



**2015/0288(COD)**

18.1.2018

# **AMENDMENT 418 - 432**

**Draft report**

**Pascal Arimont**

(PE593.817v03-00)

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

Proposal for a directive

(COM(2017)0637 – C8-0391/2015 – 2015/0288(COD))



## Amendment 418

Lucy Anderson, Olga Sehnalová, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière, Evelyne Gebhardt

### Proposal for a directive

#### Recital 2

##### *Text proposed by the Commission*

(2) For the good functioning of the internal market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, *is necessary*.

##### *Amendment*

(2) For the good functioning of the internal market, the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, *while recognising Member States' competences, is justifiable. Keeping in mind the evolving and complex European case law on this subject matter, and in order to provide a greater degree of legal certainty to businesses and consumers alike, Member States should be able to maintain or introduce more stringent provisions for the protection of consumers in so far as provided for, or not expressly regulated otherwise in this Directive.*

Or. en

## Amendment 419

Lucy Anderson, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière, Evelyne Gebhardt

### Proposal for a directive

#### Recital 3

##### *Text proposed by the Commission*

(3) E-commerce is *one of the main drivers* for growth within the internal market. However its growth potential is far from being fully exploited. *In order to strengthen Union competitiveness and to boost growth, the Union needs to act swiftly and encourage economic actors to*

##### *Amendment*

(3) E-commerce is *a key driver* for growth within the internal market. However its growth potential is far from being fully exploited. The full potential of the internal market can only be unleashed if all market participants enjoy smooth access to cross-border sales of goods

*unleash the full potential offered by the internal market.* The full potential of the internal market can only be unleashed if all market participants enjoy smooth access to cross-border sales of goods, including *in* e-commerce transactions. The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business' decisions whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

including e-commerce *transactions.* ***Contracts are an indispensable legal tool for most economic*** transactions. The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business' decisions whether to offer goods cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

Or. en

#### **Amendment 420**

**Lucy Anderson, Olga Sehnalová, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière**

#### **Proposal for a directive**

#### **Recital 4**

##### *Text proposed by the Commission*

(4) *The* Union rules applicable to the 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<sup>46</sup>. ***Member States have been allowed to go beyond the Union standards and introduce rules that ensure even higher level of consumer protection. Having done so, they have acted on different elements and to different extents. Thus,*** national provisions transposing Directive 1999/44/EC significantly diverge

##### *Amendment*

(4) ***Certain*** Union rules applicable to the sales of goods ***have already been harmonised, including*** 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 ***regulated at a minimum level by*** Directive 1999/44/EC of the European Parliament and of the Council<sup>46</sup>. ***In practice, therefore,*** national provisions transposing ***the Union legislation on consumer contract law, in particular*** Directive 1999/44/EC, significantly diverge today on essential elements ***of what constitutes a sales contract,*** such as the absence or existence of a hierarchy of remedies, the period of

today on essential elements, such as 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.

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<sup>46</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees OJ L 171, 7.7.1999, p.12.

the legal guarantee, the period of the reversal of the burden of proof, or the notification of the defect to the seller.

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<sup>46</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees OJ L 171, 7.7.1999, p.12.

Or. en

## Amendment 421

Lucy Anderson, Evelyne Gebhardt, Olga Sehnalová, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(7) While online sales of goods constitute the vast majority of cross-border sales in the Union, differences in national contract laws equally affect retailers using distance sales channels and retailers selling face-to-face ***and prevent them from expanding across borders***. This Directive should cover all sales channels, in order to create a level playing field for all businesses selling goods to consumers. ***By laying down uniform rules across sales channels***, this Directive should ***avoid any divergence that would create disproportionate burdens for the growing number of omni-channel retailers in the Union. The need for retaining consistent rules on sales and guarantees for all sales channels was confirmed in the Fitness Check of EU consumer and marketing law, which also covered Directive 1999/44/EC.***<sup>48</sup>

#### *Amendment*

(7) While online sales of goods constitute the vast majority of cross-border sales in the Union, differences in national contract laws equally affect retailers using distance sales channels and retailers selling face-to-face. This Directive should cover all sales channels, in order to create a level playing field for all businesses selling goods to consumers. ***At the same time***, this Directive should ***also ensure a very high level of consumer protection in accordance with Union law in order to provide consumers with the confidence to buy cross-border and in order to enhance the functioning of the internal market.***

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<sup>48</sup> *Commission Staff Working Document{SWD(2017) 208 final}, Report of the Fitness Check on Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'); Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers; Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees; Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests; Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising*

Or. en

#### *Justification*

*The extension of scope to offline as well as online sales means now that it is even more vitally important to ensure that a high degree of consumer protection in accordance with Union Law is ensured as this will cover and affect a far larger number of people and businesses than originally envisaged.*

#### **Amendment 422**

**Lucy Anderson, Biljana Borzan, Sergio Gutiérrez Prieto, Evelyne Gebhardt, Olga**

**Proposal for a directive**

**Recital 8**

*Text proposed by the Commission*

(8) In order to remedy **the** problems due to the fragmentation of national rules, businesses and consumers should be able to rely on a set of **fully** harmonised, targeted rules for the sales of goods. **Uniform rules are necessary in relation to several essential elements of consumer contract law which under the current minimum harmonisation approach led to disparities and trade barriers across the Union. Therefore,** this Directive should **repeal the minimum harmonisation Directive 1999/44/EC and introduce fully harmonised rules on contracts** for the sales of goods.

*Amendment*

(8) In order to remedy **those** problems **that are** due to the fragmentation of national rules, businesses and consumers should be able to rely on a set of harmonised, targeted rules for the **online and other distance** sales of goods. This Directive should **establish a set of clear, common** rules **that provide** for the **contractual rights of consumers when buying goods and help to provide a stable trading environment for sellers. Those rules should recognise that consumers and sellers are not on an equal footing and that, therefore, the legal framework needs to be just and fair in order to ensure that there is a high level of consumer protection, whilst continuing to recognise the concerns of businesses, including small businesses.**

Or. en

**Amendment 423**

**Lucy Anderson, Evelyne Gebhardt, Olga Sehnalová, Biljana Borzan, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière**

**Proposal for a directive**

**Recital 14**

*Text proposed by the Commission*

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. **In addition,** in certain areas regulated by this Directive Member States should **also** be free to lay down rules in relation to those aspects which are not regulated in this

*Amendment*

(14) This Directive should not affect contract laws of Member States in areas not regulated by this Directive. **In addition, its implementation should under no circumstances constitute grounds for reducing the level of protection afforded to consumers in fields that fall within the**

Directive: *this concerns limitation periods for exercising the consumers' rights and commercial guarantees*. Finally, in relation to the right of redress of the seller, Member States should be free to provide more detailed conditions on the exercise of such right.

*scope of Union law. Furthermore*, in certain areas regulated by this Directive Member States should be free to lay down rules in relation to those aspects which are not regulated in this Directive. Finally, in relation to the right of redress of the seller, Member States should be free to provide more detailed conditions on the exercise of such right.

Or. en

**Amendment 424**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Recital 19**

*Text proposed by the Commission*

(19) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in case of failure to deliver what is expected, it is essential to **fully harmonise rules for determining the conformity with the contract**. **Applying** a combination of subjective and objective criteria **should** safeguard legitimate interests of **both parties** to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract - but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.

*Amendment*

(19) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in case of failure to deliver what is expected, it is essential to **apply** a combination of subjective and objective criteria **in order to** safeguard **the** legitimate interests of **the parties, consumers and sellers**, to a sales contract. Conformity with the contract should be assessed by taking into account not only requirements which have actually been set in the contract - including in pre-contractual information which forms an integral part of the contract **or models and samples shown in shop windows, showrooms and trade fairs** - but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.

Or. en

## Justification

*With the extension of scope of the proposal to sales contracts for goods bought in a traditional manner conformity should no longer be limited to requirements set in the contract and pre-contractual information. In addition, product samples shown in shop windows, in show rooms or during trade fairs, which do not compose pre-contractual information can form an important criterion to assess conformity with the contract for offline sales.*

### Amendment 425

**Lucy Anderson, Olga Sehnalová, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière**

### Proposal for a directive

#### Recital 26

#### *Text proposed by the Commission*

(26) In order to allow businesses to rely on a single set of rules across the Union, it is ***necessary to fully*** harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first two years, in order to benefit from the presumption of lack of conformity, ***the consumer should*** only demonstrate that the good is not conforming, without also needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In order to increase legal certainty in relation to available remedies for lack of conformity with the contract ***and in order to eliminate one of the major obstacles inhibiting the internal market, a fully harmonised order in which remedies can be exercised should be provided for. In particular, the consumer should enjoy a choice between repair or replacement as a first remedy which should help in maintaining the contractual relation and mutual trust. Moreover, enabling consumers to require repair should encourage a sustainable consumption and could contribute to a greater durability of products.***

#### *Amendment*

(26) In order to allow businesses to rely on a single set of rules across the Union ***and to provide a high level of consumer protection***, it is ***justified to*** harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. Within the first two years, ***in addition to a short-term right to reject goods, the consumer should***, in order to benefit from the presumption of lack of conformity, only ***have to*** demonstrate that the good is not conforming, without also needing to demonstrate that the lack of conformity actually existed at the relevant time for establishing conformity. In ***addition, in*** order to increase legal certainty in relation to ***the*** available remedies for lack of conformity with the contract, ***provision should be made for harmonised rules that enshrine the principle of a free choice of remedies.***

**Amendment 426**

**Lucy Anderson, Olga Sehnalová, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière**

**Proposal for a directive**  
**Recital 34**

*Text proposed by the Commission*

(34) In order to ensure transparency, certain transparency requirements for commercial guarantees should be provided. Moreover in order to improve legal certainty and to avoid that consumers are misled, this Directive should provide that where commercial guarantee conditions contained in advertisements or pre-contractual information are more favourable to the consumer than those included in the guarantee statement the more advantageous conditions should prevail. Finally, this Directive should provide rules on the content of the guarantee statement and the way it should be made available to consumers. Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, provided that those rules do not deprive consumers of the protection afforded to them by the **fully** harmonised provisions of this Directive on commercial guarantees.

*Amendment*

(34) In order to ensure transparency, certain transparency requirements for commercial guarantees should be provided. Moreover in order to improve legal certainty and to avoid that consumers are misled, this Directive should provide that where commercial guarantee conditions contained in advertisements or pre-contractual information are more favourable to the consumer than those included in the guarantee statement the more advantageous conditions should prevail. Finally, this Directive should provide rules on the content of the guarantee statement and the way it should be made available to consumers. Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, provided that those rules do not deprive consumers of the protection afforded to them by the harmonised provisions of this Directive on commercial guarantees. ***This Directive should ensure that consumers continue to enjoy a high degree of consumer protection in accordance with Union law with regard to commercial guarantees.***

*Justification*

*It is in keeping with the provision of the Consumer Rights Directive that new legislation regarding the internal market should keep consumer protection provisions in mind.*

**Amendment 427**

**Lucy Anderson, Liisa Jaakonsaari, Sergio Gutiérrez Prieto**

**Proposal for a directive**

**Article 1 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. 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.** **deleted**

Or. en

*Justification*

*It is illogical to exclude these sales from the expanded scope of this directive as consumers do not always have the requisite knowledge to know the exact condition of the product they have bid on.*

**Amendment 428**

**Lucy Anderson, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Evelyne Gebhardt**

**Proposal for a directive**

**Article 2 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) ‘producer’ means the manufacturer of **goods**, the importer of goods into the Union **or** any person purporting to be a producer by placing their name, trade mark or other distinctive sign on the goods;

(d) ‘producer’, **in relation to goods**, means the manufacturer of **a product**, the importer of goods into the Union, **the producer of any raw material or the manufacturer of a component part, as well as** any person purporting to be a producer by placing their name, trade mark or other distinctive sign on the goods;

Or. en

#### Amendment 429

Lucy Anderson, Biljana Borzan, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière, Evelyne Gebhardt

#### Proposal for a directive

#### Article 2 – paragraph 1 – point i

##### *Text proposed by the Commission*

(i) ‘free of charge’ means free of the **necessary** costs incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials

##### *Amendment*

(i) ‘free of charge’ means free of the **usual** costs incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials

Or. en

#### Amendment 430

Lucy Anderson, Evelyne Gebhardt, Olga Sehnalová, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière

#### Proposal for a directive

#### Article 3 – paragraph 1

##### *Text proposed by the Commission*

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.

##### *Amendment*

**In so far as provided for, or not expressly regulated otherwise, in this Directive,** Member States **may** maintain or introduce **more** stringent provisions **for the protection of consumers**.

Or. en

##### *Justification*

*Whilst the harmonisation of certain aspects concerning contracts for sales of goods, taking as a base a high level of consumer protection, and recognising Member States’ competences within the Union, is justifiable, it must also be borne in mind that European case law on this subject is evolving very quickly. In order to provide a greater degree of legal certainty to businesses and consumers alike, it is both sensible and prudent to allow member states to maintain or allow them to introduce more stringent provisions for the protection of consumers in so far as provided for, or not expressly regulated otherwise in this Directive.*

**Amendment 431**  
**Evelyne Gebhardt**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) be **delivered** along with such accessories including packaging, installation instructions or other instructions as the consumer may expect to receive; and

*Amendment*

(b) be **surrendered** along with such accessories including packaging, installation instructions or other instructions as the consumer may expect to receive; and

Or. de

**Amendment 432**  
**Lucy Anderson, Olga Sehnalová, Biljana Borzan, Liisa Jaakonsaari, Sergio Gutiérrez Prieto, Virginie Rozière, Evelyne Gebhardt**

**Proposal for a directive**  
**Article 9 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. A repair or replacement shall be completed within a reasonable time, **and in any event within 30 days from the moment the seller has acquired physical possession of the goods or the consumer has handed over the goods to the carrier chosen by the seller. Such repair or replacement shall be** 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.

Or. en

*Justification*

*Amendment changed in alignment with extension of scope in order to differentiate between*

*various sales channels.*