

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 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.