

Consumers' protection: sale of consumer goods and associated guarantees

1996/0161(COD) - 24/09/1998 - Council position

The common position of the Council takes account of a number of amendments made by the European Parliament and departs from the Commission proposal. The main points on which the Council commented were as follows: a) definitions: the Council introduced a number of exceptions to the definition of ? consumer goods? by excluding all goods sold following seizure or some other procedure by the judicial authorities, water and gas which are not packaged in a specified volume or of a specific quality and electricity. Provision is also made to allow Member States to exclude auctions of second-hand goods, provided that the consumer is present at the sale. The definition of the term ?repair? is also introduced; b) hierarchy of consumer rights: on this point, the Council opted for its own model, while coming into line with the principle used for the solution proposed by the European Parliament. According to the common position, the consumer will first have a choice between free repair or replacement of the defective item and may then demand a reduction in the sales price or cancellation of the sales contract if either of the first two options is impractical or disproportionate or is not carried out within a reasonable period of time and at no major inconvenience to the consumer. However, cancellation of the sale cannot be requested if the defect is minor. It is also stipulated that compensation is considered disproportionate if it forces the seller to bear costs which, in comparison with an alternative solution, are unreasonable, given the value of the item or size of the defect, and taking account of the fact that the compensation proposed does not represent a major inconvenience to the consumer. c) implementation of consumer rights: the common position stipulates that, in the case of a refund of the purchase price, Member States may make provision for the refund to be reduced in order to take account of use which the consumer has already made of the item. Concerning the right to cancel the contract, the methods of exercising this right will be determined under national transposition legislation and replacement will not generally be possible for second-hand goods. The seller and the consumer may in all cases reach an amicable settlement to their dispute and Member States may provide for the warranty period to be suspended or interrupted in the case of repair, replacement or negotiation between the parties to find an amicable settlement. The Council also gave its opinion on several other important points: - a single warranty period of two years, with the possibility for the parties to reduce this period to one year for second-hand goods; - the possibility for Member States to introduce a provision obliging the consumer to inform the seller of a defect within two months of detecting it in order to avoid forfeiting these rights; - the deadline of three years granted to Member States for the transposition of the Directive; - and, finally, a Commission report on the application of the Directive, in which it will study the question of the introduction of the manufacturer's direct liability towards the consumer.