




Basic information	
<p>2015/0288(COD)</p> <p>COD - Ordinary legislative procedure (ex-codecision procedure) Directive</p>	Procedure completed
<p>Contracts for the online and other distance sales of goods</p> <p>See also 2015/0287(COD) Amended by 2023/0083(COD)</p> <p>Subject</p> <p>3.45.05 Business policy, e-commerce, after-sales service, commercial distribution 4.60.06 Consumers' economic and legal interests 4.60.08 Safety of products and services, product liability</p>	

Key players				
European Parliament	Committee responsible		Rapporteur	Appointed
	IMCO	Internal Market and Consumer Protection	ARIMONT Pascal (PPE)	02/02/2016
			Shadow rapporteur ANDERSON Lucy (S&D) VAN BOSSUYT Anneleen (ECR) LØKKEGAARD Morten (ALDE) DE JONG Dennis (GUE/NGL) DURAND Pascal (Verts/ALE) ZULLO Marco (EFDD)	
	Committee for opinion		Rapporteur for opinion	Appointed
	CULT	Culture and Education	The committee decided not to give an opinion.	
	JURI	Legal Affairs (Associated committee)	HAUTALA Heidi (Verts/ALE)	15/03/2016
Council of the European Union	Council configuration		Meetings	Date
	Justice and Home Affairs (JHA)		3661	2018-12-07
	Justice and Home Affairs (JHA)		3455	2016-03-10
	Justice and Home Affairs (JHA)		3622	2018-06-05
	Agriculture and Fisheries		3686	2019-04-15

European Commission	Commission DG	Commissioner
	Justice and Consumers	JOUROVÁ Vra
European Economic and Social Committee		

Key events			
Date	Event	Reference	Summary
09/12/2015	Initial legislative proposal published	COM(2015)0635 	Summary
21/01/2016	Committee referral announced in Parliament, 1st reading		
10/03/2016	Debate in Council		
28/04/2016	Referral to associated committees announced in Parliament		
31/10/2017	Legislative proposal published	COM(2017)0637 	Summary
22/02/2018	Vote in committee, 1st reading		
22/02/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
27/02/2018	Committee report tabled for plenary, 1st reading	A8-0043/2018	Summary
28/02/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/03/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
05/06/2018	Debate in Council		
20/02/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE637.295 GEDA/A/(2019)003074	
26/03/2019	Decision by Parliament, 1st reading	T8-0233/2019	Summary
26/03/2019	Results of vote in Parliament		
26/03/2019	Debate in Parliament	CRE link	
15/04/2019	Act adopted by Council after Parliament's 1st reading		
20/05/2019	Final act signed		
20/05/2019	End of procedure in Parliament		
22/05/2019	Final act published in Official Journal		

Technical information	
Procedure reference	2015/0288(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	See also 2015/0287(COD) Amended by 2023/0083(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Mandatory consultation of other institutions	European Economic and Social Committee

Stage reached in procedure	Procedure completed
Committee dossier	IMCO/8/05564

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE593.817	18/11/2016	
Amendments tabled in committee		PE597.627	25/01/2017	
Amendments tabled in committee		PE597.434	25/01/2017	
Amendments tabled in committee		PE600.964	06/03/2017	
Amendments tabled in committee		PE607.990	18/07/2017	
Amendments tabled in committee		PE615.444	15/12/2017	
Amendments tabled in committee		PE616.641	18/01/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0043/2018	27/02/2018	Summary
Text agreed during interinstitutional negotiations		PE637.295	06/02/2019	
Text adopted by Parliament, 1st reading/single reading		T8-0233/2019	26/03/2019	Summary
Council of the EU				
Document type		Reference	Date	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2019)003074	06/02/2019	
Draft final act		00027/2019/LEX	22/05/2019	
European Commission				
Document type		Reference	Date	Summary
Initial legislative proposal		COM(2015)0635 	09/12/2015	Summary
Document attached to the procedure		SWD(2015)0274 	10/12/2015	
Document attached to the procedure		SWD(2015)0275 	10/12/2015	
Legislative proposal		COM(2017)0637 	31/10/2017	Summary
Document attached to the procedure		SWD(2017)0354 	31/10/2017	Summary
Commission response to text adopted in plenary		SP(2019)437	30/07/2019	
National parliaments				
Document type	Parliament/Chamber	Reference	Date	Summary
Contribution	IE_HOUSES-OF-OIREACTAS	COM(2015)0635	22/02/2016	
Contribution	PT_PARLIAMENT	COM(2015)0635	18/03/2016	

Contribution	IT_SENATE	COM(2015)0635	29/03/2016	
Contribution	RO_SENATE	COM(2015)0635	29/03/2016	
Contribution	AT_BUNDESSTAT	COM(2015)0635	31/03/2016	
Contribution	LU_CHAMBER	COM(2015)0635	31/03/2016	
Contribution	NL_SENATE	COM(2015)0635	31/03/2016	
Reasoned opinion	FR_SENATE	PE580.757	14/04/2016	
Contribution	CZ_SENATE	COM(2015)0635	26/04/2016	
Contribution	DE_BUNDESSTAT	COM(2015)0635	27/04/2016	
Contribution	IT_CHAMBER	COM(2015)0635	07/06/2016	
Contribution	ES_PARLIAMENT	COM(2017)0637	19/12/2017	
Contribution	PT_PARLIAMENT	COM(2017)0637	21/12/2017	
Contribution	AT_BUNDESSTAT	COM(2017)0637	14/02/2018	
Contribution	RO_CHAMBER	COM(2017)0637	22/02/2018	
Contribution	IE_HOUSES-OF-OIREACHTAS	COM(2017)0637	28/02/2018	
Contribution	FR_SENATE	COM(2017)0637	02/03/2018	
Contribution	FR_SENATE	COM(2015)0635	02/03/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
ESC	Economic and Social Committee: opinion, report	CES6292/2015	27/04/2016	
EDPS	Document attached to the procedure	N8-0045/2017 OJ C 200 23.06.2017, p. 0010	14/03/2017	
ESC	Economic and Social Committee: opinion, report	CES6235/2017	15/02/2018	

Additional information

Source	Document	Date
EP Research Service	Briefing	
EP Research Service	Briefing	15/07/2019
EP Research Service	Briefing	

Final act

[Directive 2019/0771](#)
[OJ L 136 22.05.2019, p. 0028](#)

[Summary](#)

Contracts for the online and other distance sales of goods

2015/0288(COD) - 09/12/2015

PURPOSE: to contribute to faster growth of the digital single market, by eliminating the barriers related to contract law hindering the online and other distance sales of goods.

PROPOSED ACT: Directive of the European Parliament and of the Council.

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

BACKGROUND: e-commerce is the main driver for growth within the Digital Single Market. However, its growth potential is far from being fully exploited. **The Union rules applicable to the online and other distance sales of goods are still fragmented.**

Only **18% of consumers** who used the Internet for private purposes in 2014 purchased online from another EU country while 55% did so domestically. Consumers suffer detriment due to lack of clear contractual rights for faulty digital content. Different national contract law rules have created **one-off costs for retailers selling to consumers of approximately EUR 4 billion**. These costs mostly affect micro and small- and medium-sized enterprises (SMEs).

The [Digital Single Market Strategy](#) adopted by the Commission on 6 May 2015 announced a legislative initiative on harmonised rules for the supply of digital content and online sales of goods.

This initiative is composed of (i) a [proposal](#) on certain aspects concerning contracts for the supply of digital content, and (ii) this proposal on certain aspects concerning contracts for the online and other distance sales of goods.

By eliminating the key barriers related to contract law hindering cross-border trade, the rules put forward in the proposals will **reduce the uncertainty** faced by businesses and consumers that is due to the complexity of the legal framework and the costs incurred by businesses resulting from differences in contract law between Member States.

Drawing on the experience acquired during the negotiations for a [Regulation on a Common European Sales Law](#), they no longer follow the approach of an optional regime and a comprehensive set of rules. Instead, the proposals contain a targeted and focused set of fully harmonised rules.

IMPACT ASSESSMENT: the impact assessment examined **5 policy alternatives**, and concluded that **fully harmonised rules for digital content** and goods would best meet the policy objectives. This option will reduce contract law-related costs for traders and facilitate cross-border e-commerce. Businesses will be able to rely largely on their own law when selling cross-border, as the main rules that are relevant for cross-border trade, will be the same in all Member States.

CONTENT: the proposal aims to **remove consumer contract law barriers in online trade** and to contribute to faster growth of opportunities offered by creating a true Digital Single Market, to the benefit of both consumers and businesses.

Purpose and scope: the proposal takes as a basis the minimum harmonisation the rules of [Directive 1999/44/EC](#) on certain aspects of the sale of consumer goods and associated guarantees. However, it provides for a **full harmonisation** of the conformity criteria for the goods, of the hierarchy of the remedies, available to consumers and of the periods for the reversal of burden of proof and the legal guarantees. Furthermore, certain features of the current Directive 1999/44/EC are clarified.

The draft directive **does 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, neither does it apply to distance contracts for provision of services. However, it applies to goods like **household appliances and toys** where the digital content operates as an integral part of the goods. Furthermore, where a sale contract provides both for the sale of goods and the provision of services this Directive applies only to the part relating to the sale of goods.

Full harmonisation: the proposal precludes Member States from adopting or maintaining laws remaining below or going beyond the requirements of the Directive.

Conformity criteria: the proposal sets the conformity criteria that the goods have to meet in order to conform to the contract. The goods must primarily conform to what was promised in the contract. It also clarifies that, as a default rule, the conformity of the goods would be assessed not only with regard to the contract terms but also a combination of subjective and objective criteria

In addition, the proposal:

- sets **objective criteria** for conformity of the goods. In the absence of explicit contractual terms, specifying conformity criteria, the goods must conform to these objective criteria;
- states that a lack of conformity resulting from an **incorrect installation** of the goods is to be regarded as a lack of conformity of the goods themselves if the reason for the incorrect installation is in the sphere of the seller;
- contains an additional conformity requirement that the **goods must be clear of any third-party rights**, including those based on intellectual property;
- specifies at which time the conditions for the lack of conformity must be completed in order to incur the **seller's liability for non-performance**. Generally, that is the time of passing of risk, where the consumer or a third party designated by the consumer, obtains control over the goods; or when the installation is completed or after the consumer had a reasonable time for installation but in any case not later than 30 days from the moment of passing of risk.

Damages: the draft directive lists the remedies for lack of conformity the consumer has available by fully harmonising the order in which remedies could be exercised: (i) in a first step the consumer should be entitled to have the goods repaired or replaced within a reasonable time and without any significant inconvenience; (ii) in a second step the consumer should be entitled to a **price reduction or to terminate the contract** where the lack of conformity is not or cannot be remedied through repair or replacement. In addition, the consumer has the right to **withhold performance** until the goods are brought in conformity.

The proposal maintains the time limit of **two years** for the availability of the remedies.

Replacement of goods: when remedying a lack of conformity by replacement of goods, the seller is obliged to **take back the replaced goods at its own expense**. The consumer should not be obliged to pay for the use that was made of the replaced goods prior to the replacement. He may choose between repair and replacement unless the option chosen would be disproportionate compared to the other option available, impossible or unlawful.

Termination: the draft directive:

- specifies that the contract can be terminated **by any means of notice** from the consumer and that termination should be only partial, where the lack of conformity relates only to part of the goods delivered under the contract;
- regulates the restitution following termination by providing that **no later than 14 days**, the seller should reimburse the price paid at its own expenses and that the consumer should return the defective goods at the seller's expense;
- regulates **consumers' obligations** under certain restricted conditions to pay the monetary value of the goods where the goods cannot be returned and also to pay to a limited extent for the diminution of the value of the goods.

Commercial guarantees: the proposal: (i) provides transparency requirements as to the commercial guarantees issued by the sellers, e.g. as to the form for delivery and the content a guarantee statement; (ii) states that the guarantee is binding for the seller in accordance with the conditions which are contained in advertisements, pre-contractual information and in the guarantee statement; (iii) clarifies that where conditions which are advertised differ from those included in the guarantee statement, the **more advantageous to the consumers should prevail**.

Right to redress: the seller has a right of redress in case of an act or omission by a person in earlier links of the chain of transactions that triggered the seller's liability for lack of conformity towards the consumer.

Contracts for the online and other distance sales of goods

2015/0288(COD) - 22/05/2019 - Final act

PURPOSE: to introduce new rules to make cross-border transactions in the purchase and sale of goods easier and safer for consumers and businesses.

LEGISLATIVE ACT: Directive (EU) 2019/771 of the European Parliament and of the Council on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

CONTENT: the Directive aims to contribute to the proper functioning of the internal market while providing for a high level of consumer protection, by laying down common rules on certain requirements concerning sales contracts concluded between sellers and consumers, in particular rules on the conformity of goods with the contract, remedies in the event of a lack of such conformity, the modalities for the exercise of those remedies, and on commercial guarantees.

This Directive on the sale of goods is part of a package of measures which also includes a [Directive](#) on contracts for the provision of digital content and services (Digital Content Directive). The objective is to ensure a high level of protection and legal certainty for European consumers, in particular when making cross-border purchases, and to facilitate EU-wide sales operations by businesses, in particular small and medium-sized enterprises (SMEs).

Scope

The Directive shall apply to sales contracts concluded between a consumer and a seller. It shall apply to all goods, including digital content or services that are incorporated or inter-connected with goods and that are provided with those goods as part of the contract of sale. It shall apply, for example, to products such as intelligent refrigerators.

Conformity

The goods shall meet subjective and objective compliance criteria. They must (i) correspond to the description, type, quantity and quality; (ii) be adapted to the use intended by the consumer, of which the seller was informed at the latest at the time of conclusion of the contract of sale and which the seller has accepted; (ii) be delivered with all the accessories and instructions, in particular installation instructions, provided for in the contract of sale; and (iii) be supplied with updates as provided for in the contract of sale.

If the goods contain digital elements, the seller must ensure that the consumer is informed of updates, including security updates.

Any lack of conformity resulting from the incorrect installation of the goods shall be deemed to be a lack of conformity of the goods if the installation is part of the contract of sale and was carried out by the seller or under his responsibility.

Seller's liability

The seller shall be liable if a defect appears within two years of the delivery date of the product. However, Member States may introduce or maintain a longer guarantee period in their national legislation.

Burden of proof

Any lack of conformity which becomes apparent within one year from the time when the goods were delivered shall be presumed to have existed at the time of delivery of the goods, unless proven otherwise or unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity. Member States could maintain or introduce a period of two years from the time the goods were delivered.

Consumer's recourse for lack of conformity

In the event of lack of conformity, the consumer shall be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price, or to terminate the contract. In order to have the goods brought into conformity, the consumer may choose between repair and replacement.

The seller may refuse to bring the goods into compliance if repair and replacement is impossible or would impose costs that would be disproportionate.

The consumer shall not be entitled to terminate the contract if the lack of conformity is only minor. The burden of proof as to whether or not the lack of conformity is minor would be on the seller. The consumer would have the right to suspend payment of the balance of the price or part thereof until the seller has fulfilled his obligations.

Repair or replacement of goods

A repair or replacement should be carried out: (a) free of charge; (b) within a reasonable time after the seller has been informed by the consumer of the lack of conformity; and (c) without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods. The seller should take back the replaced goods at his own expense. The consumer would not be required to pay for the normal use he made of the replaced goods in the period prior to their replacement.

Commercial guarantees

Where a producer offers the consumer a commercial guarantee of durability for certain goods for a certain period of time, the producer shall be directly liable to the consumer for the duration of the commercial guarantee of durability with regard to repair or replacement.

Consumer information

Member States shall take measures to ensure that information on consumer rights under the directive, and on how to enforce these rights, is available to consumers.

ENTRY INTO FORCE: 11.6.2019.

TRANSPOSITION: no later than 1.7.2021.

APPLICATION: from 1.7.2022.

Contracts for the online and other distance sales of goods

2015/0288(COD) - 26/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 629 votes to 29, with 6 abstentions, a legislative resolution on the 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.

The position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

Objective and scope

The directive would aim to ensure a high level of consumer protection by establishing common rules on certain requirements for sales contracts between sellers and consumers, in particular rules on the conformity of goods with the contract, remedies for lack of conformity, the procedures for exercising such remedies and commercial guarantees.

The directive would apply to sales contracts concluded between a consumer and a seller as well as to products with digital elements (such as intelligent refrigerators).

Conformity of goods

In order to comply with the sales contract, the goods should in particular, where applicable:

- be of the description, type, quantity and quality and possess the functionality, compatibility, interoperability and other features as required by the sales contract;
- be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;
- be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and
- be supplied with updates as stipulated by the sales contract.

In the case of goods incorporating digital elements, the seller should ensure that the consumer is informed of updates, including safety updates, that are necessary to maintain the conformity of such goods and receives them within the period that the consumer can reasonably expect depending on the type of products and their purpose.

Seller's liability

The seller would be liable if a defect appears within two years of the delivery date of the product. However, Member States could introduce or maintain a longer guarantee period in their national legislation.

Burden of proof

Any lack of conformity which becomes apparent within one year from the time when the goods were delivered shall be presumed to have existed at the time of delivery of the goods, unless proven otherwise or unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity. Member States could maintain or introduce a period of two years from the time the goods were delivered.

Consumer's recourse for lack of conformity

In the event of lack of conformity, the consumer would be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price, or to terminate the contract. In order to have the goods brought into conformity, the consumer may choose between repair and replacement.

The seller could refuse to bring the goods into compliance if repair and replacement is impossible or would impose costs that would be disproportionate.

The consumer would not be entitled to rescind the contract if the lack of conformity is only minor. The burden of proof as to whether or not the lack of conformity is minor would be on the seller. The consumer would have the right to suspend payment of the balance of the price or part thereof until the seller has fulfilled his obligations.

Repair or replacement of goods

A repair or replacement should be carried out: (a) free of charge; (b) within a reasonable time after the seller has been informed by the consumer of the lack of conformity; and (c) without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods. The seller should take back the replaced goods at his own expense. The consumer would not be required to pay for the normal use he made of the replaced goods in the period prior to their replacement.

Commercial guarantees

The text includes provisions on additional durability guarantees for consumers, going beyond the legal guarantee which remains mandatory for two years.

Consumer information

Member States should take measures to ensure that information on consumer rights under the directive, and on how to enforce these rights, is available to consumers.

Contracts for the online and other distance sales of goods

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

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.

Contracts for the online and other distance sales of goods

2015/0288(COD) - 31/10/2017 - Document attached to the procedure

This Commission staff working document focuses on the impacts of fully harmonised rules on contracts for the sales of goods.

It presents a comprehensive overview of the findings and data gathered through different sources as regards the possible impacts of fully harmonised rules on consumer contracts for the online and offline sale of goods.

It builds on the December 2015 impact assessment:

- firstly, it aims to update the description of the problem to be tackled, taking into account recent data and evidence for both online and offline sales;
- secondly it aims to deepen the analysis of the impacts of the preferred policy option in the light of the amended Commission proposal which extends the scope to all consumer sales.

Main findings: the document stressed that a single set of EU-wide high consumer protection rules would further **empower EU consumers to take advantage of an increased offer and strengthened market competition**, thus directly contributing to the shaping of a true single market.

It should also be noted that several Member States are considering revising their legislation in the field of sales of goods (such as BE, CZ, LT and FR). All businesses in these countries will in any event incur similar costs to adapt to the new national law. Harmonising at EU level for both online and offline sales would present the advantage of **triggering adaptation costs only once**, while at the same time giving incentives to companies that are interested to sell cross-border but do not do so currently because of differences in consumer contract law rules.

Beyond the important issue of consumers' rights, which would also benefit by the legal certainty brought by the proposal since consumers would enjoy the same level of protection whether they buy online or offline, domestically or cross-border, the proposal would yield a number of economic benefits for consumers in terms of wider choice of products at more competitive prices. The impact assessment accompanying the original proposal estimated that a full harmonisation of consumer contract rules would increase household consumption in the EU by EUR 18 billion from its current level.

Contracts for the online and other distance sales of goods

2015/0288(COD) - 27/02/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection adopted the report by Pascal ARIMONT (EPP, BE) on the 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.

The committee recommended that the position of Parliament adopted in first reading following the ordinary legislative procedure, should amend the Commission's proposal as follows:

Scope: the Directive applies to **any sales contract concluded between a consumer and a trader**. It does not apply to: (i) contracts for the provision of services; (ii) digital content and digital services embedded in goods, such as DVDs and CDs or smart goods; (iii) sales of live animals between trader and consumer.

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, and where they are informed by a clear statement in writing or on a durable medium before the auction that rights deriving from this Directive do not apply.

Member States may maintain or introduce in their national law **more stringent provisions**, compatible with the Treaty, in order to ensure a higher level of consumer protection.

Conformity of goods: a new provision clarifies that goods must meet **subjective and objective conformity requirements**, which in turn are laid down in the Directive.

There shall be no lack of conformity if, at the time of the conclusion of the contract, the consumer was specifically informed that a particular characteristic of the goods was deviating from the conformity requirements stipulated and the consumer has expressly and separately accepted this deviation when concluding the contract.

Liability of the trader: the Commission's proposal deals with the moment of determining the conformity of an installed object. However, Members clarified the distinctions between installation scenarios in order to avoid confusion as to the timeframes for determining conformity.

In the case of the **sale of second-hand goods** where a consumer has had the opportunity to examine the goods in person before the conclusion of the contract, Member States may maintain provisions that **allow for a shorter period of guarantee**, where the trader and consumer concerned have expressly agreed in writing or on a durable medium to such a shorter period, which shall not be less than one year.

Burden of proof: the amended text states that any lack of conformity with the contract which becomes apparent within one year from the relevant time for establishing conformity, shall be presumed to have existed at that time unless this is incompatible with the nature of the goods or with the nature of the lack of conformity.

Within the first year, in order to benefit from the presumption of lack of conformity, the consumer should only demonstrate that the goods are not in conformity and that the lack of conformity became apparent within a year of delivery of the goods, without also needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity.

Methods of compensating consumers for non-compliance with the contract: in the case of a lack of conformity with the contract, the consumer shall be entitled to have the goods brought into conformity, free of charge, by means of repair or replacement or to **receive a proportionate reduction in the price**, or to terminate the contract.

The consumer shall have a free choice between repair and replacement, unless the option chosen would be impossible or would impose costs on the trader that would be disproportionate.

Where as part of the repair of goods, a component is replaced with a new one, or where faulty goods have been replaced with new goods, the trader shall be liable for any new lack of conformity in the replaced component which becomes apparent within two years from reception of the repaired or replaced goods.

Repair and replacement of goods: a repair shall be completed within one month and without any significant inconvenience to the consumer. The trader shall bear the risk of destruction or additional damage in the goods during the repair period or the transportation back to the consumer. A replacement shall be completed within one month from the moment that the trader has acquired physical possession of the goods and without any significant inconvenience to the consumer.

The consumer shall be entitled to **withhold the payment** of any outstanding part of the price, until the trader has brought the goods into conformity with the contract by replacement.

Termination of the contract: the consumer shall exercise the right to terminate the contract by means of an unequivocal statement setting out his decision to terminate the contract, notified to the trader. Where contracts are concluded by digital means, the trader shall provide the consumer with an easy digital means to terminate the contract. The termination shall become effective **14 days after the notification**, or on a later date indicated by the consumer.

Member States shall lay down detailed rules for the exercise of the right to damages in the event of economic loss resulting from a lack of conformity with the contract or a failure to supply the goods.

Durability: the proposal stresses the importance of ensuring longer durability of consumer goods to achieve more sustainable consumption patterns and a circular economy.

Members suggested that durability should be defined as the ability of a product to maintain its required performance over a given or long period, under the influence of foreseeable actions, assuming a normal or average rate of usage.

A producer giving a **guarantee of durability for a period of two years** or more in respect of certain goods shall be liable directly to the consumer to repair or replace those goods for non-conformity. He should repair or replace those goods within one month from the moment he has acquired physical possession of or access to the goods for the purpose of repair or replacement.

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.

Contracts for the online and other distance sales of goods

2015/0288(COD) - 09/12/2015 - Initial legislative proposal

PURPOSE: to contribute to faster growth of the digital single market, by eliminating the barriers related to contract law hindering the online and other distance sales of goods.

PROPOSED ACT: Directive of the European Parliament and of the Council.

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

BACKGROUND: e-commerce is the main driver for growth within the Digital Single Market. However, its growth potential is far from being fully exploited. **The Union rules applicable to the online and other distance sales of goods are still fragmented.**

Only **18% of consumers** who used the Internet for private purposes in 2014 purchased online from another EU country while 55% did so domestically. Consumers suffer detriment due to lack of clear contractual rights for faulty digital content. Different national contract law rules have created **one-off costs for retailers selling to consumers of approximately EUR 4 billion**. These costs mostly affect micro and small- and medium-sized enterprises (SMEs).

The [Digital Single Market Strategy](#) adopted by the Commission on 6 May 2015 announced a legislative initiative on harmonised rules for the supply of digital content and online sales of goods.

This initiative is composed of (i) [a proposal](#) on certain aspects concerning contracts for the supply of digital content, and (ii) this proposal on certain aspects concerning contracts for the online and other distance sales of goods.

By eliminating the key barriers related to contract law hindering cross-border trade, the rules put forward in the proposals will **reduce the uncertainty** faced by businesses and consumers that is due to the complexity of the legal framework and the costs incurred by businesses resulting from differences in contract law between Member States.

Drawing on the experience acquired during the negotiations for a [Regulation on a Common European Sales Law](#), they no longer follow the approach of an optional regime and a comprehensive set of rules. Instead, the proposals contain a targeted and focused set of fully harmonised rules.

IMPACT ASSESSMENT: the impact assessment examined **5 policy alternatives**, and concluded that **fully harmonised rules for digital content and goods** would best meet the policy objectives. This option will reduce contract law-related costs for traders and facilitate cross-border e-commerce.

Businesses will be able to rely largely on their own law when selling cross-border, as the main rules that are relevant for cross-border trade, will be the same in all Member States.

CONTENT: the proposal aims to **remove consumer contract law barriers in online trade** and to contribute to faster growth of opportunities offered by creating a true Digital Single Market, to the benefit of both consumers and businesses.

Purpose and scope: the proposal takes as a basis the minimum harmonisation the rules of [Directive 1999/44/EC](#) on certain aspects of the sale of consumer goods and associated guarantees. However, it provides for a **full harmonisation** of the conformity criteria for the goods, of the hierarchy of the remedies, available to consumers and of the periods for the reversal of burden of proof and the legal guarantees. Furthermore, certain features of the current Directive 1999/44/EC are clarified.

The draft directive **does 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, neither does it applies to distance contracts for provision of services. However, it applies to goods like **household appliances and toys** where the digital content operates as an integral part of the goods. Furthermore, where a sale contract provides both for the sale of goods and the provision of services this Directive applies only to the part relating to the sale of goods.

Full harmonisation: the proposal precludes Member States from adopting or maintaining laws remaining below or going beyond the requirements of the Directive.

Conformity criteria: the proposal sets the conformity criteria that the goods have to meet in order to conform to the contract. The goods must primarily conform to what was promised in the contract. It also clarifies that, as a default rule, the conformity of the goods would be assessed not only with regard to the contract terms but also a combination of subjective and objective criteria

In addition, the proposal:

- sets **objective criteria** for conformity of the goods. In the absence of explicit contractual terms, specifying conformity criteria, the goods must conform to these objective criteria;
- states that that a lack of conformity resulting from an **incorrect installation** of the goods is to be regarded as a lack of conformity of the goods themselves if the reason for the incorrect installation is in the sphere of the seller;
- contains an additional conformity requirement that the **goods must be clear of any third-party rights**, including those based on intellectual property;
- specifies at which time the conditions for the lack of conformity must be completed in order to incur the **seller's liability for non-performance**. Generally, that is the time of passing of risk, where the consumer or a third party designated by the consumer, obtains control over the goods; or when the installation is completed or after the consumer had a reasonable time for installation but in any case not later than 30 days from the moment of passing of risk.

Damages: the draft directive lists the remedies for lack of conformity the consumer has available by fully harmonising the order in which remedies could be exercised: (i) in a first step the consumer should be entitled to have the goods repaired or replaced within a reasonable time and without any significant inconvenience; (ii) in a second step the consumer should be entitled to a **price reduction or to terminate the contract** where the lack of conformity is not or cannot be remedied through repair or replacement. In addition, the consumer has the right to **withhold performance** until the goods are brought in conformity.

The proposal maintains the time limit of **two years** for the availability of the remedies.

Replacement of goods: when remedying a lack of conformity by replacement of goods, the seller is obliged to **take back the replaced goods at its own expense**. The consumer should not be obliged to pay for the use that was made of the replaced goods prior to the replacement. He may choose between repair and replacement unless the option chosen would be disproportionate compared to the other option available, impossible or unlawful.

Termination: the draft directive:

- specifies that the contract can be terminated **by any means of notice** from the consumer and that termination should be only partial, where the lack of conformity relates only to part of the goods delivered under the contract;
- regulates the restitution following termination by providing that **no later than 14 days**, the seller should reimburse the price paid at its own expenses and that the consumer should return the defective goods at the seller's expense;
- regulates **consumers' obligations** under certain restricted conditions to pay the monetary value of the goods where the goods cannot be returned and also to pay to a limited extent for the diminution of the value of the goods.

Commercial guarantees: the proposal: (i) provides transparency requirements as to the commercial guarantees issued by the sellers, e.g. as to the form for delivery and the content a guarantee statement; (ii) states that the guarantee is binding for the seller in accordance with the conditions which are contained in advertisements, pre-contractual information and in the guarantee statement; (iii) clarifies that where conditions which are advertised differ from those included in the guarantee statement, the **more advantageous to the consumers should prevail**.

Right to redress: the seller has a right of redress in case of an act or omission by a person in earlier links of the chain of transactions that triggered the seller's liability for lack of conformity towards the consumer.