

Contracts for the online and other distance sales of goods

2015/0288(COD) - 31/10/2017 - Legislative proposal

PURPOSE: to contribute to the functioning of the internal market by removing the obstacles that contract law presents for online sales and other cross-border distance sales of goods within the Union.

PROPOSED ACT: Directive of the European Parliament and of the Council (amended proposal).

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Union rules applicable to the online and other distance 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 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 Council.

The minimum harmonisation character of the Directive 1999/44/EC on consumer sales and guarantees (CSGD) has led to **differences in consumer contract law rules**, resulting from national mandatory rules going beyond the minimum standards laid down by the Union.

Consequently, there are now **significant differences between the national provisions transposing Union law** on consumer contract law relating to essential elements of a contract of sale, 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.

Those differences create obstacles to cross-border trade and therefore have a direct effect on the establishment and functioning of the internal market and limit competition.

On 9 December 2015, the Commission adopted a proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, and a proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods. These proposals aim to contribute to fostering growth through the creation of a true Digital Single Market by eliminating the key contract law-related barriers hindering cross-border trade.

During the discussions on the proposal in the European Parliament and in the Council, the co-legislators stressed the **need to have coherent rules for distance and face-to-face sales**. The Parliament rapporteurs of both the lead committee for the Internal Market and Consumer protection (IMCO) and the associated committee for Legal Affairs (JURI) for the proposal on online and other distance sales have tabled amendments which extend its scope to all contracts of sale concluded between a seller and a consumer.

In that context, IMCO requested the European Parliamentary Research Service to conduct an ex-ante impact assessment in order to assess the impacts of these amendments. **This Parliament impact assessment** was published on 14 July 2017 and its conclusions support the need to have coherent rules for all sales, which would benefit both businesses and consumers.

IMPACT ASSESSMENT: an impact assessment was carried out for the initial proposal. In the Commission Staff Working Document accompanying the amended proposal, the Commission supplemented this impact assessment with an analysis of the findings and data gathered through the Fitness Check and taking into account the impact assessment prepared by the European Parliamentary Research Service.

The Staff Working Document presents a comprehensive overview of the impacts of fully harmonised rules on contracts for the sales of goods for businesses, consumers and ultimately for Member States and the EU digital and internal market. The Commission's analysis shows that problems arising from different national rules implementing Directive 1999/44/EC on consumer sales and guarantees are relevant both for distance sales and for face-to-face sales.

CONTENT: the amended proposal **extends the scope** of the original proposal which was limited to online and other distance sales to **face-to-face sales**.

Specifically, the proposal lays down certain **requirements concerning distance sales contracts concluded between the seller and the consumer**, in particular: (i) rules on conformity of goods; (ii) remedies in case of non-conformity; (iii) the modalities for the exercise of these remedies.

The level of consumer protection shall be increased compared to Directive 1999/44/EC.

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.

This Directive shall not apply to goods like DVDs and CDs incorporating digital content in such a way that the goods function only as a carrier of the digital content.

The proposed Directive shall **repeal the minimum harmonisation Directive 1999/44/EC** and introduce a **full set of harmonised rules** for contracts for the sale of goods. Fully harmonised regulation of consumer contract law shall enable companies to:

- offer their products more easily in other Member States;
- benefit from reduced costs since they will no longer be confronted with the disparity of the rules on consumer rights;
- benefit from greater legal certainty when selling at a distance to other Member States through a stable contract law environment.

The deadline for transposition shall be two years after the date of entry into force of the Directive.