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from : General Secretariat of the Council  
to : Working Party on Consumer Protection and Information

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Subject : Proposal for a Directive of the European Parliament and of the Council on  
consumer rights

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Delegations will find attached the Presidency text on the above-mentioned proposal.

The additions with respect to the Commission's proposal are marked in **bold** and deletions with ~~strikethrough~~.

The additions with respect to previous document 11565/09 are marked in **bold** and deletions with ~~bold~~.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on consumer rights**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

...

- (37) ~~For the purpose of simplification and legal certainty, the right of withdrawal should apply to all types of off premises contracts, except under strictly defined circumstances which can easily be proved. Therefore, no right of withdrawal should apply for~~ **There are situations in case of off-premises contracts where the consumer should have no right of withdrawal, such as** urgent repairs at the consumer's home for which such a right of withdrawal would be incompatible with the emergency situation as well as for supermarket home-delivery schemes which allow consumers to select food, drinks and other goods intended for current consumption in the household through the supermarket's website and have them delivered at their home. These are goods, which are inexpensive and bought regularly by consumers for their every day's consumption or everyday use in the household and should therefore not be subject to a right of withdrawal.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

~~(37a) The main difficulties encountered by consumers and the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to clarify and harmonise the national rules on delivery and passing of risk. [Moved to recital 37c]~~ **(37b) The rules on remedies for non-conformity should apply to contracts for sale of goods as well as to contracts where the aim of the contract is to transfer the ownership of the goods from the trader to the consumer. However, the rules concerning the determination of the conditions for and the moment at which the ownership in the goods is transferred, remain subject to national law and are thus not affected by this Directive.**

**(37b) Where a contract has as its object both the goods and services are parts of the contract. However, in case of such contracts, the rules on remedies for non-conformity should apply only to the goods. However, there are contracts for sale of goods which include a minor service performance necessary to fulfil the contract for the sale of goods, for instance where a seller accepts to adjust the goods to fit the consumer or where a seller accepts to install the goods. The rules on remedies for non-conformity should therefore apply also to contracts which include service performances such as installation, assemblage or adjustment.**

~~(37c) The rules for non-conformity should not apply to spare parts that have been replaced while remedying the lack of conformity. However, if the lack of conformity of the repaired goods reappears in a short period of time, the consumer should be able to choose any available remedy, including rescission of the contract.~~ The main difficulties encountered by consumers and the main source of disputes with traders are about delivery of goods, including goods getting lost or damaged during transport and late and partial delivery. Therefore it is appropriate to clarify and harmonise the national rules on **when** delivery and passing of risk **should occur. The place and modalities of delivery should still be subject to national law.**

(38) In the context of consumer sales, the delivery of goods can take place in various ways. Only a rule which may be freely derogated from will allow the necessary flexibility to take into account those variations. **Where the trader fails to deliver in time, the consumer should always be entitled to terminate the contract and request a refund, without prejudice to other remedies available according to the applicable national law. The trader should then be obliged to refund all sums paid and considerations provided by the consumer within a short period of time. For the trader to comply, it should be enough to initiate the refund, within the prescribed time. Any delays not related to him, for instance due to the time for bank transactions, should not be considered. However, it is appropriate to provide that in certain circumstances, for example in cases where the trader would have difficulties to resell customised goods, the consumer may only terminate the contract if the delay is significantly important to him and the trader was, or should have been, aware of that. This might be the case where the good was ordered for a special occasion and due to the delay would not arrive until after the occasion it was aimed for.**

(38a) The consumer should be protected against any risk of loss or damage of the goods occurring **when the goods are not within his control. During the a transport arranged or carried out by the trader, this should apply also in situations when where the consumer has chosen a particular delivery method from a range of options offered by the trader. However, The rule introduced on the passing of risk should however not apply where the consumer unduly delays taking physical possession of the goods (for example, when the goods are not collected by the consumer from the post office or trader's premises within the agreed or set deadline fixed by the latter).** In those circumstances, the consumer should bear the risk of loss or deterioration after the time of delivery as agreed with the trader. **Should there be no agreement on the time of delivery and the consumer unduly delays taking possession of the goods, the risk passes on the consumer after [thirty] days from the conclusion of the contract from the moment when he reasonably should have taken possession of the goods. The nature of the goods, for instance if they are perishable, may cause even a short delay to be considered as undue. Situations where the consumer exercises control over the goods, but leaves the goods with the trader, for instance for storage, instead of taking physical possession of them should be regarded as comparable with situations where the consumer has acquired physical possession and the risk should then pass to the consumer.**

- (39) The trader should be liable to the consumer if **where** the goods are not in conformity with the contract. The goods should be presumed **not** to be in conformity with the contract if **unless** they satisfy a number of conditions ~~concerning mainly the qualities of the goods~~. **The elements mentioned in the presumption are cumulative, but if the circumstances of the case render any particular element manifestly inappropriate the remaining elements of the presumption nevertheless still apply.** The quality and performance which consumers can reasonably expect will depend *inter alia* on whether the goods are new or second-hand as well as on the expected life-span of the goods. **Where the consumer was, or could should have reasonably been, aware of a defect on the goods, the consumer shall not be entitled to rely on the provisions on the lack of conformity, there should be no lack of conformity.** However, this should not ~~mean~~ **imply that there is any obligation of for the consumer to inspect the goods at the time of delivery beyond a cursory glance.** **The Directive should not apply to situations where the goods are subject to a third party right that would adversely affect the consumer. Neither does this Directive affect producer's liability. These situations should be subject to national law.**
- (40) If the goods ~~is~~ **are** not in conformity with the contract, ~~firstly,~~ the consumer should **initially** have the possibility to require the trader to repair **or replace** the goods or, ~~to replace them at the trader's choice unless the trader proves that those remedies are~~ **within the first fifteen days from the day of delivery, to have the contract terminated.** **The right to terminate the contract during this initial period may strengthen consumer confidence. However, in order not to introduce an unnecessary burden on the trader, that right to terminate the contract should be limited, where the trader would have difficulties reselling the goods, for instance in relation to customised goods. When considering if repairing or replacing a good would be** unlawful, impossible or **would** causes the trader disproportionate effort, the trader's effort should be determined objectively considering costs incurred by the trader when remedying the lack of conformity, the value of the goods and the significance of the lack of conformity. The lack of spare parts should not be a valid ground to justify the trader's failure to remedy the lack of conformity within a reasonable time or without a disproportionate effort. **The legal consequences of terminating the contract should be subject to national law.**

**(40a) When the trader has either refused or has ~~more than~~ once failed to remedy the lack of conformity, the consumer should be entitled to choose freely any of the available remedies. The trader's refusal can be either explicit or implicit, meaning in the latter case that the trader does not respond or ignores the consumer's request to remedy the lack of conformity. [Moved from former recital 42]**

(41) The consumer should not bear any costs for remedying the lack of conformity, particularly the cost of postage, labour and materials. ~~Furthermore,~~ **The consumer should not only compensate the trader for the use of the defective goods in situations where the contract has been terminated and the consumer has benefited from the use of the goods.**

~~(42) When the trader has either refused or has more than once failed to remedy the lack of conformity, the consumer should be entitled to choose freely any of the available remedies. The trader's refusal can be either explicit or implicit, meaning in the latter case that the trader does not respond or ignores the consumer's request to remedy the lack of conformity.~~

**(42a) There should be a general limitation period of two years, in during which the trader should be liable for the lack of conformity. However, ~~taking into account that there are complex goods on the market, usually of a great value, the limitation period for such goods should be longer due to their life span that goes much beyond two years (cars, refrigerators, washing machines, construction materials, etc.),~~ where the lack of conformity relates to the purpose for which the goods should be used, the time limit should be ten years, due to the fact that for some goods it is difficult to discover this kind of lack of conformity. This goes for example for construction materials where the lack of conformity may not show until after a certain time.**

**(42b) In order to prevent, when a good is being repaired, spare parts of minor quality being installed, which would cause detriment to consumers, the trader should be liable for the spare parts during a period of six months after the repair independently of the remaining period during which the trader is liable for the lack of conformity of the main good.**

**(42c) To limit the costs of repair in order not to introduce an unnecessary burden on the trader, the consumer shall within a reasonable time inform the trader of the lack of conformity of a good. Circumstances in the particular case, in relation for instance to the nature of the lack of conformity or the time within which the consumer reasonably could have been expected to contact the trader, are of relevance when deciding if the consumer has acted appropriately.**

(43) ~~Directive 1999/44/EC allowed the Member States to set a period of at least two months during which the consumer was to inform the trader of any lack of conformity. The diverging transposition laws have created barriers to trade. Therefore, it is necessary to remove this regulatory option and improve legal certainty by obliging consumers to inform the trader of the lack of conformity within two months from the date of detection.~~

(44) Some traders or producers offer consumers commercial guarantees. In order to ensure that consumers are not misled, the commercial guarantees should include certain information, including their duration, territorial scope and a statement that the commercial guarantee does not affect the consumer's legal rights. **The consumer should understand from that statement that a commercial guarantee ~~ascertains~~ does not deprive him of his rights that go beyond rights guaranteed to him by law.**

...

## Chapter I

### Subject matter, definitions and scope

#### *Article 2*

#### *Definitions*

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

...

- (18) 'commercial guarantee' means any undertaking, **against consideration or provided for free,** by the trader or producer (the 'guarantor') to the consumer ~~beyond the legal guarantee~~ **besides his legal obligations** to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising **commercial communication** available at the time of, or before the conclusion of the contract;

...



## Chapter IV

### Other consumer rights specific to sales contracts

#### Article 21

##### Scope

1. This Chapter shall apply to sales contracts ~~between~~ **under which the trader and the consumer for sale of goods undertakes to transfer the ownership of goods to the consumer against consideration.** ~~Without prejudice to Article 24(5), Where the contract is a mixed purpose contract having~~ **has** as its object both goods and services, this Chapter shall only apply to the goods, **unless the service performance is necessary to fulfil the contract for sale of goods, in which case this Chapter shall apply to the entire contract.**
2. This Chapter shall also apply to contracts for the supply of goods to be manufactured or produced.
3. ~~This Chapter shall not apply to the spare parts replaced by the trader when he has remedied the lack of conformity of the goods by repair under Article 26.~~
4. ~~Member States may decide not to apply~~ This Chapter **shall not apply** to the sale of second-hand goods at public auctions.

Article 22

Delivery

1. Unless the parties have agreed otherwise, the trader shall deliver the goods by transferring the ~~material~~ **physical** possession of the goods to the consumer or to a third party, ~~other than the carrier and~~ indicated by the consumer **and acting on his behalf, immediately when the contract is concluded on business premises and otherwise** within a ~~maximum of~~ **reasonable time which in any event cannot be more than** thirty days from the day of the conclusion of the contract.
  - 1a. **Where the trader has failed to fulfil his obligations to deliver, the consumer may, in accordance with the applicable national law, allow an additional time for delivery, enforce the performance of the contract, withhold payment, terminate the contract and ask for damages.**
2. **If In any event, where** the trader has failed to fulfil his obligation to deliver **in the time in accordance with paragraph 1**, the consumer shall be entitled to **terminate the contract and request a refund without any undue delay. The trader shall then refund all** any sums paid **by the consumer without any undue delay but or other considerations provided by the consumer** within **no later than** seven days from the date of delivery provided for in ~~paragraph 1~~ **when he was informed about the consumer's decision to terminate the contract. The consumer may no longer terminate the contract if the goods have been delivered.**

3. ~~Besides the remedies provided by the Directive for late delivery, the consumer may refer to other remedies provided by national contract law, such as provisions allowing the parties to enforce the performance of a contract or allowing consumers to withhold payment and/or ask for damages.~~

Where:

- (a) the contract concerns goods to be manufactured, produced or especially ordered for the consumer and the trader would have difficulties reselling the goods, or  
(b) the goods have been delivered or delivery is imminent,  
the consumer may only terminate the contract in accordance with paragraph 2 if the delay was of significant importance to him and the trader was, or should have been, aware of this.

*Article 23*

*Passing of risk*

1. The risk of loss of or damage to the goods shall pass to the consumer ~~when~~ where he or a third party, ~~other than the carrier and indicated by the consumer~~ him and acting on his behalf, has acquired the ~~material~~ physical possession of the goods, or where the consumer has obtained control over the goods in a way comparable with physical possession.
2. ~~The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if~~ Where the consumer or a third party, ~~other than the carrier and indicated by the consumer~~ and acting on his behalf, has failed to take reasonable steps to acquire the ~~material~~ physical possession of the goods or to obtain control over the goods in a comparable way, having been given reasonable opportunity to acquire such a possession or control, the risk referred to in paragraph 1 shall pass to the consumer at the time he failed to take such steps.

Article 24

Conformity with the contract

1. The trader shall deliver the goods in conformity with the sales contract, **particularly regarding quality, quantity and description. The goods shall be contained or packaged in the manner required by the contract.**
  
2. Delivered goods shall be presumed **not** to be in conformity with the contract **if unless** they satisfy the following conditions:
  - (a) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model;
  - (b) they are fit for any particular purpose for which the consumer requires them and which he made known to the trader ~~at the time of~~ **before** the conclusion of the contract and which the trader has accepted;
  - (ba) ~~they contain~~ **are supplied with** user instructions, where ~~it~~ **this** is necessary for the proper use of the goods;
  - (bb) **they are contained or packaged in a manner adequate to preserve and protect the goods;**
  - (c) they are fit for the purposes for which goods of the same type are normally used; ~~or~~ **and**
  - (d) they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made ~~about them~~ by the trader, the producer or his representative, particularly in ~~advertising a~~ **commercial communication** or on labelling.
  
3. There shall be no lack of conformity for the purposes of this Article **if where**, at the time the contract was concluded, the consumer was ~~aware~~, or should reasonably have been, aware of the lack of conformity, or **if where** the lack of conformity has its origin in materials supplied by the consumer **if where** **he has been informed by the trader of the unsuitability of the materials.**

4. The trader shall not be bound by **a** public statements, as referred to in paragraph 2(d) **where** if he shows that one of the following situations existed:
- (a) he was not, and could not reasonably have been, aware of the statement in question;
  - (b) by the time of conclusion of the contract the statement had been corrected **in a manner which gave the consumer an opportunity to become aware of it;**
  - (c) the decision to buy the goods could not have been influenced by the statement.
5. Any lack of conformity resulting from the incorrect installation, **assemblage or adjustment** of the goods **made by the trader or under his responsibility** shall be considered as a lack of conformity of the goods ~~where the installation forms part of the sales contract and the goods were installed by the trader or under his responsibility. The same shall apply equally if the goods,~~ **Where the goods are** intended to be installed, **assembled or adjusted** by the consumer, ~~are installed by the consumer and the incorrect installation is~~ **any lack of conformity** due to a shortcoming in the ~~installation~~ instructions **should be considered as a lack of conformity of the goods.**

*Article 25*

~~*Legal rights*~~—*Liability for lack of conformity*

The trader shall be liable to the consumer for any lack of conformity which exists at the time the risk passes to the consumer.

Article 26

Remedies for lack of conformity

1. As **Under the conditions** provided for in paragraphs 2 to 5, where the goods do not conform to the contract, the consumer ~~shall be~~ is entitled to **have**:
  - (a) ~~have~~ the lack of conformity remedied by repair; ~~or~~
  - (aa) the lack of conformity remedied by** replacement;
  - (b) ~~have~~ the price reduced; **or**
  - (c) ~~have~~ the contract ~~rescinded~~ **terminated**.
  
2. The trader shall remedy the lack of conformity by either repair or replacement according to his ~~his~~ **the** choice **of the consumer**. **During a period of fifteen days from the day of delivery the consumer may also terminate the contract, unless the trader, after the contract has been terminated, would have difficulties reselling the goods and:**
  - (a) the goods are perishable;**
  - (b) the goods are manufactured, produced or especially ordered for the consumer; or**
  - (c) the consumer should have discovered the lack of conformity before carrying out an act inconsistent with returning the goods.**
  
3. Where **the remedy chosen by the consumer is repair or replacement and** the trader has proved that remedying the lack of conformity **according to the choice of the consumer** ~~by repair or replacement~~ is unlawful, impossible or would cause the trader a disproportionate effort, the consumer **shall be offered the other of those two remedies. In the event that both of those remedies are unlawful, impossible or would cause the trader a disproportionate effort, the consumer** may choose to have the price reduced or, **if the lack of conformity is not minor**, the contract ~~rescinded~~ **terminated**.

**3a.** A trader's effort is disproportionate if **where** it imposes costs on him which, in comparison with the price reduction or the ~~restitution~~ **termination** of the contract, are excessive, taking into account the value of the goods if **where** there was no lack of conformity and the significance of the lack of conformity.

~~The consumer may only rescind the contract if the lack of conformity is not minor.~~

4. The consumer may resort to any remedy available under paragraph 1, where one of the following situations exists:

- (a) the trader has implicitly or explicitly refused to remedy the lack of conformity;
- (b) the trader has failed **or, according to the objective circumstances, will fail** to remedy the lack of conformity within a reasonable time;
- (c) the trader has tried to remedy the lack of conformity, causing significant inconvenience to the consumer, **or if the trader, according to the objective circumstances, will not be able to remedy the lack of conformity without causing significant inconvenience to the consumer;**
- (d) **after repair**, [the same]/[a] defect has reappeared [**re**]**appears** ~~more than once~~ within a short period of time.

**Without prejudice to paragraph 2, the consumer may only terminate the contract under this paragraph where the lack of conformity is not minor.**

5. The significant inconvenience for the consumer and the reasonable time needed for the trader to remedy the lack of conformity shall be assessed taking into account the nature of the goods ~~or~~ **and** the purpose for which the consumer acquired the goods as provided for by Article 24(2)(b).

#### *Article 27*

#### *Costs and damages*

1. The consumer shall be entitled to have the lack of conformity remedied free of any costs. **The consumer shall compensate the trader for the use of the defective goods only in cases where the contract has been terminated and the consumer has benefited from the use of the good.**

2. Without prejudice to the provisions of this Chapter, the consumer ~~may~~ **shall be able to** claim damages **provided for by national law** for any loss not remedied in accordance with Article 26.

*Article 28*

*Time limits and burden of proof*

1. The trader shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the risk passed to the consumer.
  - 1a. Where a good, in accordance with Article 24(2)(b) and (c), is not fit for a particular purpose for which the consumer requires it or for the purposes for which goods of the same type are normally used, the trader shall be held liable under Article 25 where the lack of conformity becomes apparent within ten years as from the time the risk passed to the consumer.**
  - 1b. In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year as from the time the risk passed to the consumer. [Partially former paragraph 3]**
2. When the trader has remedied the lack of conformity by replacement, he shall be held liable under Article 25 where the lack of conformity becomes apparent within two years as from the time the consumer or a third party indicated by the consumer has acquired the ~~material~~ **physical** possession of the replaced goods.



- 2a. When the trader has remedied the lack of conformity by repair, the periods provided in paragraph 1, 1a and 1b shall be extended by the period of time during which the goods were not in the physical possession of the consumer due to the repair. However, if where the consumer has not acquired failed to take reasonable steps to acquire the physical possession of the goods after the repair ~~because he has failed to take reasonable steps, the extended period should~~ the time thereafter shall not be counted ~~up to the date, when the consumer should have acquired the physical possession of the repaired goods in accordance with the trader's indication.~~
- 2b. Where the trader has repaired the good according to Article 26 by replacement of parts, the trader shall be held liable for the lack of conformity of the spare parts during a period of six months after the repair, even if the remaining duration of his liability of the main good is shorter than six months.**
3. In the case of second hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year.
4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within a reasonable time ~~two months from the date on which,~~ having regard to all circumstances of the case after he has detected the lack of conformity.
5. Unless proved otherwise, any lack of conformity which becomes apparent within ~~six~~ twelve months of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods ~~and~~ or the nature of the lack of conformity.
- 6. The trader shall not be entitled to rely on the provisions of paragraphs 1 to 5 where the lack of conformity relates to facts of which the trader knew or could reasonably be expected to have known and which he did not disclose to the consumer.**

*Article 29*

*Commercial guarantees*

1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. In the absence of the guarantee statement, the commercial guarantee shall be binding under the conditions laid down in the ~~advertising~~ **commercial communication** on the commercial guarantee.

**In case of a difference between the guarantee statement and the commercial communication, the one more favourable for the consumer shall prevail.**

2. The guarantee statement shall be drafted in plain intelligible language and be legible. It shall include the following:
  - (a) legal rights of the consumer, as provided for in Articles 26 **and 28**, and a clear statement that those ~~legal~~ rights are not affected by the commercial guarantee,
  - (b) set the contents of the commercial guarantee and the conditions for making claims, ~~notably~~ **especially** the duration, territorial scope and the name and address of the guarantor **and, if different from the guarantor, the name and address of a third person where the commercial guarantee shall be claimed,**
  - (c) without prejudice to Articles 32 and 35 and Annex III(1)(j), set out, where applicable, that the commercial guarantee cannot be transferred to a subsequent buyer.
3. ~~If the consumer so requests,~~ **The** trader shall make the guarantee statement available in a durable medium.
4. Non-compliance with paragraph 2 or 3 shall not affect the validity of the guarantee.