle. The general principle should therefore not be used as a tool to amend the specific rights and obligations of parties as set out in the specific rules. The concrete requirements resulting from the principle of good faith and fair dealing should depend, amongst others, on the relative level of expertise of the parties and should therefore be different in business-to-consumer transactions and in business-to-business transactions. In transactions between traders, good commercial practice in the specific situation concerned should be a relevant factor in this context.*

*deleted*

#### **Amendment 41**

##### **Proposal for a regulation Recital 32**

*Text proposed by the Commission*

*Amendment*

*(32) The Common European Sales Law should aim at the preservation of a valid contract whenever possible and appropriate in view of the legitimate interests of the parties.*

*deleted*



## Amendment 42

### Proposal for a regulation Recital 33

*Text proposed by the Commission*

*(33) The Common European Sales Law should identify well-balanced solutions taking account the legitimate interests of the parties in designating and exercising the remedies available in the case of non-performance of the contract. In business-to-consumer contracts the system of remedies should reflect the fact that the non-conformity of goods, digital content or services falls within the trader's sphere of responsibility.*

*Amendment*

*deleted*

## Amendment 43

### Proposal for a regulation Recital 34

*Text proposed by the Commission*

(34) In order to enhance legal certainty by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of *the Common European Sales Law or any other provision of this Regulation* accessible to the public, the Commission should create a database comprising the final relevant decisions. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission.

*Amendment*

(34) In order to enhance legal certainty by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of this *Directive* accessible to the public, the Commission should create a database comprising the final relevant decisions. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission.

## Amendment 44

### Proposal for a regulation Recital 35

*Text proposed by the Commission*

*(35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to extend further the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.*

*Amendment*

*deleted*

## Amendment 45

### Proposal for a regulation Recital 36

*Text proposed by the Commission*

(36) Since the objective of this **Regulation**, namely to contribute to the proper functioning of the internal market by *making available a uniform set of contract law rules that can be used for cross-border transactions throughout the Union*, 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 on the European Union. In accordance with the principle of proportionality, as set out in that Article, this **Regulation** does not go beyond what is necessary in order to achieve that objective.

*Amendment*

(36) Since the objective of this **Directive**, namely to contribute to the proper functioning of the internal market by *harmonising certain aspects of the obligation relating to the guarantee of conformity in connection with sales contracts, related services and digital content*, 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 on the European Union. 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 achieve that objective.

## Amendment 46

### Proposal for a regulation Recital 37

*Text proposed by the Commission*

(37) This **Regulation** respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union **and specifically Articles 16, 38 and 47 thereof**,

*Amendment*

(37) This **Directive** respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

## Amendment 47

### Proposal for a regulation Recital 37 a (new)

*Text proposed by the Commission*

*Amendment*

***(37a) In order to avoid duplication and to compliment existing Union law this Directive should take into account the principles of Directive 2011/83/EU which harmonised rules for distance and off-premises contracts such as pre-contractual information, formal requirements, right of withdrawal, delivery, passing of risk and payment means. This should provide for a solid legal framework of European rules for business who sell goods or digital content to consumers across the Union.***

## Amendment 48

### Proposal for a regulation Recital 37 b (new)

*Text proposed by the Commission*

*Amendment*

***(37b) After the adoption of this Directive, Commission should establish a working***

*group, composed mainly of groups representing consumers and businesses, supported by academics and practitioners, in order to develop standard terms and conditions for on-line business to consumers contracts based on the rules in this Directive and the consumer acquis, in particular Directive 2011/83/EU.*

## **Amendment 49**

### **Proposal for a regulation Article 1 – paragraph 1**

*Text proposed by the Commission*

1. The purpose of this **Regulation** is to improve the conditions for the establishment and the functioning of the internal market by ***making available a uniform set of contract law rules as set out in Annex I ('the Common European Sales Law')***. *These rules can be used for cross-border transactions for the sale of goods, for the supply of digital content and for related services where the parties to a contract agree to do so.*

*Amendment*

1. The purpose of this **Directive** is to improve the conditions for the establishment and the functioning of the internal market by ***ensuring a high level of consumer protection which takes account of new technologies, too, by harmonising certain aspects of the laws, regulations and administrative provisions of the Member States with regard to certain aspects of the obligation relating to the guarantee of conformity, related services and digital content in connection with contracts concluded between consumers and traders.***

### *Justification*

*The Commission proposal should be turned into a directive on minimum harmonisation of certain aspects of the obligation relating to the guarantee of conformity in connection with consumer sales contracts, related services and digital content. In terms of substance, this is an extension of Directive 2011/83/EU. In the interests of legal certainty, matters already regulated in Directive 2011/83/EU should not be addressed by this text.*

## **Amendment 50**

### **Proposal for a regulation Article 1 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. This Regulation enables traders to rely on a common set of rules and use the same contract terms for all their cross-border transactions thereby reducing unnecessary costs while providing a high degree of legal certainty.**

**deleted**

*Justification*

*The directive should be structured as follows:*

*Chapter 1: Scope and definitions*

*Chapter 2: Conformity and the consumer's remedies*

*Chapter 3: Commercial guarantees*

*Chapter 4: Related services*

*Chapter 5: General provisions*

## **Amendment 51**

### **Proposal for a regulation**

#### **Article 1 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. In relation to contracts between traders and consumers, this Regulation** comprises a comprehensive set of consumer protection rules to ensure a high level of consumer protection, to enhance consumer confidence in the internal market and encourage consumers to shop across borders.

3. This **Directive** comprises a comprehensive set of consumer protection rules to ensure a high level of consumer protection, to enhance consumer confidence in the internal market and encourage consumers to shop across borders.

**3a. Save as otherwise provided in this Directive, Member States may maintain or introduce national laws ensuring a higher level of consumer protection which depart from the provisions of this Directive.**

**3b. Should one or more Member States avail itself of the possibility under paragraph 3a, the relevant provisions shall be in conformity with the Treaties and notified to the Commission. The Commission shall subsequently ensure**

*that that information is easily accessible to consumers and traders, inter alia on a dedicated website.*

*3c. The enjoyment of other national rights concerning traders' contractual and non-contractual obligations shall be without prejudice to the consumer rights harmonised by this Directive.*

## **Amendment 52**

### **Proposal for a regulation**

#### **Article 2 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) 'good faith and fair dealing' means a standard of conduct characterised by honesty, openness and consideration for the interests of the other party to the transaction or relationship in question;*

*deleted*

## **Amendment 53**

### **Proposal for a regulation**

#### **Article 2 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) 'loss' means economic loss and non-economic loss in the form of pain and suffering, excluding other forms of non-economic loss such as impairment of the quality of life and loss of enjoyment;*

*deleted*

## **Amendment 54**

### **Proposal for a regulation**

#### **Article 2 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) ‘standard contract terms’ means contract terms which have been drafted in advance for several transactions involving different parties, and which have not been individually negotiated by the parties within the meaning of Article 7 of the Common European Sales Law;**

**deleted**

## **Amendment 55**

### **Proposal for a regulation Article 2 – point e**

*Text proposed by the Commission*

*Amendment*

(e) ‘trader’ means any natural or legal person who is acting for purposes relating to **that person’s** trade, business, craft, or profession;

(e) ‘trader’ means any natural **person** or **any** legal person, **irrespective of whether privately or publicly owned**, who is acting, **including through any other natural or legal person acting in his name or on his behalf**, for purposes relating to **his** trade, business, craft or profession **in relation to contracts**;

### *Justification*

*This definition corresponds to that in Directive 83/2011 on consumer rights, particularly as regards third parties acting for and on behalf of the trader.*

## **Amendment 56**

### **Proposal for a regulation Article 2 – point f**

*Text proposed by the Commission*

*Amendment*

(f) ‘consumer’ means any natural person who is acting for purposes which are outside **that person’s** trade, business, craft, or profession;

(f) "consumer" means any natural person who is acting for purposes which are outside **his** trade, business, craft or profession;

*Justification*

*Definition should be brought into line with the Consumer Rights Directive.*

**Amendment 57**

**Proposal for a regulation**

**Article 2 – point h**

*Text proposed by the Commission*

(h) “goods” means any tangible movable items; *it excludes:*

*i) electricity and natural gas; and*

*ii) water and other types of gas unless they are put up for sale in a limited volume or set quantity;*

*Amendment*

(h) "goods" means any tangible movable items, *with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity shall be considered as goods where they are put up for sale in a limited volume or a set quantity;*

*Justification*

*Wording of definition should be brought into line with the Consumer Rights Directive, particularly as regards the order in which the goods are mentioned.*

**Amendment 58**

**Proposal for a regulation**

**Article 2 – point j – introductory part**

*Text proposed by the Commission*

(j) ‘digital content’ means data which are produced and supplied in digital form, whether or not according to the buyer's specifications, including video, audio, picture or written digital content, digital games, software and digital content which makes it possible to personalise existing hardware or software; it excludes:

*Amendment*

*(Does not affect English version)*



## Amendment 59

### Proposal for a regulation

#### Article 2 – point j – introductory part

*Text proposed by the Commission*

(j) ‘digital content’ means data which are produced and supplied in digital form, whether or not according to the buyer's specifications, including video, audio, picture or written digital content, digital games, software and digital content which makes it possible to personalise existing hardware or software; it excludes:

*Amendment*

(j) ‘digital content’ means data which are produced and supplied in digital form, whether or not according to the buyer's specifications, ***irrespective of whether the data are accessed through downloading or streaming, from a tangible medium or through any other means, against payment or for non-pecuniary consideration, such as making the consumer's personal data available,*** including video, audio, picture or written digital content, digital games, software and digital content which makes it possible to personalise existing hardware or software; it excludes:

*Justification*

*The definition of digital content should be extended to include free-of-charge digital content.*

## Amendment 60

### Proposal for a regulation

#### Article 2 – point j – point iv

*Text proposed by the Commission*

***(iv) electronic communications services and networks, and associated facilities and services;***

*Amendment*

***deleted***

*Justification*

*This exclusion from the definition of ‘digital content’ is not necessary, and nor is it provided for in Directive 2011/83/EU. So that the scope of both directives is consistent, it should not be deleted.*

## Amendment 61

### Proposal for a regulation Article 2 – point k

*Text proposed by the Commission*

*Amendment*

***(k) ‘sales contract’ means any contract under which the trader ('the seller') transfers or undertakes to transfer the ownership of the goods to another person ('the buyer'), and the buyer pays or undertakes to pay the price thereof; it includes a contract for the supply of goods to be manufactured or produced and excludes contracts for sale on execution or otherwise involving the exercise of public authority;***

***deleted***

*Justification*

*Already regulated by Directive 2011/83/EU.*

## Amendment 62

### Proposal for a regulation Article 2 – point m – introductory part

*Text proposed by the Commission*

*Amendment*

(m) ‘related service’ means any service related to goods or digital content, such as installation, maintenance, repair or any other processing, provided by the seller of the goods or the supplier of the digital content under the sales contract, the contract for the supply of digital content or a separate related service contract which was concluded at the same time as the sales contract or the contract for the supply of digital content; it excludes:

(m) ‘related service’ means any service related to goods or digital content, such as installation, maintenance, repair or any other processing, provided by the seller of the goods or the supplier of the digital content under the sales contract, the contract for the supply of digital content or a separate related service contract which was concluded at the same time as ***or in connection with*** the sales contract or the contract for the supply of digital content; it excludes:

## Amendment 63

### Proposal for a regulation

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## Article 2 – point m – point ii

*Text proposed by the Commission*

*Amendment*

**(ii) training services,**

***deleted***

*Justification*

*Training services should be included in the scope of this directive because they may be an important factor in purchasing a good or digital content, such as, for instance, a computer program.*

## Amendment 64

### Proposal for a regulation

#### Article 2 – point n

*Text proposed by the Commission*

*Amendment*

(n) ‘service provider’ means a ***seller of goods or supplier of digital content*** who undertakes to provide ***a customer with*** a service ***related to those goods or that digital content***;

(n) ‘service provider’ means a ***trader*** who undertakes to provide a ***related service***;

## Amendment 65

### Proposal for a regulation

#### Article 2 – point o

*Text proposed by the Commission*

*Amendment*

(o) ‘customer’ means any person who ***purchases a related service***;

***deleted***

## Amendment 66

### Proposal for a regulation

#### Article 2 – point p

*Text proposed by the Commission*

*Amendment*

(p) ‘distance contract’ means any contract ***between the trader and the consumer***

***deleted***

*under an organised distance sales scheme concluded without the simultaneous physical presence of the trader or, in case the trader is a legal person, a natural person representing the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;*

*Justification*

*Already regulated in Directive 2011/83/EU.*

## **Amendment 67**

### **Proposal for a regulation Article 2 – point q**

*Text proposed by the Commission*

*Amendment*

*(q) ‘off-premises contract’ means any contract between a trader and a consumer:* **deleted**

*(i) concluded in the simultaneous physical presence of the trader or, where the trader is a legal person, the natural person representing the trader and the consumer in a place which is not the trader's business premises, or concluded on the basis of an offer made by the consumer in the same circumstances; or*

*(ii) concluded on the trader's business premises or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the trader's business premises in the simultaneous physical presence of the trader or, where the trader is a legal person, a natural person representing the trader and the consumer; or*

*(iii) concluded during an excursion organised by the trader or, where the trader is a legal person, the natural*

*person representing the trader with the aim or effect of promoting and selling goods or supplying digital content or related services to the consumer;*

## **Amendment 68**

### **Proposal for a regulation Article 2 – point r**

*Text proposed by the Commission*

*Amendment*

*(r) ‘business premises’ means:*

*deleted*

*(i) any immovable retail premises where a trader carries out activity on a permanent basis, or*

*(ii) any movable retail premises where a trader carries out activity on a usual basis;*

*Justification*

*Already regulated in Directive 2011/83/EU.*

## **Amendment 69**

### **Proposal for a regulation Article 2 – point s**

*Text proposed by the Commission*

*Amendment*

(s) ‘commercial guarantee’ means any undertaking by the trader or a producer to the consumer, in addition to **legal obligations under Article 106 in case of lack of conformity** to reimburse the price paid or to replace or repair, or service goods or digital content in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

(s) "commercial guarantee" means any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to **his legal obligation relating to the guarantee of conformity**, to reimburse the price paid or to replace, repair or service goods **or digital contents** in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

*Justification*

*Wording of definition should be brought into line with that in the Consumer Rights Directive.*

**Amendment 70**

**Proposal for a regulation**

**Article 2 – point s a (new)**

*Text proposed by the Commission*

*Amendment*

*(sa) ‘repair’ means remedying a lack of conformity of goods or digital contents;*

**Amendment 71**

**Proposal for a regulation**

**Article 2 – point s b (new)**

*Text proposed by the Commission*

*Amendment*

*(sb) ‘producer’ means any natural or legal person who manufactures or orders the manufacture of goods or digital contents, any importer of goods or digital contents into the territory of the Union, or any other person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods or digital contents;*

*Justification*

*Definition from Consumer Goods Directive 1999/44 EC.*

**Amendment 72**

**Proposal for a regulation**

**Article 2 – point t**

*Text proposed by the Commission*

*Amendment*

(t) “durable medium” means any medium which enables **a party** to store information addressed **personally** to **that party** in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the

(t) "durable medium" means any instrument which enables **the consumer or the trader** to store information addressed to **him** in a way accessible for future reference for a period of time adequate for the purposes of the information and which

unchanged reproduction of the information stored;

allows the unchanged reproduction of the information stored;

*Justification*

*Wording of definition should be brought into line with the Consumer Rights Directive. However, the word 'personally' should be deleted, since this could imply that the information in question must always be addressed to one of the parties.*

**Amendment 73**

**Proposal for a regulation**  
**Article 2 – point v**

*Text proposed by the Commission*

*Amendment*

*(v) 'mandatory rule' means any provision the application of which the parties cannot exclude, or derogate from or the effect of which they cannot vary;* *deleted*

**Amendment 74**

**Proposal for a regulation**  
**Article 2 – point w**

*Text proposed by the Commission*

*Amendment*

*(w) 'creditor' means a person who has a right to performance of an obligation, whether monetary or non-monetary, by another person, the debtor;* *deleted*

**Amendment 75**

**Proposal for a regulation**  
**Article 2 – point x**

*Text proposed by the Commission*

*Amendment*

*(x) 'debtor' means a person who has an obligation, whether monetary or non-* *deleted*

*monetary, to another person, the creditor;*

**Amendment 76**

**Proposal for a regulation**

**Article 2 – point y a (new)**

*Text proposed by the Commission*

*Amendment*

*(ya) ‘free of charge’ means free of the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.*

**Amendment 77**

**Proposal for a regulation**

**Article 3**

*Text proposed by the Commission*

*Amendment*

**Article 3**

*deleted*

**Optional nature of the Common  
European Sales Law**

*The parties may agree that the Common European Sales Law governs their cross-border contracts for the sale of goods, for the supply of digital content and for the provision of related services within the territorial, material and personal scope as set out in Articles 4 to 7.*

**Amendment 78**

**Proposal for a regulation**

**Article 4**

*Text proposed by the Commission*

*Amendment*

**Article 4**

*deleted*

**Cross-border contracts**



***1. The Common European Sales Law may be used for cross-border contracts.***

***2. For the purposes of this Regulation, a contract between traders is a cross-border contract if the parties have their habitual residence in different countries of which at least one is a Member State.***

***3. For the purposes of this Regulation, a contract between a trader and a consumer is a cross-border contract if:***

***(a) either the address indicated by the consumer, the delivery address for goods or the billing address are located in a country other than the country of the trader's habitual residence; and***

***(b) at least one of these countries is a Member State.***

***4. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. The habitual residence of a trader who is a natural person shall be that person's principal place of business.***

***5. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment of a trader, the place where the branch, agency or any other establishment is located shall be treated as the place of the trader's habitual residence.***

***6. For the purpose of determining whether a contract is a cross-border contract the relevant point in time is the time of the agreement on the use of the Common European Sales Law.***

## **Amendment 79**

### **Proposal for a regulation Article 5**

*Text proposed by the Commission*

*Amendment*

**Article 5**

***deleted***

***Contracts for which the Common  
European Sales Law can be used***

***The Common European Sales Law may  
be used for:***

***(a) sales contracts;***

***(b) contracts for the supply of digital  
content whether or not supplied on a  
tangible medium which can be stored,  
processed or accessed, and re-used by the  
user, irrespective of whether the digital  
content is supplied in exchange for the  
payment of a price.***

***(c) related service contracts, irrespective  
of whether a separate price was agreed for  
the related service.***

**Amendment 80**

**Proposal for a regulation  
Article 6**

*Text proposed by the Commission*

*Amendment*

**Article 6**

***deleted***

***Exclusion of mixed-purpose contracts and  
contracts linked to a consumer credit***

***1. The Common European Sales Law may  
not be used for mixed-purpose contracts  
including any elements other than the  
sale of goods, the supply of digital content  
and the provision of related services  
within the meaning of Article 5.***

***2. The Common European Sales Law may  
not be used for contracts between a trader  
and a consumer where the trader grants  
or promises to grant to the consumer  
credit in the form of a deferred payment,  
loan or other similar financial***

*accommodation. The Common European Sales Law may be used for contracts between a trader and a consumer where goods, digital content or related services of the same kind are supplied on a continuing basis and the consumer pays for such goods, digital content or related services for the duration of the supply by means of instalments.*

## **Amendment 81**

### **Proposal for a regulation Article 7**

*Text proposed by the Commission*

*Amendment*

#### *Article 7*

*deleted*

#### *Parties to the contract*

*1. The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader. Where all the parties to a contract are traders, the Common European Sales Law may be used if at least one of those parties is a small or medium-sized enterprise ('SME').*

*2. For the purposes of this Regulation, an SME is a trader which*

- (a) employs fewer than 250 persons; and*
- (b) has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME which has its habitual residence in a Member State whose currency is not the euro or in a third country, the equivalent amounts in the currency of that Member State or third country.*

## **Amendment 82**

### **Proposal for a regulation Article 8**

*Text proposed by the Commission*

*Amendment*

#### **Article 8**

*deleted*

#### ***Agreement on the use of the Common European Sales Law***

***1. The use of the Common European Sales Law requires an agreement of the parties to that effect. The existence of such an agreement and its validity shall be determined on the basis of paragraphs 2 and 3 of this Article and Article 9, as well as the relevant provisions in the Common European Sales Law.***

***2. In relations between a trader and a consumer the agreement on the use of the Common European Sales Law shall be valid only if the consumer's consent is given by an explicit statement which is separate from the statement indicating the agreement to conclude a contract. The trader shall provide the consumer with a confirmation of that agreement on a durable medium.***

***3. In relations between a trader and a consumer the Common European Sales Law may not be chosen partially, but only in its entirety.***

## **Amendment 83**

### **Proposal for a regulation Article 9**

*Text proposed by the Commission*

*Amendment*

#### **Article 9**

*deleted*

#### ***Standard Information Notice in contracts between a trader and a consumer***

*1. In addition to the pre-contractual information duties laid down in the Common European Sales Law, in relations between a trader and a consumer the trader shall draw the consumer's attention to the intended application of the Common European Sales Law before the agreement by providing the consumer with the information notice in Annex II in a prominent manner. Where the agreement to use the Common European Sales Law is concluded by telephone or by any other means that do not make it possible to provide the consumer with the information notice, or where the trader has failed to provide the information notice, the consumer shall not be bound by the agreement until the consumer has received the confirmation referred to in Article 8(2) accompanied by the information notice and has expressly consented subsequently to the use of the Common European Sales Law.*

*2. The information notice referred to in paragraph 1 shall, if given in electronic form, contain a hyperlink or, in all other circumstances, include the indication of a website through which the text of the Common European Sales Law can be obtained free of charge.*

*Justification*

*Information requirements are already laid down in Directive 2011/83/EU.*

**Amendment 84**

**Proposal for a regulation  
Article 10**

*Text proposed by the Commission*

*Amendment*

*Article 10*

*deleted*

*Penalties for breach of specific*

### *requirements*

*Member States shall lay down penalties for breaches by traders in relations with consumers of the requirements set out in Articles 8 and 9 and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided shall be effective, proportionate and dissuasive. Member States shall notify the relevant provisions to the Commission no later than [1 year after the date of application of this Regulation] and shall notify any subsequent changes as soon as possible.*

### **Amendment 85**

#### **Proposal for a regulation Article 11**

*Text proposed by the Commission*

*Amendment*

#### *Article 11*

*deleted*

#### *Consequences of the use of the Common European Sales Law*

*Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules. Provided that the contract was actually concluded, the Common European Sales Law shall also govern the compliance with and remedies for failure to comply with the pre-contractual information duties.*

### **Amendment 86**

#### **Proposal for a regulation Article 12**

*Text proposed by the Commission*

*Amendment*

**Article 12**

***deleted***

***Information requirements resulting from  
the Services Directive***

***This Regulation is without prejudice to  
the information requirements laid down  
by national laws which transpose the  
provisions of Directive 2006/123/EC of  
the European Parliament and of the  
Council of 12 December 2006 on services  
in the internal market and which  
complement the information requirements  
laid down in the Common European Sales  
Law.***

**Amendment 87**

**Proposal for a regulation  
Article 13**

*Text proposed by the Commission*

*Amendment*

**Article 13**

***deleted***

***Member States' options***

***A Member State may decide to make the  
Common European Sales Law available  
for:***

***(a) contracts where the habitual residence  
of the traders or, in the case of a contract  
between a trader and a consumer, the  
habitual residence of the trader, the  
address indicated by the consumer, the  
delivery address for goods and the billing  
address, are located in that Member State;  
and/or***

***(b) contracts where all the parties are  
traders but none of them is an SME  
within the meaning of Article 7(2).***

## Amendment 88

### Proposal for a regulation Article 14 – title

*Text proposed by the Commission*

Communication of judgments applying this  
**Regulation**

*Amendment*

Communication of judgments applying this  
**Directive**

## Amendment 89

### Proposal for a regulation Article 14 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that final judgments of their courts applying the rules of this **Regulation** are communicated without undue delay to the Commission.

*Amendment*

1. Member States shall ensure that final judgments of their courts applying the rules of this **Directive** are communicated without undue delay to the Commission.

## Amendment 90

### Proposal for a regulation Article 15

*Text proposed by the Commission*

**Article 15**

**Review**

***1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, in particular on the level of acceptance of the Common European Sales Law, the extent to which its provisions have given rise to litigation and on the state of play concerning differences in the level of consumer protection between the Common European Sales Law and national law.***

*Amendment*

***deleted***



*That information shall include a comprehensive overview of the case law of the national courts interpreting the provisions of the Common European Sales Law.*

*2. By ... [5 years after the date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a detailed report reviewing the operation of this Regulation, and taking account of, amongst others, the need to extend the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.*

#### **Amendment 91**

##### **Proposal for a regulation Article 16 – paragraph 1**

*Text proposed by the Commission*

1. This **Regulation** shall enter into force on the **20<sup>th</sup>** day following that of its publication in the Official Journal of the European Union.

*Amendment*

1. This **Directive** shall enter into force on the **twentieth** day following that of its publication in the Official Journal of the European Union.

#### **Amendment 92**

##### **Proposal for a regulation Article 16 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*It shall apply from [ 6 months after its the entry into force].*

*Amendment*

*deleted*

## **Amendment 93**

### **Proposal for a regulation**

#### **Article 16 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*This Regulation shall be binding in its entirety and directly applicable in the Member States.*

*deleted*

## **Amendment 94**

### **Proposal for a regulation**

#### **Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 16a*

*Addressees*

*This Directive is addressed to the Member States.*

## **Amendment 95**

### **Proposal for a regulation**

#### **Annex I – Title**

*Text proposed by the Commission*

*Amendment*

**COMMON EUROPEAN SALES LAW**

*deleted*

## **Amendment 96**

### **Proposal for a regulation**

#### **Annex I – Table of contents**

*Text proposed by the Commission*

*Amendment*

**[...]**

*deleted*

## **Amendment 97**

### **Proposal for a regulation Annex I – Part I**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

## **Amendment 98**

### **Proposal for a regulation Annex I – Part II**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

## **Amendment 99**

### **Proposal for a regulation Annex I – Part III**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

## **Amendment 100**

### **Proposal for a regulation Annex I – Part IV – Chapter 9**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

## **Amendment 101**

### **Proposal for a regulation**

## Annex I – Part IV – Chapter 10 – Section 1

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

## Amendment 102

### Proposal for a regulation

#### Annex I – Part IV – Chapter 10 – Section 2

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

## Amendment 103

### Proposal for a regulation

#### Annex I – Part IV – Chapter 10 – Section 3 – title

*Text proposed by the Commission*

*Amendment*

Conformity *of* the *goods and digital content*

Conformity *with* the *contract and the consumer's remedies*

## Amendment 104

### Proposal for a regulation

#### Annex I – Part IV – Chapter 10 – Section 3 – Article 99 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. In order to conform with the contract, the goods or digital content must:

1. *The seller is obliged to deliver the goods or digital content in conformity with the contract.* In order to conform with the contract, the goods or digital content must:

## Amendment 105

### Proposal for a regulation

#### Annex I – Part IV – Chapter 10 – Section 3 – Article 99 – paragraph 2

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

2. In order to conform with the contract the goods or digital content must also meet the requirements of Articles **100, 101 and 102**, *save to the extent that the parties have agreed otherwise*.

##### *Amendment*

2. In order to conform with the contract the goods or digital content must also meet the requirements of Articles [...] (***Criteria for conformity of the goods and digital content; Incorrect installation under a consumer sales contract***).

## Amendment 106

### Proposal for a regulation

#### Annex I – Part IV – Chapter 10 – Section 3 – Article 99 – paragraph 3

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

3. ***In a consumer sales contract***, any agreement derogating from the requirements of Articles **100, 102 and 103** to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods or the digital content and accepted the goods or the digital content as being in conformity with the contract when concluding it.

##### *Amendment*

3. Any agreement derogating from the requirements of Articles [...] (***Criteria for conformity of the goods and digital content; incorrect installation under a consumer sales contract***) to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods or the digital content and ***explicitly*** accepted the goods or the digital content as being in conformity with the contract when concluding it.

## Amendment 107

### Proposal for a regulation

#### Annex I – Part IV – Chapter 10 – Section 3 – Article 99 – paragraph 4

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

4. ***In a consumer sales contract, the parties may not, to the detriment of the consumer, exclude the application of***

##### *Amendment*

***deleted***

*paragraph 3 or derogate from or vary its effects.*

## **Amendment 108**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 10 – Section 3 – Article 100 – point a**

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

(a) be fit for any particular purpose made known to the seller at the time of the conclusion of the contract, except where the *circumstances show* that *the buyer did not rely, or that it was unreasonable for the buyer to rely, on the seller's skill and judgement*;

##### *Amendment*

(a) be fit for any particular purpose made known to the seller at the time of the conclusion of the contract, except where the *seller shows* that *he provided corrected fitness-for-purpose information*;

##### *Justification*

*It is more appropriate and more consumer-friendly if a seller is obliged to expressly counter an incorrect opinion voiced by a consumer as to the fitness of a good for a particular purpose.*

## **Amendment 109**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 10 – Section 3 – Article 100 – point f**

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

f) possess the qualities and performance capabilities indicated in any pre-contractual statement *which forms part of the contract terms by virtue of Article 69*; and

##### *Amendment*

f) possess the qualities and performance capabilities indicated in any pre-contractual statement; and

## **Amendment 110**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 10 – Section 3 – Article 100 – point g**

*Text proposed by the Commission*

*Amendment*

g) possess such qualities and performance capabilities as the **buyer** may expect. When determining what the consumer may expect of the digital content regard is to be had to whether or not the digital content was supplied in exchange for the payment of a price.

g) possess such qualities and performance capabilities as the **consumer** may expect, **including durability, appearance and absence of minor faults**. When determining what the consumer may expect of the digital content regard is to be had to whether or not the digital content was supplied in exchange for the payment of a price.

**Amendment 111**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 10 – Section 3 – Article 101 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

**Amendment 112**

**Proposal for a regulation**

**Annex I – Chapter 10 – Section 3 – Article 102**

*Text proposed by the Commission*

*Amendment*

***Article 102***

***deleted***

***Third party rights or claims***

***1. The goods must be free from and the digital content must be cleared of any right or not obviously unfounded claim of a third party.***

***2. As regards rights or claims based on intellectual property, subject to paragraphs 3 and 4, the goods must be free from and the digital content must be cleared of any right or not obviously***

*unfounded claim of a third party:*

*(a) under the law of the state where the goods or digital content will be used according to the contract or, in the absence of such an agreement, under the law of the state of the buyer's place of business or in contracts between a trader and a consumer the consumer's place of residence indicated by the consumer at the time of the conclusion of the contract; and*

*(b) which the seller knew of or could be expected to have known of at the time of the conclusion of the contract.*

*3. In contracts between businesses, paragraph 2 does not apply where the buyer knew or could be expected to have known of the rights or claims based on intellectual property at the time of the conclusion of the contract.*

*4. In contracts between a trader and a consumer, paragraph 2 does not apply where the consumer knew of the rights or claims based on intellectual property at the time of the conclusion of the contract.*

*5. In a contract between a trader and a consumer, the parties may not, to the detriment of a consumer, exclude the application of this Article or derogate from or vary its effect.*

## **Amendment 113**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 10 – Section 3 – Article 103**

*Text proposed by the Commission*

*Amendment*

*Article 103*

*deleted*

*Limitation on conformity of digital content*

*Digital content is not considered as not conforming to the contract for the sole*



*reason that updated digital content has become available after the conclusion of the contract.*

#### **Amendment 114**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 10 – Section 3 – Article 104**

*Text proposed by the Commission*

*Amendment*

##### **Article 104**

*deleted*

***Buyer's knowledge of lack of conformity in a contract between traders***

***In a contract between traders, the seller is not liable for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of the lack of conformity.***

#### **Amendment 115**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 10 – Section 3 – Article 105 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The seller is liable for any lack of conformity which exists at the time when the risk passes to the ***buyer under Chapter 14***.

1. The seller is liable for any lack of conformity which exists at the time when the risk passes to the ***consumer***.

##### *Justification*

*In the interests of clarity of layout, Article 105 as amended for this Directive should be placed directly between Articles 114 and [...] (time limits).*

#### **Amendment 116**

##### **Proposal for a regulation**

## Annex I – Part IV – Chapter 10 – Section 3 – Article 105 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. In a consumer sales contract, any lack of conformity which becomes apparent within **six months** of the time when risk passes to the **buyer** is presumed to have existed at that time unless this is incompatible with the nature of the goods or digital content or with the nature of the lack of conformity.

2. In a consumer sales contract **or a contract for the supply of digital content**, any lack of conformity which becomes apparent within **one year** of the time when risk passes to the **consumer** is presumed to have existed at that time unless this is incompatible with the nature of the goods or digital content or with the nature of the lack of conformity.

*Justification*

*The reversal of the burden of proof is currently set at six months in Directive 1999/44/EU. In practice, however, faults which arise after six months are often not recognised, even though the guarantee is still valid. Consumers are rarely able to prove that the faults already existed at the time of purchase without resorting to costly expert reports. The time limit should therefore be extended.*

### Amendment 117

#### Proposal for a regulation

## Annex I – Part IV – Chapter 10 – Section 3 – Article 105 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. Where the digital content must be subsequently updated by the trader, the trader must ensure that the digital content remains in conformity with the contract throughout the duration of the contract.

4. Where the digital content must be subsequently updated by the trader, **or where he supplies its components separately**, the trader must ensure that the digital content remains in conformity with the contract throughout the duration of the contract.

### Amendment 118

#### Proposal for a regulation

## Annex I – Part IV – Chapter 10 – Section 3 – Article 105 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. In a contract between a trader and a consumer, the parties may not, to the**

**deleted**

*detriment of a consumer, exclude the application of this Article or derogate from or vary its effect.*

*Justification*

*In the interests of clarity of layout, Article 105 as amended for this Directive should be placed directly between Articles 114 and [...] (time limits).*

**Amendment 119**

**Proposal for a regulation  
Annex I – Part IV – Chapter 11 – title**

*Text proposed by the Commission*

*Amendment*

***The buyer's*** remedies

Remedies

**Amendment 120**

**Proposal for a regulation  
Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. In the case of non-performance of ***an*** obligation by the seller, the ***buyer*** may do any of the following:

1. In the case of non-performance of ***the*** obligation ***to conform to the contract*** by the seller, the ***consumer*** may do any of the following:

*Justification*

*The rules on remedies contained in the Commission proposal are set at a high level of consumer protection and should therefore be partly incorporated in this directive.*

**Amendment 121**

**Proposal for a regulation  
Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) require performance, which includes specific performance, repair or replacement of the goods or digital content, ***under Section 3 of this Chapter***;

(a) require performance, which includes specific performance, repair or replacement of the goods or digital content;

**Amendment 122**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) withhold the buyer's own performance ***under Section 4 of this Chapter***;

(b) to withhold the buyer's own performance;

**Amendment 123**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) terminate the contract under ***Section 5 of this Chapter*** and claim the return of any price already paid, ***under Chapter 17***;

(c) terminate the contract under ***Article [...]*** (***Termination for non-performance***) and claim the return of any price already paid;

**Amendment 124**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) reduce the price ***under Section 6 of this Chapter***; and

(d) reduce the price; and

## **Amendment 125**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

(e) claim damages *under Chapter 16*.

(e) claim damages.

## **Amendment 126**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. If the buyer is a trader:*

*2. In the case of digital content made available free of charge, the consumer may make use of the remedies referred to in points a, b, c and e of paragraph 1.*

*(a) the buyer's rights to exercise any remedy except withholding of performance are subject to cure by the seller as set out in Section 2 of this Chapter; and*

*(b) the buyer's rights to rely on lack of conformity are subject to the requirements of examination and notification set out in Section 7 of this Chapter.*

*Justification*

*The personal data of consumers have economic value. Consequently, making these data available represents a quid pro quo. The consumer should therefore also be entitled to remedies.*

## **Amendment 127**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. If the buyer is a consumer:**

***(a) the buyer's rights are not subject to cure by the seller; and***

***(b) the requirements of examination and notification set out in Section 7 of this Chapter do not apply.***

**3. Remedies which are not incompatible may be cumulated.**

## **Amendment 128**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. If the seller's non-performance is excused, the buyer may resort to any of the remedies referred to in paragraph 1 except requiring performance and damages.**

**4. The right to resort to these remedies passes to a subsequent purchaser of the goods or digital content where that purchaser is a consumer.**

#### *Justification*

*It should be made clear that claims to remedies are not lost following a change of owner but pass to the next purchaser, on condition that this purchaser is acting as a consumer.*

## **Amendment 129**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The buyer may not resort to any of the remedies referred to in paragraph 1 to the extent that the buyer caused the seller's non-performance.**

**deleted**

## **Amendment 130**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 106 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Remedies which are not incompatible  
may be cumulated.** *deleted*

## **Amendment 131**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 107**

*Text proposed by the Commission*

*Amendment*

**Article 107**

*deleted*

***Limitation of remedies for digital content  
not supplied in exchange for a price***

***Where digital content is not supplied in  
exchange for the payment of a price, the  
buyer may not resort to the remedies  
referred to in points (a) to (d) of Article  
106(1). The buyer may only claim  
damages under point (e) of Article 106 (1)  
for loss or damage caused to the buyer's  
property, including hardware, software  
and data, by the lack of conformity of the  
supplied digital content, except for any  
gain of which the buyer has been deprived  
by that damage.***

## **Amendment 132**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 1 – Article 108**

*Text proposed by the Commission*

*Amendment*

**Article 108**

*deleted*

***Mandatory nature***

*In a contract between a trader and a consumer, the parties may not, to the detriment of the consumer, exclude the application of this Chapter, or derogate from or vary its effect before the lack of conformity is brought to the trader's attention by the consumer.*

## **Amendment 133**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 2 – title**

*Text proposed by the Commission*

*Amendment*

Cure by the *seller*

Cure by the *service provider*

## **Amendment 134**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. A *seller* who has tendered performance early and who has been notified that the performance is not in conformity with the contract may make a new and conforming tender if that can be done within the time allowed for performance.

1. A *service provider* who has tendered performance early and who has been notified that the performance is not in conformity with the contract may make a new and conforming tender if that can be done within the time allowed for performance.

#### *Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

## **Amendment 135**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 2**



*Text proposed by the Commission*

*Amendment*

2. In cases not covered by paragraph 1 a **seller** who has tendered a performance which is not in conformity with the contract may, without undue delay on being notified of the lack of conformity, offer to cure it at its own expense.

2. In cases not covered by paragraph 1 a **service provider** who has tendered a performance which is not in conformity with the contract may, without undue delay on being notified of the lack of conformity, offer to cure it at its own expense.

*Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

**Amendment 136**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. An offer to cure is not precluded by notice of termination.**

**deleted**

**Amendment 137**

**Proposal for a regulation**

**Annex I– Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 4 – introductory part**

*Text proposed by the Commission*

*Amendment*

4. The **buyer** may refuse an offer to cure **only** if:

4. The **consumer** may refuse an offer to cure if:

*Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

## Amendment 138

### Proposal for a regulation

#### Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 4 – point a

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

(a) cure cannot be effected promptly and without significant inconvenience to the **buyer**;

##### *Amendment*

a) cure cannot be effected promptly and without significant inconvenience to the **consumer**;

##### *Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

## Amendment 139

### Proposal for a regulation

#### Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 4 – point b

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

(b) the **buyer** has reason to believe that the **seller's** future performance cannot be relied on; or

##### *Amendment*

b) the **consumer** has reason to believe that the **service provider's** future performance cannot be relied on; or

##### *Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

## Amendment 140

### Proposal for a regulation

#### Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 5

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

5. The **seller** has **a reasonable period of time** to effect cure.

##### *Amendment*

5. The **service provider** has **30 days** to effect cure.

### *Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

### **Amendment 141**

#### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

<b>6. The buyer may withhold performance pending cure, but the rights of the buyer which are inconsistent with allowing the seller a period of time to effect cure are suspended until that period has expired.</b>	<b>deleted</b>
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### *Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

### **Amendment 142**

#### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 2 – Article 109 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

<b>7. Notwithstanding cure, the <i>buyer</i> retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.</b>	<b>7. Notwithstanding cure, the <i>consumer</i> retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.</b>
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### *Justification*

*For the sake of greater clarity, Article 109, revised in keeping with the purposes of this directive, should come between Articles 155 (Remedies of the consumer) and 158 (Consumer's right to decline performance).*

## Amendment 143

### Proposal for a regulation

#### Annex I – Part IV – Chapter 11 – Section 3 – Article 110 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. If, in the event of non-conformity, and although requested to do so by the consumer, the trader does not effect remedy, but instead urges the consumer to seek remedy on the basis of a commercial warranty, the trader must allow the actions taken and statements made by the consumer and the warrantor concerning the commercial warranty to be asserted against him in respect of his commitments.***

*Justification*

*It may be disadvantageous for the consumer to seek remedy for non-conformity on the basis of the manufacturer's warranty, rather than on the basis of his or her sales law rights under Article 106. By way of an example, rights under the warranty may expire whilst the consumer argues in vain with the manufacturer about the scope of the warranty. What is more, it may be that after failed attempts at repair by the manufacturer, the buyer must first allow the seller to carry out further attempts at repair before being able to take the step of withdrawing from the sales contract. This is unfair if, at the urging of the seller, who thus avoids having his own liability invoked, the consumer seeks remedy under the terms of a warranty. For that reason the seller must allow actions and statements by the consumer and warrantor to be asserted against him.*

## Amendment 144

### Proposal for a regulation

#### Annex I – Part IV – Chapter 11 – Section 3 – Article 111 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

***1. Where, in a consumer sales contract, the trader is required to remedy a lack of conformity pursuant to Article 110(2) the consumer may choose*** between repair and replacement unless the option chosen would be unlawful or impossible or,

***1. If the good or the digital content is not in conformity with the contract, the consumer may require remedy free of charge by choosing*** between repair and replacement unless the option chosen would be unlawful or impossible or,

compared to the other option available, would impose costs on the seller that would be disproportionate taking into account:

compared to the other option available, would impose costs on the seller that would be disproportionate taking into account:

## **Amendment 145**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 3 – Article 111 – paragraph 2**

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

2. If the consumer has required the remedying of the lack of conformity by repair or replacement pursuant to paragraph 1, the consumer may resort to other remedies only if ***the trader has not completed repair or replacement within a reasonable time, not exceeding 30 days. However, the consumer may withhold performance during that time.***

##### *Amendment*

2. If the consumer has required the remedying of the lack of conformity by repair or replacement pursuant to paragraph 1, the consumer may resort to other remedies only if:

##### *Justification*

*Ensuring that in the context of the repair of goods consumers do not end up trapped in an endless cycle of dealings with traders constitutes a genuine improvement in consumer protection. The jurisprudence in many Member States seems to be based on the assumption that only after the second repair does the consumer have the right to seek an alternative remedy. In the light of what are sometimes considerable geographical distances and lengthy delivery periods in the internal market, the consumer should already be able to seek an alternative remedy when the same fault occurs for the second time.*

## **Amendment 146**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 3 – Article 111 – paragraph 2 – points a to c (new)**

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

##### *Amendment*

***(a) the trader has not completed repair or replacement within a reasonable time, not exceeding 30 days;***

- (b) the trader has implicitly or explicitly refused to remedy the lack of conformity;*
- (c) the same fault has occurred again following repair or replacement.*

## **Amendment 147**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 3 – Article 112**

*Text proposed by the Commission*

*Amendment*

#### **Article 112**

*deleted*

#### **Return of replaced item**

- 1. Where the seller has remedied the lack of conformity by replacement, the seller has a right and an obligation to take back the replaced item at the seller's expense.*
- 2. The buyer is not liable to pay for any use made of the replaced item in the period prior to the replacement.*

## **Amendment 148**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 4 – Article 113**

*Text proposed by the Commission*

*Amendment*

#### **Article 113**

*deleted*

#### **Right to withhold performance**

- 1. A buyer who is to perform at the same time as, or after, the seller performs has a right to withhold performance until the seller has tendered performance or has performed.*
- 2. A buyer who is to perform before the seller performs and who reasonably believes that there will be non-performance by the seller when the seller's performance becomes due may*

*withhold performance for as long as the reasonable belief continues.*

*3. The performance which may be withheld under this Article is the whole or part of the performance to the extent justified by the non-performance. Where the seller's obligations are to be performed in separate parts or are otherwise divisible, the buyer may withhold performance only in relation to that part which has not been performed, unless the seller's non-performance is such as to justify withholding the buyer's performance as a whole.*

#### **Amendment 149**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 11 – Section 5 – Article 114 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

*1. A buyer may terminate the contract within the meaning of Article 8 if the seller's non-performance under the contract is fundamental within the meaning of Article 87 (2).*

*1. In the case of a consumer sales contract and a contract for the supply of digital content between a trader and a consumer, where there is non-performance because the goods or the digital content do not conform to the contract the consumer may terminate the contract unless the lack of conformity is insignificant.*

#### **Amendment 150**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 11 – Section 5 – Article 114 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. In a consumer sales contract and a contract for the supply of digital content between a trader and a consumer, where there is a non-performance because the*

*2. If the customer terminates a contract for the supply of digital content which was not concluded in exchange for monetary consideration on the grounds of non-*

*goods do not conform to the contract, the consumer may terminate the contract unless the lack of conformity is insignificant.*

*conformity, the customer's personal data shall automatically be erased and the customer shall be informed of that erasure.*

#### *Justification*

*With a view to protecting consumers, it should be made clear that even when a contract for the supply of digital content free of charge is terminated the consumer has the right to secure the erasure of personal data he or she has already provided. The consumer should be informed that his or her personal data has been erased.*

### **Amendment 151**

#### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 5 – Article 114 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. When the termination of the contract takes place within six months after the risk has passed to the consumer, the consumer is not liable for any use of the good or the digital content.*

### **Amendment 152**

#### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 5 – Article 115**

*Text proposed by the Commission*

*Amendment*

#### *Article 115*

*deleted*

*Termination for delay in delivery after notice fixing additional time for performance*

*1. A buyer may terminate the contract in a case of delay in delivery which is not in itself fundamental if the buyer gives notice fixing an additional period of time of reasonable length for performance and the seller does not perform within that period.*



*2. The additional period referred to in paragraph 1 is taken to be of reasonable length if the seller does not object to it without undue delay.*

*3. Where the notice provides for automatic termination if the seller does not perform within the period fixed by the notice, termination takes effect after that period without further notice.*

## **Amendment 153**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 5 – Article 116**

*Text proposed by the Commission*

*Amendment*

#### *Article 116*

*deleted*

#### *Termination for anticipated non-performance*

*A buyer may terminate the contract before performance is due if the seller has declared, or it is otherwise clear, that there will be a non-performance, and if the non-performance would be such as to justify termination.*

## **Amendment 154**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 11 – Section 5 – Article 117**

*Text proposed by the Commission*

*Amendment*

#### *Article 117*

*deleted*

#### *Scope of right to terminate*

*1. Where the seller's obligations under the contract are to be performed in separate parts or are otherwise divisible, then if there is a ground for termination under this Section of a part to which a part of the price can be apportioned, the buyer*

*may terminate only in relation to that part.*

*2. Paragraph 1 does not apply if the buyer cannot be expected to accept performance of the other parts or the non-performance is such as to justify termination of the contract as a whole.*

*3. Where the seller's obligations under the contract are not divisible or a part of the price cannot be apportioned, the buyer may terminate only if the non-performance is such as to justify termination of the contract as a whole.*

#### **Amendment 155**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 11 – Section 5 – Article 118**

*Text proposed by the Commission*

*Amendment*

##### *Article 118*

*deleted*

##### *Notice of termination*

*A right to terminate under this Section is exercised by notice to the seller.*

#### **Amendment 156**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 11 – Section 5 – Article 119**

*Text proposed by the Commission*

*Amendment*

##### *Article 119*

*deleted*

##### *Loss of right to terminate*

*1. The buyer loses the right to terminate under this Section if notice of termination is not given within a reasonable time from when the right arose or the buyer became, or could be expected to have become, aware of the non-performance, whichever*

*is later.*

**2. Paragraph 1 does not apply:**

*(a) where the buyer is a consumer; or*

*(b) where no performance at all has been tendered.*

## **Amendment 157**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 11 – Section 6 – Article 120**

*Text proposed by the Commission*

*Amendment*

**Article 120**

***deleted***

***Right to reduce price***

***1. A buyer who accepts a performance not conforming to the contract may reduce the price. The reduction is to be proportionate to the decrease in the value of what was received in performance at the time performance was made compared to the value of what would have been received by a conforming performance.***

***2. A buyer who is entitled to reduce the price under paragraph 1 and who has already paid a sum exceeding the reduced price may recover the excess from the seller.***

***3. A buyer who reduces the price cannot also recover damages for the loss thereby compensated but remains entitled to damages for any further loss suffered.***

## **Amendment 158**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 11 – Section 7 – Article 121**

*Text proposed by the Commission*

*Amendment*

**Article 121**

***deleted***

***Examination of the goods in contracts  
between traders***

***1. In a contract between traders the buyer is expected to examine the goods, or cause them to be examined, within as short a period as is reasonable not exceeding 14 days from the date of delivery of the goods, supply of digital content or provision of related services.***

***2. If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.***

***3. If the goods are redirected in transit, or redispached by the buyer before the buyer has had a reasonable opportunity to examine them, and at the time of the conclusion of the contract the seller knew or could be expected to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.***

**Amendment 159**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 11 – Section 7 – Article 122**

*Text proposed by the Commission*

*Amendment*

**Article 122**

***deleted***

***Requirement of notification of lack of  
conformity in sales contracts between  
traders***

***1. In a contract between traders the buyer may not rely on a lack of conformity if the buyer does not give notice to the seller within a reasonable time specifying the***

*nature of the lack of conformity.*

*The time starts to run when the goods are supplied or when the buyer discovers or could be expected to discover the lack of conformity, whichever is later.*

*2. The buyer loses the right to rely on a lack of conformity if the buyer does not give the seller notice of the lack of conformity within two years from the time at which the goods were actually handed over to the buyer in accordance with the contract.*

*3. Where the parties have agreed that the goods must remain fit for a particular purpose or for their ordinary purpose during a fixed period of time, the period for giving notice under paragraph 2 does not expire before the end of the agreed period.*

*4. Paragraph 2 does not apply in respect of the third party claims or rights referred to in Article 102.*

*5. The buyer does not have to notify the seller that not all the goods have been delivered if the buyer has reason to believe that the remaining goods will be delivered.*

*6. The seller is not entitled to rely on this Article if the lack of conformity relates to facts of which the seller knew or could be expected to have known and which the seller did not disclose to the buyer.*

## **Amendment 160**

### **Proposal for a regulation Annex I – Part IV – Chapter 12**

*Text proposed by the Commission*

*Amendment*

*[...]*

*deleted*

## **Amendment 161**

### **Proposal for a regulation Annex I – Part IV – Chapter 13**

*Text proposed by the Commission*

*Amendment*

*deleted*

## **Amendment 162**

### **Proposal for a regulation Annex I – Part IV – Chapter 14 – Section 1 – Article 140**

*Text proposed by the Commission*

*Amendment*

*Article 140*

*deleted*

*Effect of passing of risk*

*Loss of, or damage to, the goods or the digital content after the risk has passed to the buyer does not discharge the buyer from the obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.*

## **Amendment 163**

### **Proposal for a regulation Annex I – Part IV – Chapter 14 – Section 1 – Article 141**

*Text proposed by the Commission*

*Amendment*

*Article 141*

*deleted*

*Identification of goods or digital content to contract*

*The risk does not pass to the buyer until the goods or the digital content are clearly identified as the goods or digital content to be supplied under the contract, whether by the initial agreement, by notice given to the buyer or otherwise.*

## **Amendment 164**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 14 – Section 1 – Article 141 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 141a**

##### **Time limits**

- 1. Pursuant to Article [...] (conformity) the trader shall be liable if the non-conformity comes to light within six years following delivery of the good.***
- 2. If the trader remedies the fault by means of repair or replacement, the time limit referred to in paragraph shall be suspended from the time when the consumer informs the trader of the non-conformity to the time when the consumer is once again in possession of the replaced or repaired good or the digital content.***
- 3. If the trader remedies the fault by means of repair or replacement, the time limit referred to in paragraph 1 shall start to run again as soon as the consumer is in receipt of the replaced or repaired good or the digital content. In the event of repair the time limit shall start to run again.***

#### *Justification*

*At present the two-year time limit pursuant to Directive 1999/44/EC applies, but some Member States set longer time limits. In addition, in some Member States the time limits reflect other criteria, such as the expected useful life of the good or hidden defects.*

## **Amendment 165**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 14 – Section 1 – Article 141 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 141b**

***Legal guarantee period for eco-designed products***

***The conformity period for goods covered by this directive and eco-designed according to Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products, shall be the durability period as laid down in the implementing measure to the 2009/125 Directive if it is longer than 6 years.***

*Justification*

*In order to promote sustainable consumption among consumers by creating confidence in products developed following the standards laid down in the ecodesign legislation, it is necessary to ensure that the consumer counts on guarantee rights thorough the life cycle of the product. This period of time should be established in reference to the implemented measures of Directive 2009/158/EC which already requires an assessment of the life expectancy of the product, meaning the state of the product having reached the end of its first use until its final disposal.*

**Amendment 166**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 14 – Section 1 – Article 141 c (new)**

*Text proposed by the Commission*

*Amendment*

**Article 141c**

***Direct producer's liability***

***1. The producer is liable towards the consumer to repair or replace the goods for any lack of conformity that existed at the time of the passing of risk to the consumer for the good or digital content within the time period specified in Article 10. The consumer has the right to choose between repair and replacement, under the conditions stipulated in Article 7***



*paragraph 1.*

*2. The producer shall repair or replace the goods, at the latest 30 days after having been notified of the lack of conformity.*

*3. This Article is without prejudice to the provisions of national law extending the liability to other parties such as the importer or the carrier or concerning the right of contribution or recourse.*

*Justification*

*The direct liability of producers could boost consumer confidence: a consumer could eventually turn directly to a producer established in his/her country, instead of sending a defective good backwards and forwards throughout the EU. In a real Internal Market consumers should be able to choose whom to revert to in case of problems.*

**Amendment 167**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 14 – Section 2 – Article 142 – title**

*Text proposed by the Commission*

*Amendment*

Passing of risk in a *consumer sales* contract

Passing of risk in a contract *for the supply of digital content on a tangible medium*

*Justification*

*The passing of risk is already covered by Directive 2011/83/EU and should be amplified only by a provision on digital content.*

**Amendment 168**

**Proposal for a regulation**

**Annex I – Part IV – Chapter 14 – Section 2 – Article 142 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

*1. In a consumer sales contract, the risk passes at the time when the consumer or a third party designated by the consumer,*

*deleted*

*not being the carrier, has acquired the physical possession of the goods or the tangible medium on which the digital content is supplied.*

#### **Amendment 169**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 14 – Section 2 – Article 142 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Except where the contract is a distance or off-premises contract, paragraphs 1 and 2 do not apply where the consumer fails to perform the obligation to take over the goods or the digital content and the non-performance is not excused under Article 88. In this case, the risk passes at the time when the consumer, or the third party designated by the consumer, would have acquired the physical possession of the goods or obtained the control of the digital content if the obligation to take them over had been performed.*

*deleted*

#### **Amendment 170**

##### **Proposal for a regulation**

##### **Annex I– Part IV – Chapter 14 – Section 2 Article 142 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

*4. Where the consumer arranges the carriage of the goods or the digital content supplied on a tangible medium and that choice was not offered by the trader, the risk passes when the goods or the digital content supplied on a tangible medium are handed over to the carrier, without prejudice to the rights of the consumer against the carrier.*

*deleted*

## **Amendment 171**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 14 – Section 2 – Article 142 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 172**

### **Proposal for a regulation**

#### **Annex I – Part IV – Chapter 14 – Section 2 – Article 142 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 142a**

##### **Commercial guarantees**

**1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. In the absence of the guarantee statement, or if the guarantee statement is less advantageous than advertised, the commercial guarantee shall be binding under the conditions laid down in the advertising on the commercial guarantee.**

**2. The guarantee statement shall be drafted in plain, intelligible language and be legible. It shall be drafted in the language of the contract concluded with the consumer.**

**The guarantee must:**

**a) indicate the legal rights of the consumer pursuant to Article [...] (Remedies of the consumer), 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) the benefits to the customer of making a claim, whether the guarantee is free of charge or not, and if it is not what the costs for the customer are;*

*d) the information that the commercial guarantee can be transferred to a subsequent buyer.*

*e) a statement that maintenance services and spare parts will continue to be made available for six years following the conclusion of the contract.*

*3. The trader shall make the guarantee statement available in a durable medium.*

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

#### *Justification*

*The text of the provisions on commercial guarantees is based on the Commission proposal on consumers' rights. The principle of transferability should be introduced in order to take account of the sharp increase in online trading of second-hand goods. In addition a rule should be introduced requiring manufacturers to guarantee that maintenance services and spare parts will be available for at least six years after purchase.*

#### **Amendment 173**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 14 – Section 3 – Article 143**

*Text proposed by the Commission*

*Amendment*

#### **Article 143**

*deleted*

#### **Time when risk passes**

***1. In a contract between traders the risk passes when the buyer takes delivery of the goods or digital content or the documents representing the goods.***

**2. Paragraph 1 is subject to Articles 144, 145 and 146.**

#### **Amendment 174**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 14 – Section 3 – Article 144**

*Text proposed by the Commission*

*Amendment*

##### **Article 144**

**deleted**

##### ***Goods placed at buyer's disposal***

***1. If the goods or the digital content are placed at the buyer's disposal and the buyer is aware of this, the risk passes to the buyer at the time when the goods or digital content should have been taken over, unless the buyer was entitled to withhold taking of delivery pursuant to Article 113.***

***2. If the goods or the digital content are placed at the buyer's disposal at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods or digital content are placed at the buyer's disposal at that place.***

#### **Amendment 175**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 14 – Section 3 – Article 145**

*Text proposed by the Commission*

*Amendment*

##### **Article 145**

**deleted**

##### ***Carriage of the goods***

***1. This Article applies to a contract of sale which involves carriage of goods.***

***2. If the seller is not bound to hand over the goods at a particular place, the risk***

*passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract.*

*3. If the seller is bound to hand over the goods to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place.*

*4. The fact that the seller is authorised to retain documents controlling the disposition of the goods does not affect the passing of the risk.*

#### **Amendment 176**

##### **Proposal for a regulation**

##### **Annex I – Part IV – Chapter 14 – Section 3 – Article 146**

*Text proposed by the Commission*

*Amendment*

##### **Article 146**

*deleted*

##### **Goods sold in transit**

*1. This Article applies to a contract of sale which involves goods sold in transit.*

*2. The risk passes to the buyer as from the time the goods were handed over to the first carrier. However, if the circumstances so indicate, the risk passes to the buyer when the contract is concluded.*

*3. If at the time of the conclusion of the contract the seller knew or could be expected to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.*

#### **Amendment 177**

##### **Proposal for a regulation**

## **Annex I – Part V – Chapter 15 – Section 1 – Article 147**

*Text proposed by the Commission*

*Amendment*

### **Article 147**

*deleted*

*Application of certain general rules on sales contracts*

*1. The rules in Chapter 9 apply for the purposes of this Part.*

*2. Where a sales contract or a contract for the supply of digital content is terminated any related service contract is also terminated.*

## **Amendment 178**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 148 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Where in a contract ***between a trader and a customer*** the related service includes installation of the goods, the installation must be such that the installed goods conform to the contract as required by Article ***101***.

4. Where in a contract between a trader and a consumer the related service includes installation of the goods, the installation must be such that the installed goods conform to the contract as required by Article [...] ***(faulty installation in the context of a customer sales contract)***.

## **Amendment 179**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 148 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of paragraph 2 or derogate from or vary its effects.***

*deleted*

## **Amendment 180**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 149 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. This article shall be without prejudice to general or specific obligations to prevent damage applicable under existing national law.***

## **Amendment 181**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 150 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. A service provider may entrust performance to another person, unless personal performance by the service provider is required.

*(Does not affect the English version.)*

## **Amendment 182**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 150 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

.

***1a. The service provider must obtain the express consent of the consumer before entrusting performance to another person pursuant to paragraph 1.***

*Justification*

*In the interests of clarity of layout, Article 150 as amended for this Directive should be placed directly between Article 152 (Obligation to warn of unexpected or uneconomic cost) and Article 155 (Remedies of the customer).*



## Amendment 183

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 2 – Article 150 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of paragraph 2 or derogate from or vary its effects.**

**deleted**

#### *Justification*

*In the interests of clarity of layout, Article 150 as amended for this Directive should be placed directly between Article 152 (Obligation to warn of unexpected or uneconomic cost) and Article 155 (Remedies of the customer).*

## Amendment 184

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 2 – Article 151

*Text proposed by the Commission*

*Amendment*

Where a separate price is payable for the related service, and the price is not a lump sum agreed at the time of conclusion of the contract, the service provider must provide the **customer** with an invoice which explains, in a clear and intelligible way, how the price was calculated.

Where a separate price is payable for the related service, and the price is not a lump sum agreed at the time of conclusion of the contract, the service provider must provide the **consumer** with an invoice which explains, in a clear and intelligible way, how the price was calculated.

## Amendment 185

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 2 – Article 152 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. The service provider must warn the **customer** and seek the consent of the

1. The service provider must warn the **consumer** and seek the consent of the

*customer* to proceed if:

*consumer* to proceed *if the latter does not make use of his right to terminate the contract pursuant to Article [...] (list of remedies of the customer)* if:

## **Amendment 186**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 152 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the cost of the related service would be greater than already indicated by the service provider to the *customer*; or

(a) the cost of the related service would be greater than already indicated by the service provider to the *consumer*; or

## **Amendment 187**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 152 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. A service provider who fails to obtain the consent of the *customer* in accordance with paragraph 1 is not entitled to a price exceeding the cost already indicated or, as the case may be, the value of the goods or digital content after the related service has been provided.

2. A service provider who fails to obtain the consent of the *consumer* in accordance with paragraph 1 is not entitled to a price exceeding the cost already indicated or, as the case may be, the value of the goods or digital content after the related service has been provided.

## **Amendment 188**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 2 – Article 152 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. The level of costs indicated for the related service shall be binding, unless explicitly stated otherwise. The binding figure indicated for such costs may not be*

*exceeded.*

#### *Justification*

*Consumers need a particularly high level of protection in respect of estimates of costs. In addition to non-binding estimates, which may be exceeded pursuant to Article 152(1) and (2), provision should be made for binding estimates. The trader must be required to state clearly whether an estimate is non-binding.*

### **Amendment 189**

#### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 3 – Article 153**

*Text proposed by the Commission*

*Amendment*

#### *Article 153*

*deleted*

#### *Payment of the price*

*1. The customer must pay any price that is payable for the related service in accordance with the contract.*

*2. The price is payable when the related service is completed and the object of the related service is made available to the customer.*

### **Amendment 190**

#### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 3 – Article 154**

*Text proposed by the Commission*

*Amendment*

#### *Article 154*

*deleted*

#### *Provision of access*

*Where it is necessary for the service provider to obtain access to the customer's premises in order to perform the related service the customer must provide such access at reasonable hours.*

## Amendment 191

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 4 – Article 155 – title

*Text proposed by the Commission*

*Amendment*

Remedies of the *customer*

Remedies of the *consumer*

## Amendment 192

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 4 – Article 155 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. In the case of *non-performance of an obligation* by the service provider, the *customer* has, *with the adaptations set out in this Article*, the *same remedies as are provided for the buyer in Chapter 11, namely:*

1. In the case of *failure* by the service provider *to perform an obligation in accordance with the contract*, the *consumer* has the *following* remedies:

## Amendment 193

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 4 – Article 155 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Without prejudice to paragraph 3, the *customer's* remedies are subject to a right of the service provider to cure *whether or not the customer is a consumer*.

2. Without prejudice to paragraph 3, the *consumer's* remedies are subject to a right of the service provider to cure *pursuant to Article [...] (cure by the seller)*.

## Amendment 194

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 4 – Article 155 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. In the case of incorrect installation ***under a consumer sales contract*** as referred to in ***Article 101*** the consumer's remedies are not subject to a right of the service provider to cure.

3. In the case of incorrect installation as referred to in ***Article [...]*** (***faulty installation in the context of a customer sales contract***), the consumer's remedies are not subject to a right of the service provider to cure.

**Amendment 195**

**Proposal for a regulation**

**Annex I – Part V – Chapter 15 – Section 4 – Article 155 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. The ***customer, if a*** consumer, has the right to terminate the contract for any lack of conformity in the related service provided unless the lack of conformity is insignificant.

4. The consumer has the right to terminate the contract for any lack of conformity in the related service provided unless the lack of conformity is insignificant.

**Amendment 196**

**Proposal for a regulation**

**Annex I – Part V – Chapter 15 – Section 4 – Article 155 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. Chapter 11 applies with the necessary adaptations, in particular:***

***deleted***

***(a) in relation to the right of the service provider to cure, in contracts between a trader and a consumer, the reasonable period under Article 109 (5) must not exceed 30 days;***

***(b) in relation to the remedying of a non-conforming performance Articles 111 and 112 do not apply; and***

***(c) Article 156 applies instead of Article 122.***

## Amendment 197

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 4 – Article 155 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Where a sales contract or a contract for the supply of digital content is terminated, any related service contract is also terminated.***

## Amendment 198

### Proposal for a regulation

#### Annex I – Part V – Chapter 15 – Section 4 – Article 156

*Text proposed by the Commission*

*Amendment*

#### ***Article 156***

***deleted***

***Requirement of notification of lack of conformity in related service contracts between traders***

***1. In a related service contract between traders, the customer may rely on a lack of conformity only if the customer gives notice to the service provider within a reasonable time specifying the nature of the lack of conformity.***

***The time starts to run when the related service is completed or when the customer discovers or could be expected to discover the lack of conformity, whichever is later.***

***2. The service provider is not entitled to rely on this Article if the lack of conformity relates to facts of which the service provider knew or could be expected to have known and which the service provider did not disclose to the customer.***

## **Amendment 199**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 157**

*Text proposed by the Commission*

*Amendment*

#### **Article 157**

**deleted**

##### ***Remedies of the service provider***

***1. In the case of a non-performance by the customer, the service provider has, with the adaptations set out in paragraph 2, the same remedies as are provided for the seller in Chapter 13, namely:***

***(a) to require performance;***

***(b) to withhold the customer's own performance;***

***(c) to terminate the contract; and***

***(d) to claim interest on the price or damages.***

***2. Chapter 13 applies with the necessary adaptations. In particular Article 158 applies instead of Article 132 (2).***

## **Amendment 200**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 – title**

*Text proposed by the Commission*

*Amendment*

***Customer's right to decline performance***

***Consumer's right to decline performance***

## **Amendment 201**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The **customer** may at any time give notice to the service provider that performance, or further performance of the related service is no longer required.

1. The **consumer** may at any time give notice to the service provider that performance, or further performance of the related service is no longer required.

**Amendment 202**

**Proposal for a regulation**

**Annex I – Part V – Chapter 15 – Section 4 – Article 158 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. *Where notice is given under paragraph 1:*

*deleted*

**Amendment 203**

**Proposal for a regulation**

**Annex I – Part V – Chapter 15 – Section 4 – Article 158 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the **customer**, if there is no ground for termination under any other provision, remains liable to pay the price less the expenses that the service provider has saved or could be expected to have saved by not having to complete performance.

(b) the **consumer**, if there is no ground for termination under any other provision, remains liable to pay the price less the expenses that the service provider has saved or could be expected to have saved by not having to complete performance.

**Amendment 204**

**Proposal for a regulation**

**Annex I – Part V – Chapter 15 – Section 4 – Article 158 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 158a**



***Imperative nature of the Directive***

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

***Any contractual terms which directly or indirectly waive or restrict the rights resulting from this Directive shall not be binding on the consumer.***

***Justification***

***In the interests of consistency with Directive 2011/83/EU, the relevant final provisions of that Directive – in amended form – should be incorporated in this Directive. See Article 25 of Directive 2011/83/EU.***

**Amendment 205**

**Proposal for a regulation**

**Annex I – Part V – Chapter 15 – Section 4 – Article 158 b (new)**

*Text proposed by the Commission*

*Amendment*

***Article 158b***

***Model Contracts***

***The Commission shall present the standard terms and conditions within [one year] of the transposition of this Directive.***

**Amendment 206**

**Proposal for a regulation**

**Annex I – Part V – Chapter 15 – Section 4 – Article 158 c (new)**

*Text proposed by the Commission*

*Amendment*

***Article 158c***

***Information campaign***

***The Commission shall carry out an information campaign to inform***

*businesses at national level about these standards terms for on-line consumer transactions based on the European rules.*

## **Amendment 207**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 d (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 158d**

***Reporting by the Commission on planned durability***

***By [...], the Commission shall***

***(a) undertake research to identify, analyse and assess the impact of planned durability on the life cycle of products, and***

***(b) submit a report to the European Parliament on the transposition of this Directive with the necessary measures to address the problematic of planned durability of products.***

#### *Justification*

*Planned durability is a current practice which aims at reducing the life cycle of a product. This problem is not addressed by the current acquis. Consequently, it is necessary to assess how this practice would affect the life cycle of the product vis-à-vis the existing guarantee rights (e.g. products designed to fail after the two-year legal guarantee in those Member States that have transposed the minimum period of the 1999 Consumer Sales Directive) and what are the necessary measures to discourage or penalise planned durability.*

## **Amendment 208**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 e (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 158 e**

### ***Right of redress***

***1. Where the final seller is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain.***

***2. Member States shall establish the remedies referred in paragraph 1 and conditions of exercise.***

### ***Justification***

*This amendment incorporates Article 4 of the 1999 Consumer Sales Directive.*

## **Amendment 209**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 f (new)**

*Text proposed by the Commission*

*Amendment*

### ***Article 158f***

#### ***Enforcement***

***1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.***

***2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action in accordance with national law before the courts or competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:***

- (a) public bodies or their representatives;***
- (b) consumer organisations having a legitimate interest in protecting consumers;***

*(c) professional organisations having a legitimate interest in acting.*

*Justification*

*See Article 23 of Directive 2011/83/EU.*

## **Amendment 210**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 g (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 158g**

##### **Penalties**

*1. Member States shall impose penalties for infringements of the national provisions adopted on the basis of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.*

*2. Member States shall notify those provisions to the Commission by [...] and shall notify it without delay of any subsequent amendment affecting them.*

*Justification*

*See Article 24 of Directive 2011/83/EU.*

## **Amendment 211**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 h (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 158 h**

***Reporting and review of unfair contract***

*terms legislation*

***By [...], the Commission shall submit a report to the European Parliament on the application of Directive 93/13/EEC on unfair terms in consumer contracts in different sectors which fall within its scope of application, and as appropriate, present proposals to the European Parliament and the Council for amending it.***

*Justification*

*The Unfair Contract Terms Directive is the horizontal EU legislation regulating consumer contract terms and conditions across different sectors. As a part of the revision of the Consumer Acquis, the European Commission should make an assessment of the application of this legislation to identify problems in consumer contracts in different markets (e.g. supply of digital content, telecommunication service, energy, etc.) which should be addressed in a possible revision of Directive 93/13/EEC.*

## **Amendment 212**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 i (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 158i***

##### ***Reporting by the Commission and review***

***By [...], the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. The report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of consumer rights.***

*Justification*

*There should be a specific requirement for the Commission to report, in order to inform the EU's legislative bodies, the Council and the European Parliament, adequately about the application of this Directive and developments relevant to it, and, if necessary, propose further amendments.*

## **Amendment 213**

### **Proposal for a regulation**

#### **Annex I – Part V – Chapter 15 – Section 4 – Article 158 j (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 158j**

##### **Implementation aspects**

*(1) By [...] Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of these measures in the form of documents. For the purposes of the report referred to in Article [...] (Reporting by the Commission and review), the Commission shall make use of these documents.*

*It shall apply these measures from [...].*

*When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.*

*(2) The provisions of this Directive shall apply to consumer sales contracts concluded after [...].*

*Justification*

*See Article 28 of Directive 2011/83/EU.*

## **Amendment 214**

### **Proposal for a regulation**

#### **Annex I – Part VI – Chapter 16 – Section 1**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

#### **Amendment 215**

##### **Proposal for a regulation**

##### **Annex I – Part VI – Chapter 16 – Section 2**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

#### **Amendment 216**

##### **Proposal for a regulation**

##### **Annex I – Part VI – Chapter 16 – Section 3**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

#### **Amendment 217**

##### **Proposal for a regulation**

##### **Annex I – Part VII – Chapter 17**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

#### **Amendment 218**

##### **Proposal for a regulation**

##### **Annex I – Part VIII – Chapter 18**

*Text proposed by the Commission*

*Amendment*

*[...]*

*deleted*

## **Amendment 219**

### **Proposal for a regulation Annex I– Appendix 1**

*Text proposed by the Commission*

*Amendment*

*[...]*

*deleted*

#### *Justification*

*The right of withdrawal is already regulated in Directive 2011/83/EU.*

## **Amendment 220**

### **Proposal for a regulation Annex I– Appendix 2**

*Text proposed by the Commission*

*Amendment*

#### ***Model withdrawal form***

*deleted*

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

***– To [here the trader’s name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader]:***

***– I/We\* hereby give notice that I/We\* withdraw from my/our\* contract of sale of the following goods\*/for the supply of the following digital content/for the provision of the following related service\****

***– Ordered on\*/received on\****

***– Name of consumer(s)***

***– Address of consumer(s)***

***– Signature of consumer(s) (only if this***



*form is notified on paper)*

*– Date*

*\* Delete as appropriate.*

*Justification*

*The right of withdrawal is already regulated in Directive 2011/83/EU.*

**Amendment 221**

**Proposal for a regulation**  
**Annex II**

*Text proposed by the Commission*

*Amendment*

*[...]*

*deleted*

## PROCEDURE

<b>Title</b>	Common European Sales Law			
<b>References</b>	COM(2011)0635 – C7-0329/2011 – 2011/0284(COD)			
<b>Committee responsible</b> Date announced in plenary	JURI 25.10.2011			
<b>Opinion by</b> Date announced in plenary	IMCO 25.10.2011			
<b>Associated committee(s) - date announced in plenary</b>	24.5.2012			
<b>Discussed in committee</b>	31.5.2012	24.9.2012	21.2.2013	21.3.2013
	30.5.2013	18.6.2013		
<b>Date adopted</b>	9.7.2013			
<b>Result of final vote</b>	+: -: 0:	22 17 1		
<b>Members present for the final vote</b>	Claudette Abela Baldacchino, Pablo Arias Echeverría, Adam Bielan, Preslav Borissov, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Thomas Händel, Małgorzata Handzlik, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Toine Manders, Hans-Peter Mayer, Franz Obermayr, Sirpa Pietikäinen, Phil Prendergast, Robert Rochefort, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler			
<b>Substitute(s) present for the final vote</b>	Jürgen Creutzmann, Ashley Fox, María Irigoyen Pérez, Othmar Karas, Roberta Metsola, Olle Schmidt, Olga Sehnalová, Marc Tarabella, Sabine Verheyen			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Diane Dodds, Francesco Enrico Speroni, Cornelis de Jong			



11.10.2012

## **OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law  
(COM(2011)0635 – C7-0329/2011 – 2011/0284(COD))

Rapporteur: Marianne Thyssen

### **SHORT JUSTIFICATION**

#### **A. Substance of the proposal**

By means of this proposal for a Common European Sales Law, the Commission aims to eliminate from the internal market obstacles arising from differences in contract law between Member States. This instrument introduces into national law an alternative set of contract law provisions for which traders can opt (opt-in system), provided that the consumer explicitly consents to this. An opt-in would only be possible in the case of cross-border sales agreements relating to material movable goods, digital content and related service agreements between traders and consumers (B2C) or between traders if at least one of the parties is an SME (B2B). Member States may, however, themselves extend the scope of this system to include purely internal contracts and B2B contracts which do not involve any SME.

According to the Commission, a uniform set of contract law rules may reduce transaction costs for traders, particularly SMEs. The proposed system would give consumers a wider and more competitive range of products to choose from and a high level of consumer protection and legal certainty.

#### **B. Rapporteur's observations**

Differences in contract law constitute an obstacle, albeit by no means the biggest one. Even so, whatever can be done to eliminate it should be done. As the rapporteur for the Committee on Economic and Monetary Affairs, I see it as my task to focus on the concrete economic impact of this proposal and on maximising its added value both to businesses and to consumers.

The crucial question is whether the cost of the existing diversity is greater than the cost of the new regime. In considering this point, it should also be borne in mind that the legal framework for cross-border sales agreements is still very much in flux due to the recently adopted Consumer Rights Directive, the legislative proposals on alternative and online dispute resolution and the evaluation of the Rome I Regulation scheduled for 2013. Nonetheless, and despite the not entirely clear impact assessment, it seems likely that an optional uniform regime could possess added value for the internal market. However, the responses of stakeholder organisations to this proposal show that they anticipate relatively minor ‘benefits’. In order to ensure that traders actually opt for the instrument, it must possess substantial added value. The practical details of this uniform regime must therefore be such that it is clear, affords maximum legal certainty and does not entail any additional cost which can act as a disincentive. Moreover, consumers must be able to rely on a high level of consumer protection.

As the difficult negotiations on the Consumer Rights Directive have demonstrated the limits of maximum harmonisation (as the ‘first best’ option), the rapporteur supports the decision to propose an optional instrument.

Your rapporteur also welcomes the inclusion of B2B contractual relationships in this proposal. In professional relationships too, SMEs derive benefit from lower legal costs. Moreover, the impact assessment shows that there is major potential for economic gain precisely thanks to the simplification of negotiations between SMEs. Furthermore, this acknowledges the often weaker negotiating position of SMEs in B2B relationships. The rapporteur is accordingly delighted with the binding character of the provisions concerning delays in payment by professional operators. However, this sales law instrument ought to be geared more to SMEs.

The proposal fails to regulate a number of essential elements of the contractual relationship, as a result of which businesses may still need to seek advice on foreign law, and the intended legal certainty is not achieved. Particularly the lack of provisions concerning the transfer of ownership is problematic. When the first review is performed, at the latest, therefore, it should be ascertained whether the matters referred to in Recital 27 – particularly transfer of ownership – ought to be dealt with in this regulation.

Although financial services are in principle excluded from the scope of the regulation, as requested in a previous advisory report from the European Parliament, this point needs to be clarified further in certain respects.

As this instrument is particularly intended to limit the costs of cross-border trade for SMEs, the Commission ought to draw up standard contracts, in consultation with representative organisations, to clarify European sales law. This would improve legal certainty and user-friendliness.

Lastly, the rapporteur trusts that, in view of the concerns expressed by stakeholder organisations, the committee responsible, JURI, and the associated committee, IMCO, will devote themselves to the numerous terminological confusions, the need for it to be made clear that the application of Article 6(2) of the Rome I Regulation does not have the effect that the consumer rights provided for in the sales law instrument are after all superseded by stricter national provisions, the unclear formulation of Articles 8 and 9 of the regulation, and a better

balance between the rights and obligations of traders and consumers in order to make the system sufficiently attractive.

## AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation Recital 19 a (new)

*Draft legislative resolution*

*Amendment*

*(19a) In view of their special character, financial services should be excluded from the scope of this regulation. For the purposes of this regulation, ‘financial services’ means, albeit not exclusively, services and activities of a credit institution, a financial institution or an undertaking which provides ancillary services within the meaning of Article 4(1), (5) and (21) of Directive 2006/48/EC; of an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Articles 13(1) and (2), 13(4) and (5) and 212(1)(f) of Directive 2009/138/EC; of an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC; of a payment service provider within the meaning of Article 4(9) of Directive 2007/64/EC; of an electronic money issuer within the meaning of Article 2(3) of Directive 2009/110/EC; of a credit intermediary or non-credit institution within the meaning of Article 3(e) or (i) of Directive .../.../EC [proposal for a directive of the European Parliament and of the Council on credit agreements for consumers relating to immovable property]; of a creditor or credit intermediary within the meaning of Article 3(b) or (f) of Directive*

***2008/48/EC. The provision of currency exchange services should also be regarded as financial services.***

*Justification*

*The rapporteur considers it desirable that the exclusion of financial services from the scope of the regulation should already be explicitly stated in the preamble and that a non-exhaustive definition of this category should be inserted.*

**Amendment 2**

**Proposal for a regulation  
Recital 30**

*Text proposed by the Commission*

(30) Freedom of contract should be the guiding principle underlying the Common European Sales Law. Party autonomy should be restricted only where and to the extent that this is indispensable, in particular for reasons of consumer protection. Where such a necessity exists, the mandatory nature of the rules in question should be clearly indicated.

*Amendment*

(30) Freedom of contract should be the guiding principle underlying the Common European Sales Law. Party autonomy should be restricted only where and to the extent that this is indispensable, in particular for reasons of consumer protection ***and the protection of SMEs***. Where such a necessity exists, the mandatory nature of the rules in question should be clearly indicated.

*Justification*

*Although freedom of contract is indeed essential, the fact should also be clearly acknowledged that in reality SMEs are in a weaker negotiating position in certain B2B relationships, and it should be remedied where necessary.*

**Amendment 3**

**Proposal for a regulation  
Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***(34a) In order to make the Common European Sales Law as user-friendly as possible for traders, particularly SMEs, and in accordance with the***

*recommendations of the European Parliament, the Commission will draw up European standard contracts in all the official languages of the EU, in consultation with organisations representing consumers and businesses.*

*Justification*

*Both the regrettable complexity of this proposal and the lack of in-house legal expertise in SMEs make it highly desirable to draft European standard contracts.*

**Amendment 4**

**Proposal for a regulation**  
**Recital 34 b (new)**

*Text proposed by the Commission*

*Amendment*

*(34b) Furthermore, the Commission will organise training both for legal practitioners and for representative professional and inter-professional business organisations. It should also provide information on how this Regulation interacts with Directive .../.../EU of the European Parliament and the Council of ... on alternative dispute resolution for consumers<sup>1</sup> and Regulation (EU) No xxxx/xxxx of the European Parliament and of the Council of ... on online dispute resolution for consumer disputes<sup>2</sup>.*

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<sup>1</sup> OJ L ...

<sup>2</sup> OJ L ...

*Justification*

*Professional and inter-professional business organisations often play an important role in informing their members about existing and new regulation and are therefore very much eligible for training concerning the new Common European Sales Law regime.*



## Amendment 5

### Proposal for a regulation Recital 35

#### *Text proposed by the Commission*

(35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to extend further the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.

#### *Amendment*

(35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to extend further the scope in relation to business-to-business contracts, ***the need for the Common European Sales Law, in particular transfer of ownership, rules on claims in tort***, market and technological developments in respect of digital content and future developments of the Union acquis. ***In order to develop equivalent instruments to be used for more sophisticated contracts, such as contracts linked to insurance or financial services, the review should also consider the possibility of developing such instruments as part of a more comprehensive common European contract law, including rules on insurance and transport law. Likewise the possibility of drawing up a common European insolvency law, including rules on foreclosure, should be looked at.***

#### *Justification*

*Despite the aim of providing a comprehensive set of contract law provisions, the proposal does not regulate a number of essential aspects of the contractual relationship, creating a real risk that businesses will still have to bear the cost of legal advice on a foreign regime. The lack of provisions concerning the transfer of ownership is particularly problematic. When the first review is performed, at the latest, therefore, the Commission should ascertain whether the matters referred to in Recital 27 – particularly transfer of ownership – ought likewise to be dealt with in this regulation.*

## Amendment 6

### Proposal for a regulation

#### Article 2 – point h – point ii a (new)

*Text proposed by the Commission*

*Amendment*

***(ii a) the purchase of foreign currency;***

*Justification*

*Although in principle financial services are excluded from the scope of the regulation, further clarification is desirable in order to prevent them from being included in the scope unintentionally.*

## Amendment 7

### Proposal for a regulation

#### Article 2 – point j – point i

*Text proposed by the Commission*

*Amendment*

(i) financial services, including online banking services;

(i) financial services, including online banking services, ***payment services and the issue of electronic money;***

*Justification*

*Although in principle financial services are excluded from the scope of the regulation, further clarification is desirable in order to prevent them from being included in the scope unintentionally.*

## Amendment 8

### Proposal for a regulation

#### Article 2 – point m – point iv

*Text proposed by the Commission*

*Amendment*

(iv) financial services;

(iv) financial services ***including payment services and the issue of electronic money and insurance of any kind whether for goods and digital content or otherwise;***

*Justification*

*Although in principle financial services are excluded from the scope of the regulation, further*

clarification is desirable in order to prevent them from being included in the scope unintentionally.

## **Amendment 9**

### **Proposal for a regulation**

#### **Article 7 – paragraph 1**

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

1. The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader.

***Where all the parties to a contract are traders, the Common European Sales Law may be used if at least one of those parties is a small or medium-sized enterprise ('SME').***

##### *Amendment*

1. The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader.

##### *Justification*

*The prohibition of the use of CESL for contracts between non-SME traders seems arbitrary. Since it is an opt-in regime, we propose to remove it as cross border trade between larger companies could also benefit from CESL.*

## **Amendment 10**

### **Proposal for a regulation**

#### **Article 14 a (new)**

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

##### *Amendment*

##### ***Article 14a***

##### ***Toolbox***

***By ... [1 year after the date of application of this Regulation], the Commission shall present a comprehensive 'toolbox' to complement the Common European Sales Law. That toolbox shall at least include a model contract with standard terms and conditions under the Common European Sales Law as well as an explanatory memorandum providing an article by article discussion of the Common European Sales Law;***

## Amendment 11

### Proposal for a regulation Article 15 – paragraph 1

*Text proposed by the Commission*

1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, in particular **on** the level of acceptance of the Common European Sales Law, the extent to which its provisions have given rise to litigation and **on** the state of play concerning differences in the level of consumer protection between the Common European Sales Law and national law. That information shall include a comprehensive overview of the case law of the national courts interpreting the provisions of the Common European Sales Law.

*Amendment*

1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, **assessing** in particular the level of acceptance of the Common European Sales Law **by SME and non-SME traders, whether it has resulted in reduced transaction costs**, the extent to which its provisions have given rise to litigation and the state of play concerning differences in the level of consumer protection between the Common European Sales Law and national law. That information shall include a comprehensive overview of the case law of the national courts interpreting the provisions of the Common European Sales Law.

## Amendment 12

### Proposal for a regulation Article 15 – paragraph 2

*Text proposed by the Commission*

2. By ... [5 years after the date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a detailed report reviewing the operation of this Regulation, and taking account of, amongst others, the need to extend the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.

*Amendment*

2. By ... [5 years after the date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a detailed report reviewing the operation of this Regulation, and taking account of, amongst others, the need to extend the scope in relation to business-to-business contracts, **the need for the Common European Sales Law to include provisions regulating those aspects of the contractual relationship which are currently not dealt with by the Common European Sales Law,**

*particularly transfer of ownership and rules on claims in torts, market and technological developments in respect of digital content and future developments of the Union acquis.*

*The review shall, in particular, assess whether the application of the Common European Sales Law has helped to increase consumer confidence in cross-border trade and to reduce transaction costs. It shall also evaluate the impact on vulnerable consumers. Furthermore, in order to maintain the high level of consumer protection under the Common European Sales Law, the report shall take due account of any changes made in the interim to Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights<sup>1</sup>.*

*As regards matters of a contractual and non-contractual nature which fall outside the scope of the Common European Sales Law but nonetheless concern aspects of the contractual relationship, the Commission shall discuss the following subjects: transfer of ownership, legal personality, the invalidity of a contract arising from lack of capacity, illegality or immorality, the determination of the language of the contract, matters of non-discrimination, representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including the transfer of ownership, intellectual property law and the law of torts, and concurrent contractual and non-contractual liability claims outside the scope of the Common European Sales Law.*

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<sup>1</sup> OJ L 304, 22.11.2011, p. 64

#### *Justification*

*Despite the aim of providing a comprehensive set of contract law provisions, the proposal does not regulate a number of essential aspects of the contractual relationship, creating a*

*real risk that businesses will still have to bear the cost of legal advice on a foreign regime. The lack of provisions concerning the transfer of ownership is particularly problematic. When the first review is performed, at the latest, therefore, the Commission should ascertain whether the matters referred to in Recital 27 – particularly transfer of ownership – ought likewise to be dealt with in this regulation.*

## **Amendment 13**

### **Proposal for a regulation**

#### **Annex I – Article 4 – paragraph 2**

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

2. Issues within the scope of the Common European Sales Law but not expressly settled by it are to be settled in accordance with the ***objectives and the principles underlying it and all its provisions, without recourse to the*** national law that would be applicable in the absence of an agreement to use the Common European Sales Law ***or to any other law***.

##### *Amendment*

2. Issues within the scope of the Common European Sales Law but not expressly settled by it are ***as far as possible*** to be settled in accordance with the ***objectives and principles underling it and all its provisions***.

## **Amendment 14**

### **Proposal for a regulation**

#### **Annex 1 – Article 20 – paragraph 1 – point b**

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

(b) the total price and additional charges and costs, in accordance with Article 14(1);

##### *Amendment*

(b) the total price and additional charges and costs, in accordance with Article 14(1) ***and (2)***;

##### *Justification*

*If the contract is signed on the trader's premises, it is not clear why the consumer cannot have all the price information under Article 14.*

## PROCEDURE

<b>Title</b>	Common European Sales Law	
<b>References</b>	COM(2011)0635 – C7-0329/2011 – 2011/0284(COD)	
<b>Committee responsible</b> Date announced in plenary	JURI	25.10.2011
<b>Opinion by</b> Date announced in plenary	ECON	25.10.2011
<b>Rapporteur</b> Date appointed	Marianne Thyssen	14.11.2011
<b>Discussed in committee</b>	25.6.2012	19.9.2012
<b>Date adopted</b>	9.10.2012	
<b>Result of final vote</b>	+: 34 –: 4 0: 0	
<b>Members present for the final vote</b>	Burkhard Balz, Elena Băsescu, Jean-Paul Basset, Sharon Bowles, Udo Bullmann, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Diogo Feio, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Wolf Klinz, Rodi Kratsa-Tsagaropoulou, Philippe Lambert, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Peter Simon, Theodor Dumitru Stolojan, Ivo Strejček, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool, Pablo Zalba Bidegain	
<b>Substitute(s) present for the final vote</b>	Sari Essayah, Ashley Fox, Robert Goebbels, Olle Ludvigsson	

## PROCEDURE

Title	Common European Sales Law			
References	COM(2011)0635 – C7-0329/2011 – 2011/0284(COD)			
Date submitted to Parliament	11.10.2011			
Committee responsible Date announced in plenary	JURI 25.10.2011			
Committee(s) asked for opinion(s) Date announced in plenary	ECON 25.10.2011	IMCO 25.10.2011		
Associated committee(s) Date announced in plenary	IMCO 24.5.2012			
Rapporteur(s) Date appointed	Luigi Berlinguer 1.3.2012	Klaus-Heiner Lehne 1.3.2012		
Discussed in committee	22.11.2011	1.3.2012	10.7.2012	10.10.2012
	19.3.2013	29.5.2013		
Date adopted	17.9.2013			
Result of final vote	+: –: 0:	18 3 2		
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka			
Substitute(s) present for the final vote	Eva Lichtenberger, Angelika Niebler, József Szájer, Axel Voss			
Substitute(s) under Rule 187(2) present for the final vote	Olle Schmidt			
Date tabled	25.9.2013			