

Contracts for the online and other distance sales of goods

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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.