



2015/0288(COD)

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AMENDMENTS

213 - 260

Draft opinion
Heidi Hautala
(PE594.153v01-00)

Certain aspects concerning contracts for the sales of goods

Proposal for a directive
(COM(2017)0637 – C8-0379/2017 – 2015/0288(COD))

Amendment 213
Gilles Lebreton

Proposal for a directive
Title

Text proposed by the Commission

Amended proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on certain aspects concerning contracts for
the sales of goods, amending Regulation
(EC) No 2006/2004 of the European
Parliament and of the Council and
***Directive 2009/22/EC of the European
Parliament and of the Council and
repealing Directive 1999/44/EC of the
European Parliament and of the Council***

Amendment

Amended proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on certain aspects concerning contracts for
the sales of goods ***on line and any other
distance selling thereof***, amending
Regulation (EC) No 2006/2004 of the
European Parliament and of the Council
and ***Directives 1999/44/EC and
2009/22/EC*** of the European Parliament
and of the Council

Or. fr

Amendment 214
Gilles Lebreton

Proposal for a directive
Recital 1

Text proposed by the Commission

1. In order to remain competitive on
global markets, the Union ***needs*** to
improve the functioning of the internal
market and successfully answer the
multiple challenges raised today by an
increasingly technologically-driven
economy. The Digital Single Market
Strategy⁴⁵ lays down a comprehensive
framework facilitating the integration of
the digital dimension into the internal
market. The first pillar of the Strategy
tackles fragmentation in intra-EU trade by
approaching all major obstacles to the

Amendment

(1) In order to remain competitive on
global markets, the Union ***wishes*** to
improve the functioning of the internal
market and successfully answer the
multiple challenges raised today by an
increasingly technologically-driven
economy. The Digital Single Market
Strategy⁴⁵ lays down a comprehensive
framework facilitating the integration of
the digital dimension into the internal
market. The first pillar of the Strategy
tackles fragmentation in intra-EU trade by
approaching all major obstacles to the

development of cross-border e-commerce, which constitutes the most significant part of cross-border business-to-consumer sales of goods.

⁴⁵ COM(2015) 192 final.

development of cross-border e-commerce, which constitutes the most significant part of cross-border business-to-consumer sales of goods.

⁴⁵ COM(2015) 192 final.

Or. fr

Amendment 215

Gilles Lebreton

Proposal for a directive

Recital 2

Text proposed by the Commission

2. For the *good functioning of the internal* market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, is necessary.

Amendment

(2) For the *achievement of a genuine digital single* market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, is necessary.

Or. fr

Amendment 216

Evelyne Gebhardt

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) For the good functioning of the internal market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, *is necessary*.

Amendment

(2) For the good functioning of the internal market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, *while recognising Member States' competences within the Union, is justifiable. Keeping in mind the evolving and complex European case law*

on this subject matter, and in order to provide a greater degree of legal certainty to businesses and consumers alike, Member States may maintain or introduce more stringent provisions for the protection of consumers in so far as provided for, or not expressly regulated otherwise in this Directive.

Or. en

Amendment 217

Evelyne Gebhardt, Lucy Anderson

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) E-commerce is *one of the main drivers* for growth within the internal market. However its growth potential is far from being fully exploited. *In order to strengthen Union competitiveness and to boost growth, the Union needs to act swiftly and encourage economic actors to unleash the full potential offered by the internal market.* The full potential of the internal market can only be unleashed if all market participants enjoy smooth access to cross-border sales of goods including *in* e-commerce transactions. The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business' decisions whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

Amendment

(3) E-commerce is *a key driver* for growth within the internal market. However its growth potential is far from being fully exploited. The full potential of the internal market can only be unleashed if all market participants enjoy smooth access to cross-border sales of goods including e-commerce transactions. *Contracts are an indispensable legal tool for most economic transactions.* The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business' decisions whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

Or. en

Amendment 218

Gilles Lebreton

Proposal for a directive
Recital 3

Text proposed by the Commission

3. E-commerce is one of the the main drivers for growth within the **internal** market. However its growth potential is far from being fully exploited. In order to strengthen Union competitiveness and to boost growth, the Union needs to act swiftly and encourage economic actors to unleash the full potential offered by the **internal** market. The full potential of the **internal** market can only be unleashed if all market participants enjoy smooth access to cross-border sales of goods, **including** in e-commerce transactions. The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business' decisions whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

Amendment

(3) E-commerce is one of the main drivers for growth within the **Digital Single** Market. However its growth potential is far from being fully exploited. In order to strengthen Union competitiveness and to boost growth, the Union needs to act swiftly and encourage economic actors to unleash the full potential offered by the **Digital Single** Market. The full potential of the **Digital Single** Market can only be unleashed if all market participants enjoy smooth access to **online** cross-border sales of goods **and are able to confidently engage** in e-commerce transactions. The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business' decisions whether to offer goods cross-border **on line**. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

Or. fr

Amendment 219
Gilles Lebreton

Proposal for a directive
Recital 4

Text proposed by the Commission

4. The Union rules applicable to the sales of goods are still fragmented although rules on pre-contractual information requirements, the right of withdrawal for distance contracts and delivery conditions have already been fully harmonised. Other

Amendment

(4) The Union rules applicable to the sales of goods **on line and other distance selling thereof** are still fragmented although rules on pre-contractual information requirements, the right of withdrawal for distance contracts and

key contractual elements such as the conformity criteria, the remedies and modalities for their exercise for goods which do not conform to the contract are currently subject to minimum harmonisation in Directive 1999/44/EC of the European Parliament and of the Council⁴⁶. Member States have been allowed to go beyond the Union standards and introduce rules that ensure even higher level of consumer protection. Having done so, they have acted on different elements and to different extents. ***Thus, national provisions transposing Directive 1999/44/EC significantly diverge today on essential elements , such as the absence or existence of a hierarchy of remedies, the period of the legal guarantee, the period of the reversal of the burden of proof, or the notification of the defect to the seller.***

⁴⁶Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p.12.

delivery conditions have already been fully harmonised. Other key contractual elements such as the conformity criteria, the remedies and modalities for their exercise for goods which do not conform to the contract are currently subject to minimum harmonisation in Directive 1999/44/EC of the European Parliament and of the Council⁴⁶. Member States have been allowed to go beyond the Union standards and introduce rules that ensure even higher level of consumer protection. Having done so, they have acted on different elements and to different extents.

⁴⁶Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p.12.

Or. fr

Amendment 220

Gilles Lebreton

Proposal for a directive

Recital 5

Text proposed by the Commission

5. Existing disparities may adversely affect businesses and consumers. Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council⁴⁷, businesses directing activities to consumers in other Member States need to take account of the mandatory consumer

Amendment

(5) Existing disparities may adversely affect businesses and consumers. Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council⁴⁷, businesses directing activities to consumers in other Member States need to take account of the mandatory consumer

contract law rules of the consumer's country of habitual residence. As these rules differ among Member States, businesses may be faced with additional costs. Consequently many businesses may prefer to continue trading domestically or only export to one or two Member States. That choice of minimising exposure to costs and risks associated with cross-border **trade** results in lost opportunities of commercial expansion and economies of scale. Small and medium enterprises are in particular affected.

contract law rules of the consumer's country of habitual residence. As these rules differ among Member States, businesses may be faced with additional costs. Consequently many businesses may prefer to continue trading domestically or only export to one or two Member States. That choice of minimising exposure to costs and risks associated with cross-border **e-commerce** results in lost opportunities of commercial expansion and economies of scale. Small and medium enterprises are in particular affected.

⁴⁷Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L177, 4.7.2008, p.6.

⁴⁷Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L177, 4.7.2008, p.6.

Or. fr

Amendment 221

Gilles Lebreton

Proposal for a directive

Recital 6

Text proposed by the Commission

6. While consumers enjoy a high level of protection when they purchase from abroad as a result of the application of Regulation (EC) No 593/2008, fragmentation also impacts negatively on consumers' levels of confidence in **cross-border transactions**. While several factors contribute to this mistrust, uncertainty about key contractual rights ranks prominently among consumers' concerns. This uncertainty exists independently of whether or not consumers are protected by the mandatory consumer contract law provisions of their own Member State in

Amendment

(6) While consumers enjoy a high level of protection when they purchase **online or otherwise at a distance** from abroad as a result of the application of Regulation (EC) No 593/2008, fragmentation also impacts negatively on consumers' levels of confidence in **e-commerce**. While several factors contribute to this mistrust, uncertainty about key contractual rights ranks prominently among consumers' concerns. This uncertainty exists independently of whether or not consumers are protected by the mandatory consumer contract law provisions of their own

the case where a seller directs his cross-border activities to them or whether or not consumers conclude cross-border contracts with a seller without the respective seller pursuing commercial activities in the consumer's Member State.

Member State in the case where a seller directs his cross-border activities to them or whether or not consumers conclude cross-border contracts with a seller without the respective seller pursuing commercial activities in the consumer's Member State.

Or. fr

Amendment 222
Gilles Lebreton

Proposal for a directive
Recital 7

Text proposed by the Commission

Amendment

7. While online sales of goods constitute the vast majority of cross-border sales in the Union, differences in national contract laws equally affect retailers using distance sales channels and retailers selling face-to-face and prevent them from expanding across borders. This Directive should cover all sales channels, in order to create a level playing field for all businesses selling goods to consumers. By laying down uniform rules across sales channels, this Directive should avoid any divergence that would create disproportionate burdens for the growing number of omni-channel retailers in the Union. The need for retaining consistent rules on sales and guarantees for all sales channels was confirmed in the Fitness Check of EU consumer and marketing law, which also covered Directive 1999/44/EC⁴⁸.

deleted

⁴⁸Commission Staff Working Document SWD(2017) 208 final, Report of the Fitness Check on Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning

unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'); Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers; Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees; Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests; Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

Or. fr

Amendment 223 Gilles Lebreton

Proposal for a directive Recital 8

Text proposed by the Commission

8. In order to remedy *the* problems *due to the fragmentation of national rules*, businesses and consumers should be able to rely on a set of *fully* harmonised, targeted rules for *the* sales of goods. Uniform rules are necessary in relation to several essential elements of consumer

Amendment

(8) In order to remedy *those* problems, businesses and consumers should be able to rely on a set of harmonised, targeted rules for *online and other distance* sales of goods. Uniform rules are necessary in relation to several essential elements of consumer contract law which under the

contract law which under the current minimum harmonisation approach led to disparities and trade barriers across the Union. ***Therefore, this Directive should repeal the minimum harmonisation Directive 1999/44/EC and introduce fully harmonised rules on contracts for the sales of goods.***

current minimum harmonisation approach led to disparities and trade barriers across the Union. ***However, full harmonisation should be avoided, as it could lower the level of consumer protection in some Member States and would therefore go against the interests of the consumers of those Member States.***

Or. fr

Amendment 224
Gilles Lebreton

Proposal for a directive
Recital 9

Text proposed by the Commission

9. Fully harmonised consumer contract law rules will make it easier for traders to offer their products in other Member States. Businesses will have reduced costs as they will no longer need to take account of different consumer mandatory rules. They will enjoy more legal certainty when selling to other Member States through a stable contract law environment.

Amendment

(9) Fully harmonised consumer contract law rules will make it easier for traders to offer their products in other Member States. Businesses will have reduced costs as they will no longer need to take account of different consumer mandatory rules. They will enjoy more legal certainty when ***engaging in distance*** selling to other Member States through a stable contract law environment.

Or. fr

Amendment 225
Gilles Lebreton

Proposal for a directive
Recital 10

Text proposed by the Commission

10. Increased competition among retailers is likely to result in wider choices at more competitive prices being offered to

Amendment

(10) Increased competition among retailers is likely to result in wider choices at more competitive prices being offered to

consumers. Consumers will benefit from a high level of consumer protection and welfare gains through targeted fully harmonised rules. This in turn would increase their trust in *the* cross-border commerce . Consumers will more confidently buy cross-border knowing they would enjoy the same rights across the Union.

consumers. Consumers will benefit from a high level of consumer protection and welfare gains through targeted fully harmonised rules. This in turn would increase their trust in cross-border commerce *at a distance and in particular online*. Consumers will more confidently buy *at a distance* cross-border knowing they would enjoy the same rights across the Union.

Or. fr

Amendment 226 **Gilles Lebreton**

Proposal for a directive **Recital 11**

Text proposed by the Commission

11. This Directive covers rules applicable to *the* sales of goods only in relation to key contract elements needed to overcome contract-law related barriers in the *internal* market. For this purpose, rules on conformity requirements, remedies available to consumers for lack of conformity of the goods with the contract and modalities for their exercise should be fully harmonised and the level of consumer protection as compared to Directive 1999/44/EC, should be increased.

Amendment

(11) This Directive covers rules applicable to *online and other distance* sales of goods only in relation to key contract elements needed to overcome contract-law related barriers in the *Digital Single* Market. For this purpose, rules on conformity requirements, remedies available to consumers for lack of conformity of the goods with the contract and modalities for their exercise should be fully harmonised and the level of consumer protection as compared to Directive 1999/44/EC, should be increased.

Or. fr

Amendment 227 **Evelyne Gebhardt, Lucy Anderson**

Proposal for a directive **Recital 14**

Text proposed by the Commission

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. ***In addition***, in certain areas regulated by this Directive Member States should ***also*** be free to lay down rules in relation to those aspects which are not regulated in this Directive: this concerns limitation periods for exercising the consumers' rights and commercial guarantees. Finally, in relation to the right of redress of the seller, Member States should be free to provide more detailed conditions on the exercise of such right.

Amendment

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive, ***and its implementation should under no circumstances constitute grounds for reducing the level of protection afforded to consumers in fields that fall within the scope of Union law. Furthermore***, in certain areas regulated by this Directive Member States should be free to lay down rules in relation to those aspects which are not regulated in this Directive. Finally, in relation to the right of redress of the seller, Member States should be free to provide more detailed conditions on the exercise of such right.

Or. en

Amendment 228

Gilles Lebreton

Proposal for a directive

Recital 14

Text proposed by the Commission

14. This Directive should not affect contract laws of Member States in areas not regulated by this Directive. In addition, in certain areas regulated by this Directive Member States should also be free to lay down rules in relation to those aspects which are not regulated in this Directive : this concerns limitation periods for exercising the consumers' rights and commercial guarantees. Finally, in relation to the right of redress of the seller, Member States should be free to provide more detailed conditions on the exercise of such right.

Amendment

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. In addition, in certain areas regulated by this Directive Member States should also be free to lay down rules in relation to those aspects which are not regulated in this Directive : this concerns, ***in particular***, limitation periods for exercising the consumers' rights and commercial guarantees. Finally, in relation to the right of redress of the seller, Member States should be free to provide more detailed conditions on the exercise of such right.

Or. fr

Amendment 229

Evelyne Gebhardt, Lucy Anderson

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) The rules of this Directive complement the rules of ***Directive*** Directive 2011/83/EU of the European Parliament and of the Council. While Directive 2011/83/EU of the European Parliament and of the Council mainly lays down provisions regarding pre-contractual information requirements, the right of withdrawal from distance and off-premises contracts and rules on delivery and passing of risk, this Directive introduces rules on conformity of the goods, remedies in the event of a lack of conformity and modalities for the exercise of such remedies.

Amendment

(15) The rules of this Directive complement the rules of Directive 2011/83/EU of the European Parliament and of the Council. While Directive 2011/83/EU of the European Parliament and of the Council mainly lays down provisions regarding pre-contractual information requirements, the right of withdrawal from distance and off-premises contracts and rules on delivery and passing of risk, this Directive introduces rules on conformity of the goods, remedies in the event of a lack of conformity and modalities for the exercise of such remedies.

Or. en

Amendment 230

Gilles Lebreton

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) *The rules of this Directive complement the rules of Directive Directive 2011/83/EU of the European Parliament and of the Council. While Directive 2011/83/EU of the European Parliament and of the Council mainly lays down provisions regarding pre-contractual information requirements, the right of withdrawal from distance and off-*

Amendment

deleted

premises contracts and rules on delivery and passing of risk, this Directive introduces rules on conformity of the goods, remedies in the event of a lack of conformity and modalities for the exercise of such remedies

Or. fr

Amendment 231

Gilles Lebreton

Proposal for a directive

Recital 16

Text proposed by the Commission

Amendment

(16) For the purpose of legal clarity this Directive should include a definition of a sales contract. That definition should provide that contracts where goods are yet to be produced or manufactured, including under consumer's specifications, are also included in the scope of this Directive.

deleted

Or. fr

Amendment 232

Gilles Lebreton

Proposal for a directive

Recital 17

Text proposed by the Commission

Amendment

17. In order to bring clarity and certainty for sellers and consumers this Directive should define the notion of a contract. That definition should follow the common traditions of all Member States by requiring an agreement intended to give rise to obligations or other legal effects for

(17) In order to bring clarity and certainty for sellers and consumers this Directive should define the notion of a *sales* contract. That definition should follow the common traditions of all Member States by requiring an agreement intended to give rise to obligations or other

a contract to exist.

legal effects for a contract to exist.

Or. fr

Amendment 233

Evelyne Gebhardt, Lucy Anderson

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in case of failure to deliver what is expected, it is essential ***to fully harmonise rules for determining the conformity with the contract. Applying*** a combination of subjective and objective criteria ***should*** safeguard legitimate interests of ***both parties*** to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract - but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.

Amendment

(19) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in case of failure to deliver what is expected, it is essential ***to apply*** a combination of subjective and objective criteria ***to*** safeguard legitimate interests of ***consumer and seller*** to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract ***or models and samples shown in shop windows, showrooms and trade fairs*** - but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.

Or. en

Justification

Amendment changed in alignment with extension of scope.

Amendment 234

Gilles Lebreton

Proposal for a directive
Recital 23

Text proposed by the Commission

Amendment

(23) Ensuring longer durability of consumer goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential to increase trust in the functioning of the internal market. For these purposes, product specific Union legislation is the most appropriate approach to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives followed in such Union product specific legislation. In so far as specific durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the criteria for conformity.

deleted

Or. fr

Amendment 235
Evelyne Gebhardt, Lucy Anderson

Proposal for a directive
Recital 23

Text proposed by the Commission

Amendment

(23) Ensuring longer durability of consumer goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping

(23) Ensuring longer durability of consumer goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping

non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential to increase trust in the functioning of the internal market. For *these* purposes, product specific Union legislation is the most appropriate approach to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives followed in such Union product *specific* legislation. *In so far as specific* durability information is indicated in any pre-contractual statement which forms part of the sales contract, *the consumer should be able to rely on them as a* part of the criteria for conformity.

non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential to increase trust in the functioning of the internal market. For *those* purposes, product specific Union legislation, *such as Council Directive 85/374/EEC^{1a}*, is the most appropriate approach to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives followed in such Union product *liability* legislation. Specific *durability* information *should be* indicated in any pre-contractual statement which forms part of the sales contract, *which should be* part of the criteria for conformity. *Furthermore, sellers should inform consumers about the availability of spare parts which are necessary for the use of the product.*

^{1a} Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).

Or. en

Amendment 236
Evelyne Gebhardt, Lucy Anderson

Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) The Commission considered in its Green Paper on Guarantees for Consumer Goods that in modern societies

the confidence of consumers is bound up with their faith in the manufacturers. Current Directive 1999/44/EC envisages more far-reaching provisions on producers' liability, in particular by providing for producers' direct liability for non-conformity for which they are responsible.

Or. en

Amendment 237

Gilles Lebreton

Proposal for a directive

Recital 25

Text proposed by the Commission

25. The optional possibility for Member States to maintain notification obligations for consumers may lead them to easily lose well-substantiated claims for remedies in case of delayed or lack of notification, especially in a cross-border transaction where a law of another Member State applies and the consumer is not aware of this notification obligation resulting from the law of another Member State. ***Therefore a notification obligation for consumers should not be established. Accordingly, Member States should be prevented from introducing or maintaining a requirement for the consumer to notify the seller the lack of conformity within a certain deadline.***

Amendment

(25) The optional possibility for Member States to maintain notification obligations for consumers may lead them to easily lose well-substantiated claims for remedies in case of delayed or lack of notification, especially in a cross-border transaction where a law of another Member State applies and the consumer is not aware of this notification obligation resulting from the law of another Member State. ***It should therefore be recommended that Member States do not establish a notification obligation for consumers.***

Or. fr

Amendment 238

Gilles Lebreton

Proposal for a directive

Recital 26

Text proposed by the Commission

26. In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first two years, in order to benefit from the presumption of lack of conformity, the consumer should only demonstrate that the good is not conforming, without also needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the internal market, a **fully** harmonised order in which remedies can be exercised should be provided for. In particular, the consumer should enjoy a choice between repair or replacement as a first remedy which should help in maintaining the contractual relation and mutual trust. Moreover, enabling consumers to require repair should encourage a sustainable consumption and could contribute to a greater durability of products.

Amendment

(26) In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first two years, in order to benefit from the presumption of lack of conformity, the consumer should only demonstrate that the good is not conforming, without also needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract and in order to eliminate one of the major obstacles inhibiting the internal market, a harmonised order in which remedies can be exercised should be provided for. In particular, the consumer should enjoy a choice between repair or replacement as a first remedy which should help in maintaining the contractual relation and mutual trust. Moreover, enabling consumers to require repair should encourage a sustainable consumption and could contribute to a greater durability of products.

Or. fr

Amendment 239

Evelyne Gebhardt, Lucy Anderson

Proposal for a directive

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) This Directive should grant consumers throughout the Union a new and unrivalled freedom in choosing

remedies. A consumer should be able to require the seller to bring the goods into conformity with the contract either through repair of the defects or through replacement of the defective goods with conforming ones. But more importantly, the consumer should be able to turn down any offer by the seller to have the goods brought into conformity and instead to require price reduction or termination of the contract. The consumer should be able to decide whether or not to give the supplier a chance to bring the goods into conformity, and in which way the seller should cure the defects, according to his own preference. Repair or replacement might be preferable if a consumer thinks the value of the defective goods is substantial, for example because the goods are unique or the market prices of the goods have gone up.

Or. en

Amendment 240
Gilles Lebreton

Proposal for a directive
Recital 34

Text proposed by the Commission

34. In order to ensure transparency, certain transparency requirements for commercial guarantees should be provided. Moreover in order to improve legal certainty and to avoid that consumers are misled, this Directive should provide that where commercial guarantee conditions contained in advertisements or pre-contractual information are more favourable to the consumer than those included in the guarantee statement the more advantageous conditions should prevail. ***Finally, this Directive should provide rules on the content of the***

Amendment

(34) In order to ensure transparency, certain transparency requirements for commercial guarantees should be provided. Moreover in order to improve legal certainty and to avoid that consumers are misled, this Directive should provide that where commercial guarantee conditions contained in advertisements or pre-contractual information are more favourable to the consumer than those included in the guarantee statement the more advantageous conditions should prevail. Member States should be free to lay down rules on other aspects of

guarantee statement and the way it should be made available to consumers. Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, provided that those rules do not deprive consumers of the protection afforded to them by the fully harmonised provisions of this Directive on commercial guarantees.

commercial guarantees not covered by this Directive, provided that those rules do not deprive consumers of the protection afforded to them by the fully harmonised provisions of this Directive on commercial guarantees.

Or. fr

Amendment 241
Gilles Lebreton

Proposal for a directive
Recital 38

Text proposed by the Commission

38. Directive 1999/44/EC should be ***repealed. The date of repeal should be aligned with the transposition date of this Directive. In order to ensure a uniform application of the laws, regulations and administrative provisions necessary for Member States to comply with this Directive to contracts concluded from the transposition date onwards, this Directive should not apply to contracts concluded before its transposition date.***

Amendment

(38) Directive 1999/44/EC should be ***amended to exclude distance sales contracts from its scope.***

Or. fr

Amendment 242
Gilles Lebreton

Proposal for a directive
Recital 42

Text proposed by the Commission

42. ***The objectives of this Directive,***

Amendment

deleted

namely to contribute to the functioning of the internal market by tackling in a consistent manner contract law-related obstacles for the sales of goods across borders in the Union, cannot be sufficiently achieved by the Member States, as each Member State individually is not in a position to tackle the existing legal fragmentation by ensuring the coherence of its legislation with other Member States' legislations. The objectives of this Directive can rather be better achieved at Union level by removing the identified contract law-related obstacles through full harmonisation. Therefore, in order to achieve the objectives of this Directive the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on 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 those objectives.

Or. fr

Amendment 243
Gilles Lebreton

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive lays down certain requirements concerning sales contracts concluded between the seller and the consumer, in particular rules on conformity of goods, remedies in case of non-conformity and the modalities for the exercise of those remedies.

Amendment

1. This Directive lays down certain requirements concerning **distance** sales contracts concluded between the seller and the consumer, in particular rules on conformity of goods, remedies in case of non-conformity and the modalities for the exercise of those remedies.

Or. fr

Amendment 244
Gilles Lebreton

Proposal for a directive
Article 1 – paragraph 2

Text proposed by the Commission

2. This Directive shall not apply to contracts for the provision of services. However, in case of sales contracts providing both for the sale of goods and the provision of services, this Directive shall apply to the part relating to the sale of goods.

Amendment

2. This Directive shall not apply to ***distance*** contracts for the provision of services. However, in case of sales contracts providing both for the sale of goods and the provision of services, this Directive shall apply to the part relating to the sale of goods.

Or. fr

Amendment 245
Gilles Lebreton

Proposal for a directive
Article 1 – paragraph 4

Text proposed by the Commission

4. ***Member States may exclude from the scope of this Directive contracts for the sale of second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person.***

Amendment

deleted

Or. fr

Amendment 246
Evelyne Gebhardt, Lucy Anderson

Proposal for a directive
Article 2 – point d

Text proposed by the Commission

(d) ‘producer’ *means the manufacturer* of goods, the importer of goods into the Union *or* any person purporting to be a producer by placing their name, trade mark or other distinctive sign on the goods;

Amendment

(d) ‘producer’, *in relation to goods*, means the manufacturer of *a product*, the importer of goods into the Union, *the producer of any raw material or the manufacturer of a component part and* any person purporting to be a producer by placing their name, trade mark or other distinctive sign on the goods;

Or. en

Amendment 247
Gilles Lebreton

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

Text proposed by the Commission

(ea) ‘distance sales contract’ *means any sales contract concluded under an organised distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded;*

Or. fr

Amendment 248
Gilles Lebreton

Proposal for a directive
Article 2 – point g

Text proposed by the Commission

(g) ‘contract’ *means an agreement*

Amendment

deleted

intended to give rise to obligations or other legal effects;

Or. fr

Justification

The concept of the contract as defined here is vague and therefore liable to result in an extension of the scope of the Directive.

Amendment 249

Evelyne Gebhardt, Lucy Anderson

Proposal for a directive

Article 2 – point i

Text proposed by the Commission

(i) ‘free of charge’ means free of the ***necessary*** costs incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials.

Amendment

(i) ‘free of charge’ means free of the ***usual*** costs incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials

Or. en

Amendment 250

Gilles Lebreton

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States shall not maintain or introduce provisions diverging from those laid down in this Directive ***except for*** provisions to ensure a ***higher*** level of consumer protection.

Or. fr

Amendment 251

Virginie Rozière, Lucy Anderson, Evelyne Gebhardt

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment

In so far as provided for, or not expressly regulated otherwise, in this Directive Member States *may* maintain or introduce *more stringent* provisions *for the* protection *of consumers*.

Or. en

Amendment 252

Evelyne Gebhardt

Proposal for a directive

Article 5 – point b

Text proposed by the Commission

(b) be *delivered* along with such accessories including packaging, installation instructions or other instructions as the consumer may expect to receive;

Amendment

(b) be *surrendered* along with such accessories including packaging, installation instructions or other instructions as the consumer may expect to receive;

Or. de

Justification

In view of the extension of the scope to include traditional sales contracts and cash-and-carry transactions, it is no longer appropriate, for the purpose of ascertaining the conformity of goods with the contract, to take as a basis the consumer's expectation in respect of delivery: rather the basis should be the expectation in respect of the surrender of the article.

Amendment 253

Evelyne Gebhardt, Lucy Anderson

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

2. A repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

Amendment

2. A repair or replacement shall be completed within a reasonable time, ***and in any event within 30 days from the moment the seller has acquired physical possession of the goods or the consumer has handed over the goods to the carrier chosen by the seller,*** and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

Or. en

Justification

Amendment changed in alignment with extension of scope in order to differentiate between various sales channels.

Amendment 254
Gilles Lebreton

Proposal for a directive
Article 9 – paragraph 5

Text proposed by the Commission

5. The consumer shall not be entitled to a remedy ***to the extent that the consumer has*** contributed to the lack of conformity with the contract or its effects.

Amendment

5. The consumer shall not be entitled to a remedy ***if he has knowingly*** contributed to the lack of conformity with the contract or its effects.

Or. fr

Justification

Unless reference is made to the possibility of the consumer's having knowingly contributed, the scope of the Directive is liable to be extended as a result.

Amendment 255
Gilles Lebreton

Proposal for a directive

Article 15 – paragraph 5

Text proposed by the Commission

5. Member States may lay down **rules on other aspects** concerning commercial guarantees **which are not regulated in this Article**.

Amendment

5. Member States may lay down **additional rules** concerning commercial guarantees.

Or. fr

Amendment 256 **Gilles Lebreton**

Proposal for a directive **Article 19 – title**

Text proposed by the Commission

Article 19
Amendments to Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Amendment

Article 19
Amendments to **Directive 1999/44/EC**, Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Or. fr

Amendment 257 **Gilles Lebreton**

Proposal for a directive **Article 19 – point -1 a (new)** Directive 1999/44/EC Article 1

Present text

Amendment

-1a. Article 1 of Directive 1999/44/EC is amended as follows:

(a) paragraph 1 is replaced by the following:

1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of contracts for the sale of consumer goods and associated guarantees, which are not distance sales contracts, in order to ensure a uniform minimum level of consumer protection in the context of the internal market.’

(Does not affect the English version.)

(f) “repair” shall mean, in the event of lack of conformity, bringing **consumer** goods into conformity with the contract of sale;

(b) paragraph 2 is amended as follows:

(i) point (f) is replaced by the following:

“(f) “repair” shall mean, in the event of lack of conformity, bringing goods into conformity with the contract of sale;”

(ii) the following point is added:

“(fa) ‘distance sales contract’ means any sales contract concluded under an organised distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded.”

Or. fr

Amendment 258
Gilles Lebreton

Proposal for a directive
Article 19 – point 1
Regulation (EC) No 2006/2004
Annex

Text proposed by the Commission

1. In the Annex to Regulation (EC) No 2006/2004, ***point 11 is replaced by the following:***

“22. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 and ***Directive 2009/22/EC and repealing Directive 1999/44/EC (OJ...)***”

Amendment

1. In the Annex to Regulation (EC) No 2006/2004, ***the following point is added:***

“22. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the sales of goods ***on line and any other distance selling thereof***, amending Regulation (EC) No 2006/2004 and ***Directives 1999/44/EC and 2009/22/EC (OJ...)***”

Or. fr

Amendment 259
Gilles Lebreton

Proposal for a directive
Article 19 – point 2
Directive 2009/22/EC
Annex I

Text proposed by the Commission

2. In Annex I to Directive 2009/22/EC ***point 7 is replaced by the following:***

“7. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 and ***Directive 2009/22/EC and repealing Directive 1999/44/EC (OJ...)***”

Amendment

2. In Annex I to Directive 2009/22/EC ***the following point is added:***

“***16.*** Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the sales of goods ***on line and any other distance selling thereof***, amending Regulation (EC) No 2006/2004 and ***Directives 1999/44/EC and 2009/22/EC (OJ...)***”

Or. fr

Amendment 260
Gilles Lebreton

Gilles Lebreton

Proposal for a directive

Article 21

Text proposed by the Commission

Amendment

Article 21

deleted

***Repeal of Directive 1999/44/EC of the
European Parliament and of the Council***

***Directive 1999/44/EC of the European
Parliament and of the Council of 25 May
1999 on certain aspects of the sale of
consumer goods and associated
guarantees is repealed as of [date of two
years after the entry into force].
References to the repealed Directive shall
be construed as references to this
Directive and shall be read in accordance
with the correlation table set out in Annex
1.***

Or. fr