

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, [...] HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive lays down certain requirements concerning distance sales contracts concluded between the seller and the consumer, in particular rules on conformity of goods, remedies in case of non-conformity and the modalities for the exercise of these remedies.
2. 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.
3. This Directive shall not apply to any durable medium incorporating digital content where the durable medium has been used exclusively as a carrier for the supply of the digital content to the consumer.
4. In so far as not regulated therein, this Directive shall not affect national general contract laws such as rules on formation, the validity or effects of contracts, including the consequences of the termination of a contract.

Definitions

For the purpose of this Directive, the following definitions shall apply:

- (a) ‘sales contract’ means any contract under which the seller transfers or undertakes to transfer the ownership of goods, including goods which are to be manufactured or produced, to the consumer and the consumer pays or undertakes to pay the price thereof.
- (b) ‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (c) ‘seller’ means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;
- (d) ‘goods’ means any tangible movable items with the exception of
 - (a) items sold by way of execution or otherwise by authority of law;
 - (b) water, gas and electricity unless they are put up for sale in a limited volume or a set quantity.
- (e) ‘distance sales contract’ means any sales contract concluded under an organised distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded;
- (f) ‘durable medium’ means any instrument which enables the consumer or the seller to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (g) ‘commercial guarantee’ means any undertaking by the seller or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace,

repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

- (h) 'contract' means an agreement intended to give rise to obligations or other legal effects;
- (i) 'repair' means, in the event of lack of conformity, bringing goods into conformity with the contract;
- (j) 'free of charge' means free of the costs necessarily incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials.

Article 3

Level of harmonisation

Member States shall not maintain or introduce provisions diverging from those laid down in this Directive including more or less stringent provisions to ensure a different level of consumer protection.

Article 4

Conformity with the contract

1. The seller shall ensure that, in order to conform with the contract, the goods shall, where relevant:
 - (a) be of the quantity, quality and description required by the contract, which includes that where the seller shows a sample or a model to the consumer, the goods shall possess the quality of and correspond to the description of this sample or model;
 - (b) be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the time of the conclusion of the contract and which the seller has accepted; and
 - (c) possess the qualities and performance capabilities indicated in any pre-contractual statement which forms an integral part of the contract.

2. In order to conform with the contract, the goods must also meet the requirements of Articles 5, 6 and 7.
3. Any agreement excluding, derogating from or varying the effects of Articles 5 and 6 to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods and the consumer has expressly accepted this specific condition when concluding the contract.

Article 5

Requirements for conformity of the goods

The goods shall, where relevant:

- (a) be fit for all the purposes for which goods of the same description would ordinarily be used;
- (b) be delivered along with such accessories including packaging, installation instructions or other instructions as the consumer may expect to receive; and
- (c) possess qualities and performance capabilities which are normal in goods of the same type and which the consumer may expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller or other persons in earlier links of the chain of transactions, including the producer, unless the seller shows that:
 - (i) the seller was not, and could not reasonably have been, aware of the statement in question;
 - (ii) by the time of conclusion of the contract the statement had been corrected; or
 - (iii) the decision to buy the goods could not have been influenced by the statement.

Article 6

Incorrect installation

Where the goods are incorrectly installed, any lack of conformity resulting from the incorrect installation is regarded as lack of conformity with the contract of the goods if:

- (a) the goods were installed by the seller or under the seller's responsibility; or
- (b) the goods, intended to be installed by the consumer, were installed by the consumer and the incorrect installation was due to a shortcoming in the installation instructions.

Article 7

Third party rights

At the time relevant for establishing the conformity with the contract as determined by Article 8, the goods must be free from any right of a third party, including based on intellectual property, so that the goods can be used in accordance with the contract.

Article 8

Relevant time for establishing conformity with the contract

1. The seller shall be liable for any lack of conformity with the contract which exists at the time when:
 - (a) the consumer or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods; or
 - (b) the goods are handed over to the carrier chosen by the consumer, where that carrier was not proposed by the seller or where the seller proposes no means of carriage.
2. In cases where the goods were installed by the seller or under the seller's responsibility, the time when the installation is complete shall be considered as the time when the consumer has acquired the physical possession of the goods. In a case where the goods were intended to be installed by the consumer, the time when the consumer had reasonable time for the installation but in any case not later than 30 days after the time indicated in

paragraph 1 shall be considered as the time when the consumer has acquired the physical possession of the goods.

3. Any lack of conformity with the contract which becomes apparent within two years from the time indicated in paragraphs 1 and 2 is presumed to have existed at the time indicated in paragraphs 1 and 2 unless this is incompatible with the nature of the goods or with the nature of the lack of conformity.

Article 9

Consumer's remedies for the lack of conformity with the contract

1. In the case of a lack of conformity with the contract, the consumer shall be entitled to have the goods brought into conformity by the seller, free of charge, by repair or replacement in accordance with Article 11.
2. A repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.
3. The consumer shall be entitled to a proportionate reduction of the price in accordance with Article 12 or to terminate the contract in accordance with Article 13 where:
 - (a) a repair or replacement are impossible or unlawful;
 - (b) the seller has not completed repair or replacement within a reasonable time;
 - (c) a repair or replacement would cause significant inconvenience to the consumer; or
 - (d) the seller has declared, or it is equally clear from the circumstances, that the seller will not bring the goods in conformity with the contract within a reasonable time.
4. The consumer shall be entitled to withhold the payment of any outstanding part of the price, until the seller has brought the goods into conformity with the contract.
5. The consumer shall not be entitled to a remedy to the extent that the consumer has contributed to the lack of conformity with the contract or its effects.

Article 10

Replacement of goods

1. Where the seller remedies the lack of conformity with the contract by replacement, the seller shall take back the replaced goods at the seller's expense unless the parties have agreed otherwise after the lack of conformity with the contract has been brought to the seller's attention by the consumer.
2. Where the consumer had installed the goods in a manner consistent with their nature and purpose, before the lack of conformity with the contract became apparent, the obligation to take back the replaced goods shall include the removal of the non-conforming goods and the installation of replacement goods, or bearing the costs thereof.
3. The consumer shall not be liable to pay for any use made of the replaced goods in the period prior to the replacement.

Article 11

Consumer's choice between repair and replacement

The consumer may choose between repair and replacement unless the option chosen would be impossible, unlawful or, compared to the other option, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

- (a) the value the goods would have if there were no lack of conformity with the contract;
- (b) the significance of the lack of conformity with the contract;
- (c) whether the alternative remedy could be completed without significant inconvenience to the consumer.

Article 12

Price reduction

The reduction of price shall be proportionate to the decrease in the value of the goods which were received by the consumer compared to the value the goods would have if in conformity with the contract

Article 13

The consumer's right to terminate the contract

1. The consumer shall exercise the right to terminate the contract by notice to the seller given by any means.
2. Where the lack of conformity with the contract relates to only some of the goods delivered under the contract and there is a ground for termination of a contract pursuant to Article 9, the consumer may terminate the contract only in relation to those goods and any other goods, which the consumer acquired as an accessory to the non-conforming goods.
3. Where the consumer terminates a contract as a whole or in relation to some of the goods delivered under the contract in accordance with paragraph 2:
 - (a) the seller shall reimburse to the consumer the price paid without undue delay and in any event not later than 14 days from receipt of the notice and shall bear the cost of the reimbursement;
 - (b) the consumer shall return, at the seller's expense, to the seller the goods without undue delay and in any event not later than 14 days from sending the notice of termination;
 - (c) where the goods cannot be returned because of destruction or loss, the consumer shall pay to the seller the monetary value which the non-conforming goods would have had at the date when the return was to be made, if they had been kept by the consumer without destruction or loss until that date, unless the destruction or loss has been caused by a lack of conformity of the goods with the contract; and
 - (d) the consumer shall pay for a decrease in the value of the goods only to the extent that the decrease in value exceeds depreciation through regular use. The payment for decrease in value shall not exceed the price paid for the goods.

Article 14

Time limits

The consumer shall be entitled to a remedy for the lack of conformity with the contract of the goods where the lack of conformity becomes apparent within two years as from the relevant time for establishing conformity. If, under national legislation, the rights

laid down in Article 9 are subject to a limitation period, that period shall not be shorter than two years from the relevant time for establishing conformity with the contract.

Article 15

Commercial guarantees

1. Any commercial guarantee shall be binding on the guarantor under the conditions laid down in:
 - (a) pre-contractual information provided by the seller, including any pre-contractual statement which forms an integral part of the contract;
 - (b) advertising available at the time of or before the conclusion of the contract; and
 - (c) the guarantee statement.If the guarantee statement is less advantageous to the consumer than the conditions laid down in pre-contractual information provided by the seller or advertising, the commercial guarantee shall be binding under the conditions laid down in the pre-contractual information or advertising relating to the commercial guarantee.
2. The guarantee statement shall be made available on a durable medium and drafted in plain, intelligible language. It shall include the following:
 - (a) a clear statement of the legal rights of the consumer as provided for in this Directive and a clear statement that those rights are not affected by the commercial guarantee; and
 - (b) the terms of the commercial guarantee that go beyond the legal rights of the consumer, information about the duration, transferability, territorial scope and existence of any charges which the consumer might incur in order to benefit from the commercial guarantee, the name and address of the guarantor and, if different from the guarantor, the person against whom any claim is to be made and the procedure by which the claim is to be made.
3. Non-compliance with paragraph 2 shall not affect the binding nature of the commercial guarantee for the guarantor.
4. The Member States may lay down additional rules on commercial guarantees insofar as those rules do not reduce the protection set out in this Article.

Article 16

Right of redress

Where the seller is liable to the consumer because of a lack of conformity with the contract resulting from an act or omission by a person in earlier links of the chain of transactions, the seller shall be entitled to pursue remedies against the person or persons liable in the chain of transactions. The person against whom the seller may pursue remedies and the relevant actions and conditions of exercise, shall be determined by national law.

Article 17

Enforcement

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions transposing this Directive are applied:
 - (a) public bodies or their representatives;
 - (b) consumer organisations having a legitimate interest in protecting consumers;
 - (c) professional organisations having a legitimate interest in acting.

Article 18

Mandatory nature

Any contractual agreement which, to the detriment of the consumer, excludes the application of national measures transposing this Directive, derogates from them or varies their effect before the lack of conformity with the contract of the goods is brought to the seller's attention by the consumer shall not be binding on the consumer unless parties to the contract exclude, derogate from or vary the effects of the requirements of Articles 5 and 6 in accordance with Article 4 (3).

Article 19

Amendments to Directive 1999/44/EC, Regulation (EC) No 2006/2004 and Directive 2009/22/EC

1. Article 1 of Directive 1999/44/EC is amended as follows:

(a) paragraph 1 is replaced by the following:

*"1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of **contracts for the sale of consumer goods and associated guarantees, which are not distance sales contracts**, in order to ensure a uniform minimum level of consumer protection in the context of the internal market."*

(b) paragraph 2 is amended as follows:

(i) point (f) is replaced by the following:

"(f) repair: shall mean, in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale;"

(ii) the following point is added:

"(g) 'distance sales contract' means any sales contract concluded under an organised distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication, including via internet, up to and including the time at which the contract is concluded".

2. In the Annex to Regulation (EC) No 2006/2004, the following point is added:

"22. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the online and other distance sales of goods (OJ...)"

3. In Annex I to Directive 2009/22/EC the following point is added:

"16. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the online and other distance sales of goods (OJ...)"

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*date of two years after the entry into force*] at the latest.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 21

Entering into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*