

Thursday 24 March 2011

Consumer rights *I**

P7_TA(2011)0116

European Parliament amendments adopted on 24 March 2011 to the proposal for a directive of the European Parliament and of the Council on consumer rights (COM(2008)0614 – C6-0349/2008 – 2008/0196(COD))

(2012/C 247 E/16)

(Ordinary legislative procedure: first reading)

The proposal was amended as follows ⁽¹⁾:

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Amendment 1
Proposal for a directive
Recital 2

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects *and move away from the minimum harmonisation approach in the former Directives under which* Member States *could* maintain or adopt *stricter* national rules.

(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects *whilst allowing* Member States *to* maintain or adopt national rules, *in relation to certain other aspects, providing for a higher level of consumer protection.*

Amendment 2
Proposal for a directive
Recital 5

(5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited *by consumers*. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium size enterprises (including individual *entrepreneurs*) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore the

(5) The cross-border potential of distance selling which should be one of the main tangible results of the internal market is not fully exploited. Compared with the significant growth of domestic distance sales over the last few years, the growth in cross-border distance sales has been limited. This discrepancy is particularly significant for Internet sales for which the potential of further growth is high. The cross-border potential of contracts negotiated away from business premises (direct selling) is constrained by a number of factors including the different national consumer protection rules imposed upon the industry. Compared with the growth of domestic direct selling over the last few years, in particular in the services sector (e.g. utilities), the number of consumers using this channel for cross-border purchases has remained flat. Responding to increased business opportunities in many Member States, small and medium size enterprises (including individual *traders*) or agents of direct selling companies should be more inclined to seek business opportunities in other Member States, in particular in border regions. Therefore

⁽¹⁾ The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0038/2011).

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full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to **the** better functioning of the business to consumer internal market.

the full harmonisation of **certain aspects of** consumer information and **of** the right of withdrawal in distance and off-premises contracts will contribute to **a high level of consumer protection and** better functioning of the business-to-consumer internal market.

Amendment 3
Proposal for a directive
Recital 6

(6) *The laws of the Member States on consumer contracts show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. The existing Community legislation in the field of consumer contracts concluded at a distance or away from business premises consumer goods and guarantees as well as unfair contract terms establishes minimum standards for harmonising legislation allowing the Member States the possibility to maintain or introduce more stringent measures which ensure a higher level of consumer protection in their territories. Furthermore, many issues are regulated inconsistently between directives or have been left open. These issues have been addressed differently by the Member States. As a result, the national provisions implementing directives on consumer contract law diverge significantly.*

deleted

Amendment 4
Proposal for a directive
Recital 7

(7) *These* disparities create significant internal market barriers affecting **business** and consumers. They increase compliance costs to **business** wishing to engage in cross border sale of goods or provision of services. Fragmentation also undermines consumer confidence in the internal market. **The negative effect on consumer confidence is strengthened by an uneven level of consumer protection across the Community. This problem is particularly acute in the light of new market developments.**

(7) **Certain** disparities **in the Member States' legislation in the field of consumer contracts, particularly distance contracts or off-premises contracts,** create significant internal market barriers affecting **traders** and consumers. They increase compliance costs to **traders** wishing to engage in cross border sale of goods or provision of services. **Disproportionate** fragmentation also undermines consumer confidence in the internal market.

Amendment 5
Proposal for a directive
Recital 8

(8) Full harmonisation of some key regulatory aspects **will** considerably increase legal certainty for both consumers and **business**. Both consumers and **business** will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Community. **The effect will be to** eliminate the barriers stemming from the fragmentation of

(8) **Unless otherwise specified and in accordance with Article 169 of the Treaty on the Functioning of the European Union, the provisions of this Directive should not hinder the Member States from adopting or maintaining more stringent measures of national law, which improve consumer protection. However, the** full harmonisation of some key regulatory aspects **is justified in order to secure a single regulatory**

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the rules and **to** complete the internal market in this area. **These barriers can only be eliminated by establishing uniform rules at Community level. Furthermore consumers will enjoy a high common level of protection across the Community.**

framework for consumer protection and in order to considerably increase legal certainty for both consumers and **traders in cross-border business. In this case, both** consumers and **traders** will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Union. **Thus, the consumer will enjoy a high common level of protection across the Union. Furthermore, by establishing uniform rules at Union level, this should** eliminate the barriers stemming from the **disproportionate** fragmentation of the rules and complete the internal market in this area.

Amendment 6
Proposal for a directive
Recital 10 a (new)

(10a) This Directive should not apply to healthcare, that is to say health services provided by health professionals to patients to assess, maintain or restore their health.

Amendment 7
Proposal for a directive
Recital 10 b (new)

(10b) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the very specific nature of those activities, in the light of which Member States should be able to adopt other, including more stringent, consumer protection measures in relation to such activities.

Amendment 8
Proposal for a directive
Recital 11

(11) The existing **Community** legislation **on** consumer financial services contains numerous rules on consumer protection. For this reason **the provisions of this Directive cover contracts relating to financial services only insofar as this is necessary to fill the regulatory gaps.**

(11) The existing **Union** legislation **inter alia relating to** consumer financial services **or package travel** contains numerous rules on consumer protection. For this reason, **Articles 5 to 19 and Article 23a of this Directive should not apply to contracts relating to financial services and Articles 9 to 19 should not apply to distance and off-premises contracts relating to package travel, without prejudice to other provisions of existing Union legislation. With regard to financial services, Member States should be encouraged to draw inspiration from existing Union legislation in that area when legislating in areas not regulated at Union level, in such a way that a level playing field for all consumers and all contracts relating to financial services is ensured. The Commission should aim at complementing Union legislation in the field of financial services in order to close existing gaps and protect consumers in all types of contracts.**

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Amendment 9
Proposal for a directive
Recital 11 a (new)

(11a) Articles 9 to 19 of this Directive should be without prejudice to the application of the provisions of the Member States relating to the acquisition of immovable property and guarantees relating to immovable property or the formation or transfer of rights in rem in immovable property. This includes agreements connected with such legal acts, such as sales of immovable property still to be developed and hire-purchase.

Amendment 10
Proposal for a directive
Recital 11 b (new)

(11b) As no difficult psychological situation applies when contracts, in accordance with the provisions of the Member States, are established by a public office-holder, such contracts should be excluded from the scope of Articles 9 to 19 of this Directive.

Amendment 11
Proposal for a directive
Recital 11 c (new)

(11c) For the purposes of this Directive, leasing contracts for motor vehicles, where the motor vehicle is returned at the end of the contract, should be considered as motor vehicle rental services.

Amendment 12
Proposal for a directive
Recital 11 d (new)

(11d) Many Member States have chosen to apply national consumer protection rules to other entities such as non-governmental organisations, start-up businesses and small and medium-sized enterprises, and other Member States may wish to do so. It should be recalled that Member States may extend the scope of the national rules adopted in order to implement this Directive to cover natural or legal persons who are not consumers within the meaning of this Directive.

Amendment 13
Proposal for a directive
Recital 11 e (new)

(11e) Digital content transmitted to the consumer in a digital format, where the consumer obtains the possibility of use on a permanent basis or in a way similar to the physical possession of a good, should be treated as goods for the application of the provisions of this Directive which apply to sales contracts. However, a withdrawal right should only apply until the moment the consumer chooses to download the digital content.

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Amendment 14
Proposal for a directive
Recital 12

(12) The new definition of distance contract should cover all cases where **sales and service** contracts are concluded using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). This should create a level playing field for all distance traders. **It should also improve legal certainty as compared to the current definition requiring the presence of an organised distance selling scheme run by the trader up to the conclusion of the contract.**

(12) The new definition of distance contract should cover all cases where contracts **concerning the supply of a good or the provision of a service** are concluded **between the trader and the consumer under an organised distance sales or service-provision scheme and without the simultaneous physical presence of the parties**, using exclusively one or more means of distance communication (such as mail order, Internet, telephone or fax). **Websites offering only information on the trader, his goods and/or services should not be covered by the definition of such an organised distance sales or service-provision scheme, even if such websites indicate one or more means of distance communication.** This should create a level playing field for all distance traders.

Amendment 15
Proposal for a directive
Recital 13

(13) The particular circumstances under which an offer was made or the contract was negotiated should not be relevant in the definition of a distance contract. The fact that the trader **is an occasional distance seller or that he** uses an organised scheme run by a third party such as an online platform, should not deprive consumers of their protection. Similarly, a transaction negotiated face to face between the trader and the consumer away from business premises should be a distance contract, if the contract has then been concluded through the exclusive use of means of distance communication, such as the Internet or telephone. For traders, a simpler definition of a distance contract should improve legal certainty and protect them from unfair competition.

(13) The particular circumstances under which an offer was made or the contract was negotiated should not be relevant in the definition of a distance contract. The fact that the trader uses an organised **distance sales or service-provision** scheme run by a third party such as an online platform, should not deprive consumers of their protection. Similarly, a transaction negotiated face to face between the trader and the consumer away from business premises should be a distance contract, if the contract has then been concluded through the exclusive use of means of distance communication, such as the Internet or telephone. For traders, a simpler definition of a distance contract should improve legal certainty and protect them from unfair competition.

Amendment 16
Proposal for a directive
Recital 14

(14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are **under** psychological **pressure** no matter whether they have solicited the trader's visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract.

(14) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, away from business premises, for example at the consumer's home or workplace. In an off-premises context, consumers are **temporarily in a special situation which is different from the situation in a shop, for instance from a psychological point of view and as regards the scope for comparing goods and prices**, no matter whether they have solicited the trader's visit or not. Furthermore, in order to prevent circumventions of rules when consumers are approached away from business premises, a contract negotiated, for example at the consumer's home but concluded in a shop should be regarded as an off-premises contract **only when the main components of the contract have been determined in the course of an excursion, a leisure event or a sales demonstration. Nevertheless, contracts under which the payment to be made by the consumer does not exceed EUR 40 should not be covered by the information requirements laid down in this Directive, so that for instance street traders, whose goods are supplied immediately, are not overburdened with obligations as regards information. A right of withdrawal is also**

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Amendment 17
Proposal for a directive
Recital 15

(15) Business premises should include premises in whatever form (such as shops or lorries) which serve as a permanent place of **business** for the trader. Market stalls **and fair stands** should be treated as business premises even though they may be used by the trader on a temporary basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.

unnecessary in such cases, since the implications of such contracts are readily understandable. Nevertheless Member States should remain free, and be encouraged, to set a lower value.

(15) Business premises should include premises in whatever form (such as shops, **taxis** or lorries) which serve as a permanent place of **activity** for the trader. Market stalls should be treated as business premises even though they may be used by the trader on a temporary **or regular** basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transport or facilities as well as private homes or workplaces should not be regarded as business premises.

Amendment 18
Proposal for a directive
Recital 16

(16) *The definition of* durable **medium** *should include in particular* **documents on** paper, USB sticks, CD-ROMs, DVDs, memory cards and the hard **drive of the computer on which the** electronic mail or **a pdf file is** stored.

(16) Durable **media** should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards **or the hard disks of computers. In order to qualify as a 'durable medium', an** electronic mail or **a website should firstly enable the consumer to store the information for as long as it is relevant for him to protect his interests stemming from his relationship with the trader. Secondly, the electronic mail or website should allow for the information to be stored in such a way as to make it impossible for the trader to change it unilaterally.**

Amendment 19
Proposal for a directive
Recital 17

(17) **Consumers** should be **entitled to receive** information before **the conclusion of the** contract. **However traders should not have to provide the information when already apparent from the context. For example in an on-premises transaction, the main characteristics of a product, the identity of the trader and the arrangements for delivery may be apparent from the context. In distance and off-premises transactions, the trader should always provide the information on arrangements for payment, delivery, performance and the complaint handling policy, since these might not be apparent from the context.**

(17) **The consumer** should be **given comprehensive** information before **he is bound by an on-premises contract, a distance contract, an off-premises contract or a corresponding contract offer.** **In providing that information, the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, taking into account such specific needs should not lead to different levels of consumer protection.**

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Amendment 228
Proposal for a directive
Recital 17 a (new)

(17a) Notwithstanding the exemption for the trader to provide the information set out in Article 9 on a durable medium when concluding an off-premises mixed contract for which the trader and the consumer immediately perform their contractual obligations and the payment to be made by the consumer does not exceed EUR 200, the consumer should nevertheless be given comprehensive information by the trader on the essential points of the contract, especially as regards the price, before the consumer is bound by that contract.

Amendment 20
Proposal for a directive
Recital 20

(20) The consumer should know whether he is contracting with the trader or with an intermediary acting on behalf of another consumer, since in the latter case the consumer may not enjoy the protection under this Directive. Therefore the intermediary should inform of this fact and the consequences thereof. The notion of intermediary should not include online trading platforms which do not conclude the contract in the name of or on behalf of any other party. *deleted*

Amendment 21
Proposal for a directive
Recital 22

(22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, which allows him to ascertain the nature and functioning of the goods. *(22) Since in the case of distance sales, the consumer is not able to see the good before concluding the contract he should have a right of withdrawal, so that, until the expiration of the withdrawal period, he can ascertain the nature, quality and functioning of the goods. Such a right of withdrawal should also be granted for off-premises contracts.*

Amendment 22
Proposal for a directive
Recital 24

(24) To ensure legal certainty, it is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits should apply to the calculation of the periods contained in this Directive. Therefore, all periods contained in this Directive should be understood to be expressed in calendar days. *deleted*

Amendment 23
Proposal for a directive
Recital 26

(26) When the consumer orders more than one good from the same trader, he should be entitled to exercise the right of withdrawal in respect of each of these goods. If the goods are delivered separately, the withdrawal period should start when the consumer acquires the material possession of each individual good. Where a good is delivered in different lots or *(26) Where goods are supplied in more than one delivery, the withdrawal period should begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of the first partial shipment. Where a good is delivered in different lots or pieces, the withdrawal period should begin from the day on*

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pieces, the withdrawal period should **start when** the consumer **or a third party indicated by the consumer** acquires the material possession of the last lot or piece.

which the consumer acquires the material possession of the last lot or piece. ***If multiple goods are ordered by the consumer in one order and but are delivered separately, the withdrawal period should start when the consumer acquires possession of the last good.***

Amendment 24
Proposal for a directive
Recital 27

(27) If the trader has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty over time, a **three-month** limitation period should be introduced, ***provided that the trader has fully performed his contractual obligations. The trader should be regarded as having fully performed his obligations when he has delivered the goods or has fully provided the services ordered by the consumer.***

(27) If the trader has not informed the consumer on the right of withdrawal prior to the conclusion of a distance or off-premises contract, the withdrawal period should be extended. However, in order to ensure legal certainty over time, a **one-year** limitation period should be introduced. ***However, Member States should be allowed to maintain existing national legislation to extend that limitation period.***

Amendment 229
Proposal for a directive
Recital 28

(28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised standard withdrawal form **to be used by** the consumer should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Community-wide** standard form relating for example to the font size.

(28) Differences in the ways in which the right of withdrawal is exercised in the Member States have caused costs for businesses selling cross-border. The introduction of a harmonised standard withdrawal form **that** the consumer **may use** should simplify the withdrawal process and bring legal certainty. For these reasons, Member States should refrain from adding any presentational requirements to the **Union-wide** standard form relating for example to the font size. ***However, the consumer should remain free to withdraw using his own chosen wording, provided that his statement to the trader is clearly worded. Sending back the goods, sending a letter or a making a telephone call could also meet this requirement, but the burden of proof for demonstrating having withdrawn within the time limits specified in this Directive may be on the consumer. For this reason, it is in the interest of the consumer to make use of a durable medium when communicating his withdrawal to the trader.***

Amendment 26
Proposal for a directive
Recital 30

(30) In case of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses born by the trader to deliver goods to the consumer.

(30) In case of withdrawal the trader should reimburse all payments received from the consumer, including those covering the expenses born by the trader to deliver goods to the consumer, ***with the exception of payments for express deliveries at the express wish of the consumer. Reimbursement should be possible by any means of payment, provided they are legal tender in the Member State where the consumer receives it. Therefore, reimbursement shall not take place in the form of vouchers or credit notes.***

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Amendment 230
Proposal for a directive
Recital 32

(32) In order to avoid the trader reimbursing a consumer who has not returned the goods, the consumer should be required to send back the goods no later than fourteen days after having informed the trader about his decision to withdraw.

(32) In order to avoid the trader reimbursing a consumer who has not returned the goods, the consumer should be required to send back the goods no later than fourteen days after having informed the trader about his decision to withdraw. **By the same token, the trader should also be enabled to make reimbursement subject to the condition that the consumer has supplied evidence of having sent back the goods.**

Amendment 231
Proposal for a directive
Recital 33

(33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate given the nature of the product. That is applicable for example to wine supplied a long time after the conclusion of the contract of a speculative nature where the value is dependent on fluctuations in the market (vin en primeur).

(33) Certain exemptions should exist from the right of withdrawal, such as in cases where a right of withdrawal would be inappropriate given the nature of the product, **and exercising a right of withdrawal would unfairly disadvantage the trader.** That is applicable **in particular to foodstuffs and other hygienically sensitive or perishable goods**, for example to wine supplied a long time after the conclusion of the contract of a speculative nature where the value is dependent on fluctuations in the market (vin en primeur). **Certain other goods or services whose price is dependent on market fluctuations, for instance commodities such as fuel oil, should also be exempt from the right of withdrawal.**

Amendment 28
Proposal for a directive
Recital 34

(34) Furthermore, in case of distance contracts for the provision of services, for which the performance begins during the withdrawal period (*e.g.* data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express agreement.

(34) Furthermore, in case of distance **and off-premises** contracts for the provision of services, for which the performance begins during the withdrawal period (**for instance** data files downloaded by the consumer during that period), it would be unfair to allow the consumer to withdraw after the service has been enjoyed by the consumer in full or in part. Therefore the consumer should lose his right of withdrawal when performance begins with his prior express agreement, **provided that such agreement constitutes informed consent, that is to say that the consumer has been informed of the consequences of this decision in terms of losing his right of withdrawal.**

Amendment 29
Proposal for a directive
Recital 37

(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 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.**

(37) For the purpose of simplification and legal certainty, the right of withdrawal should apply to all types of **distance and off-premises** contracts, except under strictly defined circumstances which can easily be proved.

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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.

Amendment 30
Proposal for a directive
Recital 37 a (new)

(37a) The main difficulties encountered by consumers and the main source of disputes with traders concern delivery of goods, including goods getting lost or damaged during transport and late or partial delivery. Therefore it is appropriate to harmonise the national rules on delivery and passing of risk.

Amendment 31
Proposal for a directive
Recital 37 b (new)

(37b) Where the trader has failed to fulfil his obligations to deliver the goods, the consumer should call upon him, on a durable medium, to make the delivery within no less than seven days and notify him of his intention to withdraw from the contract if delivery does not take place. The consumer should be deemed to have withdrawn from the contract if no action has been taken by the time the deadline expires. Without prejudice to his rights to claim damages, the consumer should be entitled to reimbursement within seven days of withdrawal if payment has already been made. It should be possible for Member States to adopt or maintain provisions of national law, in order to ensure a higher level of consumer protection.

Amendment 32
Proposal for a directive
Recital 38

(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.*** The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the trader. The rule introduced on the passing of risk should not apply where the consumer unduly delays taking possession of the goods (for example, when the goods are not collected by the consumer from the post-office within the deadline fixed by

(38) In the context of consumer sales, the delivery of goods can take place in various ways: ***either immediately or at a later date. If the parties have not agreed on a specific delivery date, the trader should deliver the goods as soon as possible but in any event not later than thirty days from the day of the conclusion of the contract.*** The consumer should be protected against any risk of loss or damage of the goods occurring during the transport arranged or carried out by the trader. The rule introduced on the passing of risk should not apply where the consumer unduly delays taking possession of the

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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.

goods (for example, when the goods are not collected by the consumer from the post-office within the 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.

Amendment 33
Proposal for a directive
Recital 38 a (new)

(38a) In many transactions consumers are provided with insufficient choices of means of payments or they are charged if they refuse to use certain means. This situation should be addressed by means of a provision which ensures that the trader will offer to the consumer different means of payment and, in the case of distance contracts, these should include both electronic and non-electronic means of payment. An example of a non-electronic system of payment would be the printing of an order from the trader's website to be paid in cash at a bank or at any other contact point of the trader.

Amendment 34
Proposal for a directive
Recital 39

(39) The trader should be liable to the consumer if the goods are not in conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the **qualities** of the goods. 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.

(39) The trader should be liable to the consumer if the goods are not in conformity with the contract. The goods should be presumed to be in conformity with the contract if they satisfy a number of conditions concerning mainly the **quality and quantity** of the goods. 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 goods other than those ordered have been delivered, or in the event of undershipment, the goods should be presumed not to be in conformity with the contract.**

Amendment 35
Proposal for a directive
Recital 40

(40) **If the good is not in conformity with the contract, firstly, the consumer should have the possibility to require the trader to repair the goods or to replace them at the trader's choice unless the trader proves that those remedies are unlawful, impossible or 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.**

(40) **The consumer should in the first instance have the option of requiring the trader to repair the goods or to replace them unless those remedies are impossible or disproportionate. Whether or not a remedy is disproportionate should be determined objectively. A remedy should be considered disproportionate if it imposes, in comparison with other remedies, unreasonable costs. In order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of another remedy.**

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Amendment 36
Proposal for a directive
Recital 41

(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 compensate the trader for the use of the defective goods.

(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 compensate the trader for the use of the defective goods. **The consumer should be entitled to claim damages, in accordance with provisions of applicable national law, for any loss resulting from lack of conformity with the sales contract and not remedied by the trader. It should be possible for such damages to include non-pecuniary damages where applicable national law so provides.**

Amendment 37
Proposal for a directive
Recital 42

(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.**

(42) The consumer should be entitled to choose freely any of the available remedies **if he is not entitled to have the goods repaired or replaced. It should be possible for Member States to adopt or maintain provisions of national law on the free choice of remedies in the event of lack of conformity, in order to ensure a higher level of consumer protection.**

Amendment 38
Proposal for a directive
Recital 42 a (new)

(42a) **It should be stipulated that in certain cases the trader may be held liable for a lack of conformity that existed at the time the risk was transferred to the consumer, even if the lack of conformity becomes apparent only subsequently.**

Amendment 39
Proposal for a directive
Recital 42 b (new)

(42b) **Where the trader, as final seller, is liable to the consumer because of an act or omission by the producer, it should be ensured that the trader, as final seller, can pursue remedies against the person or persons liable in the contractual chain. To this end, Member States' national provisions should determine the person or persons liable, together with the relevant actions and procedure.**

Amendment 40
Proposal for a directive
Recital 42 c (new)

(42c) **With regard to lack of conformity, the consumer should be entitled to a two-year liability period. There should be a rebuttable presumption in the consumer's favour that any lack of conformity which has become apparent within six months after the risk passed to the consumer already existed when the risk passed. It should be possible for Member States to adopt or maintain provisions of national law on liability periods, duration for reversal of the**

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burden of proof or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to ensure a higher level of consumer protection.

Amendment 41
Proposal for a directive
Recital 43

(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.

deleted

Amendment 42
Proposal for a directive
Recital 44

(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.

(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 *under the national provisions in force and those laid down in this Directive.*

Amendment 43
Proposal for a directive
Recital 45 a (new)

(45a) The harmonised regulatory aspects concern only contracts concluded between traders and consumers. Therefore, the provisions on unfair contract terms should not affect national law in the area of contracts relating to employment, contracts relating to succession rights, contracts relating to family law and contracts relating to the incorporation and organisation of companies or partnership agreements and bond terms.

Amendment 44
Proposal for a directive
Recital 46

(46) Provisions on unfair contract terms should not apply to contract terms, which directly or indirectly reflect **mandatory** statutory or **regulatory** provisions of the Member States which comply with **Community** law. Similarly terms which reflect the principles or provisions of international conventions to which the **Community** or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.

(46) Provisions on unfair contract terms should not apply to contract terms, which directly or indirectly reflect statutory, **regulatory** or **public policy** provisions of the Member States which comply with **Union** law. Similarly, **contract** terms **should reflect the principles and provisions of the Charter of Fundamental Rights of the European Union.** Terms which reflect the principles or provisions of international conventions to which the **Union** or the Member States are party, particularly in the transport area, should not be subject to the unfairness test.

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Amendment 45
Proposal for a directive
Recital 47

(47) *Consumer contracts should* be drafted in plain, intelligible language and be **legible**. Traders should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the trader's website in respect of distance contracts) or attaching standard terms to the order form (in respect of off-premises contracts). The trader should seek the consumer's express consent to any payment in addition to the remuneration for the trader's main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.

(47) *All contract terms should be expressed in a clear and comprehensible manner. If a contract term is in writing, it should always* be drafted in plain, intelligible language. Traders should be free to choose the font type or size in which the contract terms are drafted. The consumer should be given an opportunity to read the terms before concluding the contract. This opportunity could be given to the consumer by providing him with the terms on request (for on-premises contracts) or making those terms otherwise available (e.g. on the trader's website in respect of distance contracts) or attaching standard terms to the order form (in respect of off-premises contracts). The trader should seek the consumer's express consent to any payment in addition to the remuneration for the trader's main contractual obligation. Inferring consent by using opt-out systems, such as pre-ticked boxes online should be prohibited.

Amendment 46
Proposal for a directive
Recital 47 a (new)

(47a) Traders should be free to choose the way in which contract terms are communicated, for example the font type or size in which the contract terms are drafted. Member States should refrain from imposing any presentational requirements, except for those related to persons with disabilities or where the goods or services may present a particular risk to the health and safety of the consumer or a third person. Member States may also seek to impose additional requirements where, due to complexities inherent in contracts for such goods or services, there is a risk of consumer detriment including issues arising which relate to competition in that sector. This may apply, for example, to contracts relating to financial services, gas, electricity and water, telecoms and immovable property. However, this should not apply to formal national requirements concerning the conclusion of the contract or other formal requirements such as for instance the language of the terms, requirements on the content of the terms or the formulation of certain contract terms for specific sectors. This Directive should not harmonise language requirements applicable to consumer contracts. Therefore, Member States should be able to maintain or introduce in their national law linguistic requirements relating to the contractual terms.

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Amendment 47
Proposal for a directive
Recital 49

(49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer.

(49) For the purposes of this Directive, neither the fairness of terms which describe the main subject matter of the contract, nor the quality/price ratio of the goods or services supplied should be assessed unless these terms did not meet transparency requirements. The main subject matter of the contract and the price/quality ratio should nevertheless be taken into account in assessing the fairness of other terms. For example, in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability should not be subject to such an assessment since these restrictions are taken into account in calculating the premium paid by the consumer. ***This exclusion does not apply to the remuneration foreseen for the trader from ancillary or contingent charges set out in the contract, including fees or charges for breaching any of the terms of the contract, which should be fully subject to the fairness test.***

Amendment 48
Proposal for a directive
Recital 50

(50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the trader proves otherwise. ***These same lists should apply in all Member States.***

(50) In order to ensure legal certainty and improve the functioning of the internal market, the Directive should contain two ***non-exhaustive*** lists of unfair terms. Annex II contains a list of terms which should in all circumstances be considered unfair. Annex III contains a list of terms which should be deemed unfair unless the trader proves otherwise.

Amendment 49
Proposal for a directive
Recital 51

(51) ***The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.***

deleted

Amendment 50
Proposal for a directive
Recital 52

(52) ***In particular, the Commission should be empowered to amend Annexes II and III on contract terms to be considered or presumed unfair. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.***

deleted

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Amendment 51
Proposal for a directive
Recital 53

(53) *The Commission's power to amend Annexes II and III should be used to ensure consistent implementation of the rules on unfair terms by supplementing those Annexes with contractual terms, which should be considered unfair in all circumstances or which should be deemed unfair unless the trader has proved otherwise.* *deleted*

Amendment 52
Proposal for a directive
Recital 55 a (new)

(55a) The Member States should ensure that their national authorities have the necessary level of cooperation with the European Consumer Centre (ECC) network, so as to react in cross-border cases, especially on pending requests at ECCs.

Amendment 53
Proposal for a directive
Recital 60

(60) The **European** Commission will look into the most appropriate way to ensure that all consumers are made aware of their rights at the point of sale.

(60) The Commission, *following consultation with the Member States and stakeholders*, will look into the most appropriate way to ensure that all consumers **and traders** are made aware of their rights at the point of sale. *The Commission should avail itself especially of the means provided by information and communication technology tools and public media.*

Amendment 54
Proposal for a directive
Recital 61 a (new)

(61a) Provision should be made for a mutual evaluation process in which, during the transposition period for this Directive, Member States would first have to screen their legislation in order to ascertain what stricter provisions, which are compliant with the Treaty on the Functioning of the European Union, are to be maintained or adopted in their national law in order to ensure a higher level of protection for the consumer. By the end of the transposition period for this Directive, Member States should draw up a report on the results of this screening. The Commission should submit each report to all other Member States and stakeholders. Member States and the European Parliament would then have six months in which to submit their observations on those reports. Not later than one year after the end of the transposition period for this Directive, and every three years thereafter, the Commission should draw up a report, accompanied where appropriate by legislative proposals. If necessary, the Commission could assist the Member States in devising a common method.

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Amendment 55
Proposal for a directive
Recital 61 b (new)

(61b) To ensure a high level of consumer protection in all Member States, persons and organisations with a legitimate interest in consumer protection should be encouraged to notify the Member States and the Commission about their evaluations and issue non-binding recommendations so that they can be taken into account when this Directive is reviewed.

Amendment 56
Proposal for a directive
Recital 63

(63) It is appropriate to review this Directive if some barriers to the internal market were identified. The review could lead to a Commission proposal to amend this Directive, which may include amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the acquis in order to achieve a high, common level of consumer protection.

deleted

Amendment 57
Proposal for a directive
Article 1

The purpose of this Directive is to **contribute to the proper functioning of the internal market and** achieve a high level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

The purpose of this Directive is to achieve a high level of consumer protection and **contribute to the proper functioning of the internal market** by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts between consumers and traders.

Amendment 59
Proposal for a directive
Article 2 – point 1

(1) '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;

(1) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are **primarily** outside his trade, business, craft or profession.

Member States may maintain or extend the application of this Directive to legal or natural persons which are not 'consumers' within the meaning of this Directive;

Amendment 60
Proposal for a directive
Article 2 – point 2

(2) 'trader' means any natural or legal person who, **in contracts covered by this Directive**, is acting for purposes relating to his trade, business, craft or profession and anyone acting **in the name of or** on behalf of a trader;

(2) 'trader' means any natural or legal person who, **irrespective of whether privately or publicly owned**, is acting for purposes relating to his trade, business, craft or profession and anyone acting on behalf of a trader **in relation to contracts covered by this Directive**;

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Amendment 61**Proposal for a directive****Article 2 – point 2 a (new)**

(2a) *'goods' means any tangible movable item, and any intangible item usable in a manner which can be equated with physical possession, with the exception of goods sold by way of execution or otherwise by authority of law. Water, gas and electricity shall be considered as 'goods' within the meaning of this Directive where they are put up for sale in a limited volume or set quantity;*

Amendment 62**Proposal for a directive****Article 2 – point 2 b (new)**

(2b) *'good made to the consumer's specifications' means any non-prefabricated good made on the basis of an individual choice or decision by the consumer;*

Amendment 63**Proposal for a directive****Article 2 – point 3**

(3) *'sales contract' means any contract for the sale of goods by the trader to the consumer including any mixed-purpose contract having as its object both goods and services;* *deleted*

Amendment 64**Proposal for a directive****Article 2 – point 4**

(4) *'goods' means any tangible movable item, with the exception of:* *deleted*

(a) *goods sold by way of execution or otherwise by authority of law,*

(b) *water and gas where they are not put up for sale in a limited volume or set quantity,*

(c) *electricity;*

Amendment 65**Proposal for a directive****Article 2 – point 5**

(5) *'service contract' means any contract other than a sales contract whereby a service is provided by the trader to the consumer;* *(5) 'service' means any work or other service of any kind provided by the trader to the consumer for remuneration;*

Amendment 66**Proposal for a directive****Article 2 – point 5 a (new)**

(5a) *'sales contract' means any contract whereby a trader grants ownership of goods to a consumer in accordance*

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with the applicable national law, or undertakes to grant such ownership, and whereby the consumer undertakes to pay the agreed price.

Contracts for the supply of goods to be manufactured or produced shall also be defined as sales contracts for the purposes of this Directive

Amendment 67
Proposal for a directive
Article 2 – point 5 b (new)

(5b) ‘mixed-purpose contract’ means any contract that includes both aspects relating to the provision of services and aspects relating to the supply of goods;

Amendment 68
Proposal for a directive
Article 2 – point 6

(6) ‘distance contract’ means any ***sales or service*** contract ***where the*** trader, ***for the conclusion of the contract,*** ***makes*** exclusive use of one or more means of distance communication;

(6) ‘distance contract’ means any contract ***for the supply of a good or the provision of a service concluded between a trader and a consumer under an organised distance sales or service-provision scheme where the trader and the consumer are not simultaneously physically present for the conclusion of the contract, but, rather, make*** exclusive use of one or more means of distance communication;

Amendment 69
Proposal for a directive
Article 2 – point 7

(7) ‘***means of distance communication***’ means any means ***which, without the simultaneous physical presence of the trader and the consumer, may be used for the conclusion of a contract between those parties;***

deleted

Amendment 70
Proposal for a directive
Article 2 – point 8

(8) ‘off-premises contract’ means:

(8) ‘off-premises contract’ means ***any contract between a trader and a consumer for the supply of a good or the provision of a service:***

(a) ***any sales or service contract*** concluded away from business premises with the simultaneous physical presence of the trader and the consumer ***or any sales or service contract for which an offer was made by the consumer in the same circumstances, or***

(a) ***which is*** concluded away from business premises with the simultaneous physical presence of the trader and the consumer, or

(aa) for which an offer was made by the consumer with the simultaneous physical presence of the trader and the consumer away from business premises, or

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- (b) *any sales or service contract concluded on business premises but negotiated* away from business premises, with the simultaneous physical presence of the trader and the consumer.

- (b) *whose main components have been determined in the course of an excursion, a leisure event or a sales demonstration organised by the trader* away from business premises, with the simultaneous physical presence of the trader and the consumer, *the aim of such excursion, leisure event or demonstration being to conclude a contract subsequently on business premises;*

Amendment 71
Proposal for a directive
Article 2 – point 9 – point b

- (b) market stalls *and fair stands* where the trader carries on his activity on a regular or temporary basis;

- (b) market stalls where the trader carries on his activity on a regular or temporary basis;

Amendment 72
Proposal for a directive
Article 2 – point 12

- (12) *'product' means any good or service including* ~~deleted~~
immoveable property, rights and obligations;

Amendment 73
Proposal for a directive
Article 2 – point 14

- (14) *'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;* ~~deleted~~

Amendment 74
Proposal for a directive
Article 2 – point 15

- (15) *'auction' means a method of sale where goods or services are offered by the trader through a competitive bidding procedure which may include the use of means of distance communication and where the highest bidder is bound to purchase the goods or the services. A transaction concluded on the basis of a fixed-price offer, despite the option given to the consumer to conclude it through a bidding procedure is not an auction;* ~~deleted~~

Amendment 75
Proposal for a directive
Article 2 – point 16

- (16) *'public auction' means a method of sale where goods are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a competitive bidding procedure run by an auctioneer and where the highest bidder is bound to purchase the goods;*

- (16) *'public auction' means a method of sale where a good or a service is offered by the trader to consumers, during an event which is physically accessible to the public, through a transparent, competitive bidding procedure run by a third party (the auctioneer), who, for pecuniary consideration, acts as the trader's agent. In an ascending price auction, the good or service is sold to the consumer or a person acting on his behalf making the highest bid. In a*

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descending price auction, the good or service is sold to the consumer or a person acting on his behalf who is first to agree immediately to purchase the good or service for the asking price;

Amendment 76
Proposal for a directive
Article 2 – point 17

(17) 'producer' means the manufacturer of goods, the importer of goods into the territory of the **Community** or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;

(17) 'producer' means the manufacturer of goods, the importer of goods into the territory of the **Union** or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;

Amendment 77
Proposal for a directive
Article 2 – point 18

(18) 'commercial guarantee' means any undertaking by the trader or producer (the 'guarantor') to the consumer 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 available at the time of, or before the conclusion of the contract;

(18) 'commercial guarantee' means any undertaking by the trader or producer (the 'guarantor') to the consumer, **in addition to his legal obligations 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 requirement 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;

Amendment 78
Proposal for a directive
Article 2 – point 19

(19) 'intermediary' means a trader who concludes the contract in the name of or on behalf of the consumer;

deleted

Amendment 79
Proposal for a directive
Article 2 – point 20

(20) '**ancillary** contract' means **a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and these goods or services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.**

(20) '**linked** contract' means **any contract for the supply of a good or the provision of a service:**

(a) **which forms, from an objective point of view, a commercial unit with a distance contract or an off-premises contract; and**

(b) **where the goods are supplied or the services are provided by the trader or a third party on the basis of an arrangement between that third party and the trader.**

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A commercial unit shall be deemed to exist where the goods or services provided under the linked contract are related to the performance of the distance contract or of the off-premises contract, as the case may be, or to the use of the goods supplied or the services provided under such distance or off-premises contract.

Amendments 80 and 232
Proposal for a directive
Article 3

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to ***sales and service*** contracts concluded between the trader and the consumer.

2. This Directive shall ***only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.***

3. ***Only Articles 30 to 39 on consumer rights concerning unfair contract terms, read in conjunction with Article 4 on full harmonisation, shall apply to contracts which fall within the scope of Directive 94/47/EC of the European Parliament and of the Council and of Council Directive 90/314/EEC.***

4. Articles 5, 7, 9 and 11 shall ***be without prejudice to the provisions concerning information requirements contained in Directive 2006/123/EC of the European Parliament and of the Council and Directive 2000/31/EC of the European Parliament and of the Council.***

1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to contracts concluded between the trader and the consumer ***for the supply of a good or the provision of a service and to mixed-purpose contracts.***

2. This Directive shall ***be without prejudice to sector-specific Union legislation governing contracts concluded between a trader and a consumer.***

2a. ***This Directive shall not apply to contracts relating to:***

(a) social services;

(b) healthcare, that is to say health services provided by health professionals to patients to assess, maintain or restore their health;

(c) gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions.

2b. ***Articles 5 to 19 and Article 23a shall not apply to contracts:***

(a) relating to financial services;

(b) falling within the scope of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services ⁽¹⁾.

3. ***Subject to paragraphs 4 to 4c of this Article, Articles 9 to 19 shall apply to distance and off-premises contracts.***

4. Articles 9 to 19 shall ***not apply to distance and off-premises contracts:***

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(a) relating to the formation, acquisition or conveyance of rights in immovable property or guarantees in immovable property, or relating to the construction or major modification of a building or the renting of a building or an apartment;

(b) falling within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽²⁾ or Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts ⁽³⁾;

(c) which, in accordance with the provisions of the Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful consideration and with knowledge of its legal scope.

4a. Articles 9 to 19 shall not apply to off-premises contracts for which the trader and the consumer immediately perform their contractual obligations and the payment to be made by the consumer does not exceed EUR 40, if such contracts, due to their nature, are usually concluded away from business premises. Member States may define a lower value in their national legislation.

4b. Articles 9 to 19 shall not apply to distance contracts:

(a) concluded by means of automatic vending machines or automated commercial premises;

(b) concluded with telecommunications operators through public payphones for the use thereof, or relating to single telephone, Internet or fax connections established by the consumer.

4c. Article 11(1b) and Articles 12 to 19 shall not apply to distance contracts for the provision of accommodation, transport, motor vehicle rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.

4d. Subject to paragraphs 4e, 4f and 4g of this Article, Articles 22 to 29 shall apply to sales contracts. Without prejudice to Article 24(5), where the contract is a mixed-purpose contract, Articles 22 to 29 shall only apply to the goods.

4e. Articles 22a and 23a shall also apply to service contracts and mixed-purpose contracts.

4f. Articles 22 to 29 shall not apply to:

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- (a) electricity;
- (b) water and gas, where they are not put up for sale in a limited volume or set quantity.
- 4g. Articles 22 to 29 shall not apply to the sale of second-hand goods at public auctions.

⁽¹⁾ OJ L 271, 9.10.2002, p. 16.

⁽²⁾ OJ L 158, 23.6.1990, p. 59.

⁽³⁾ OJ L 33, 3.2.2009, p. 10.

Amendment 81
Proposal for a directive
Article 4 – title

Full harmonisation

Degree of harmonisation

Amendment 82
Proposal for a directive
Article 4

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

1. ***Except where provided for in paragraphs 1a and 1b,*** Member States may maintain or introduce, in their national law, ***more stringent provisions, compatible with the Treaty on the Functioning of the European Union, in order to ensure a higher level of consumer protection, under the conditions and to the extent specified in Article 5, Article 9(5) and 9(6), Articles 22 to 29, Article 31(4) and Articles 34 and 35.***

2. ***Member States may maintain in force, in their national law, more stringent provisions, which are compatible with the Treaty on the Functioning of the European Union, in order to ensure a higher level of consumer protection, as laid down in Article 12(4) and Article 13(2).***

3. ***Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in Article 2, Article 9(1) to (4) and Article 9(8), Articles 10 and 11, Article 12(1) to (3), Article 13(1), Articles 14 to 19, Articles 30 to 33 and Article 36 including more stringent provisions to ensure a different level of consumer protection.***

Amendment 83
Proposal for a directive
Article 4 a (new)

Article 4a

Periods, dates and time limits

Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽¹⁾ shall apply to the calculation of the periods, dates and time limits contained in this Directive.

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

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Amendment 84
Proposal for a directive
Chapter II – title

Consumer information

Consumer information *for on-premises contracts*

Amendment 85
Proposal for a directive
Article 5 – title

General information requirementsInformation requirements *for on-premises contracts*

Amendment 86
Proposal for a directive
Article 5 – paragraph 1 – introductory part

1. *Prior to the conclusion of any sales or service* contract, the trader shall provide the consumer with the following information, if not already apparent from the context:

1. *On concluding an on-premises* contract, the trader shall provide the consumer with the following information *in a clear and intelligible manner*, if not already apparent from the context:

Amendment 87
Proposal for a directive
Article 5 – paragraph 1 – point a

(a) the main characteristics of the **product**, to an extent appropriate to the *medium and the product*;

(a) the main characteristics of the **good or service**, to an extent appropriate to the *good or service*;

Amendment 88
Proposal for a directive
Article 5 – paragraph 1 – point b

(b) *the geographical address and* the identity of the trader, such as his trading name *and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting*;

(b) the identity of the trader, such as his trading name;

Amendment 89
Proposal for a directive
Article 5 – paragraph 1 – point b a (new)

(ba) *the trader's business address, telephone, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and to communicate with the trader efficiently*;

Amendment 90
Proposal for a directive
Article 5 – paragraph 1 – point c

(c) the price inclusive of taxes, or where the nature of the **product** means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

(c) the **total** price inclusive of taxes, or where the nature of the **good or service** means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges *and any other cost* or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. *In the case of an contract of indeterminate duration, the total price shall mean the total monthly costs*;

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Amendment 91**Proposal for a directive****Article 5 – paragraph 1 – point d**

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| <p>(d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;</p> | <p>(d) where appropriate, the arrangements for payment, delivery, performance, the date by which the trader undertakes to deliver the goods or to provide the service and the trader's complaint handling policy;</p> |
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Amendment 92**Proposal for a directive****Article 5 – paragraph 1 – point f**

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| <p>(f) the existence and the conditions of after-sales services and commercial guarantees, where applicable;</p> | <p>(f) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;</p> |
|--|--|
- (fa) **the existence of codes of conduct and how they can be obtained, where applicable**;

Amendment 93**Proposal for a directive****Article 5 – paragraph 1 – point g**

- | | |
|--|--|
| <p>(g) the duration of the contract where applicable or if the contract is open-ended, the conditions for terminating the contract;</p> | <p>(g) the duration of the contract where applicable or if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;</p> |
|--|--|

Amendment 94**Proposal for a directive****Article 5 – paragraph 1 – point i**

- | | |
|--|---|
| <p>(i) the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader.</p> | <p>(i) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;</p> |
|--|---|

Amendment 95**Proposal for a directive****Article 5 – paragraph 1 – points i a, i b and i c (new)**

- (ia) **the application of technical protection measures for digital content, where applicable**;
- (ib) **any interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of, including any lack of interoperability, where applicable**;
- (ic) **the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it, where applicable**.

Amendment 96**Proposal for a directive****Article 5 – paragraph 2**

- | | |
|---|--|
| <p>2. In the case of a public auction, the information in paragraph 1(b) may be replaced by the geographical address and the identity of the auctioneer.</p> | <p>2. Paragraph 1 shall not be applicable to contracts for the delivery of a good or the provision of a service, which involve day-to-day transactions and in which the trader has to deliver the good or provide the service immediately when the contract is concluded.</p> |
|---|--|

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 97
Proposal for a directive
Article 5 – paragraph 3

3. *The information referred to in paragraph 1 shall form an integral part of the sales or service contract.*

3. *Member States may adopt or maintain additional pre-contractual information requirements.*

Amendment 98
Proposal for a directive
Article 6 – paragraph 2

2. Without prejudice to **Articles** 7(2), 13 and 42, the consequences of any breach of Article 5, shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective **contract law** remedies for any breach of Article 5.

2. Without prejudice to **Articles** 13 and 42, the consequences of any breach of Article 5 shall be determined in accordance with the applicable national law. Member States shall provide in their national laws for effective **and proportionate** remedies for any breach of Article 5.

Amendment 99
Proposal for a directive
Article 7

Article 7

deleted

Specific information requirements for intermediaries

1. *Prior to the conclusion of the contract, the intermediary shall disclose to the consumer, that he is acting in the name of or on behalf of another consumer and that the contract concluded, shall not be regarded as a contract between the consumer and the trader but rather as a contract between two consumers and as such falling outside the scope of this Directive.*

2. *The intermediary, who does not fulfil the obligation under paragraph 1, shall be deemed to have concluded the contract in his own name.*

3. *This Article shall not apply to public auctions.*

Amendment 100
Proposal for a directive
Article 8

Article 8

deleted

Scope

This Chapter shall apply to distance and off-premises contracts.

Amendment 101
Proposal for a directive
Article 9

Article 9

Article 9

Information requirements for distance and off-premises contracts

Pre-contractual information requirements for distance and off-premises contracts

As regards distance or off-premises **contracts**, the trader shall provide the following information **which shall form an integral part of the contract**:

1. *In good time before the consumer is bound by any distance or off-premises **contract or any corresponding offer**, the trader shall provide the **consumer with the** following information **in a clear and intelligible manner**:*

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TEXT PROPOSED BY THE COMMISSION

- (a) *the information referred to in Articles 5 and 7 and, by way of derogation from Article 5(1)(d), the arrangements for payment, delivery and performance in all cases;*
- (b) *where a right of withdrawal applies, the conditions and procedures for exercising that right in accordance with Annex I;*
- (c) *if different from his geographical address, the geographical address of the place of business of the trader (and where applicable that of the trader on whose behalf he is acting) where the consumer can address any complaints;*
- (d) *the existence of codes of conduct and how they can be obtained, where applicable;*
- (e) *the possibility of having recourse to an amicable dispute settlement, where applicable;*
- (f) *that the contract will be concluded with a trader and as a result that the consumer will benefit from the protection afforded by this Directive.*

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- (a) *the main characteristics of the good or service, to the extent appropriate to the medium and the good or service;*
- (b) *the identity of the trader, such as his trading name;*
- (ba) *the trader's business address, telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and to communicate with him efficiently;*
- (c) *the total price inclusive of taxes, or, where the nature of the good or service means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges and any other cost or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; in the case of a contract of indeterminate duration, the total price shall mean the total monthly costs;*
- (d) *the arrangements for payment, delivery, performance, the date by which the trader undertakes to deliver the goods or to perform the service and the trader's complaint handling policy;*
- (e) *in so far as a right of withdrawal exists, the conditions, period and procedure for exercising that right including the eventual costs of return of the goods for the consumer; for this purpose, the trader may use the model instructions on withdrawal set out in Annex I(A) and the model withdrawal form set out in Annex I(B), or any other clearly worded statement; if the trader informs the consumer using the model instructions on withdrawal set out in Annex I(A), he shall be deemed to have satisfied the information requirements laid down in this Article concerning the right of withdrawal;*
- (ea) *where a right of withdrawal does not apply in accordance with Article 19(1), the information that the consumer cannot exercise a right of withdrawal;*
- (f) *in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;*
- (fa) *the existence of codes of conduct and how copies of them can be obtained, where applicable;*
- (fb) *the duration of the contract where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;*
- (fc) *the minimum duration of the consumer's obligations under the contract, where applicable;*

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- (fd) the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
 - (fe) the application of technical protection measures for digital content, where applicable;
 - (ff) any interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of, including any lack of interoperability, where applicable;
 - (fg) the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it, where applicable.
2. In the case of a public auction, the information referred to in points (b), (ba) and (c) of paragraph 1 may be replaced by the equivalent details for the auctioneer.
3. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract.
4. Member States shall not impose any other requirements on the content of the model instructions on withdrawal set out in Annex I(A).
5. For distance and off-premises contracts relating to transport services or health and safety requirements, Member States may adopt or maintain provisions of national law laying down additional pre-contractual information requirements provided that they are compatible with the Treaty on the Functioning of European Union and that such requirements are appropriate for the proper information of the consumer.
6. Member States may adopt or maintain additional pre-contractual information requirements for all distance and off-premises contracts for the provision of services for which, pursuant to Article 22(5) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ⁽¹⁾, they impose additional information requirements applicable to providers established in their territory.
7. Article 5 shall be without prejudice to Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ⁽²⁾.
8. As regards demonstrating compliance with the information requirements referred to in this Chapter, the burden of proof shall be upon the trader.

⁽¹⁾ OJ L 376, 27.12.2006, p. 36.

⁽²⁾ OJ L 178, 17.7.2000, p. 1.

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 102
Proposal for a directive
Article 10 – title

Formal requirements for off-premises contracts

Formal *pre-contractual information* requirements for off-premises contracts

Amendment 233
Proposal for a directive
Article 10 – paragraph 1

1. With respect to off-premises contracts, the information provided for in Article 9 shall be given in the order form in plain **and** intelligible language and be legible. **The order form shall include the standard withdrawal form set out in Annex I(B).**

1. With respect to off-premises contracts, the information provided for in Article 9 shall be given in the order form **to the consumer on paper or, if the consumer agrees, on another durable medium** in plain, intelligible language and **shall** be legible.

Amendment 104
Proposal for a directive
Article 10 – paragraph 2

2. An off-premises contract shall only **be** valid if the consumer **signs** an **order form and in cases where the order form is not on paper, receives a copy of the order form on another durable medium.**

2. An off-premises contract shall only **become** valid if the consumer **has signed** an order form.

Amendment 234
Proposal for a directive
Article 10 – paragraph 2 a (new)

2a. Notwithstanding paragraphs 1 and 2, with respect to off-premises mixed contracts for which the trader and the consumer immediately perform their contractual obligations and the payment to be made by the consumer does not exceed EUR 200:

(a) the trader shall not be required to provide the information set out in Article 9 on paper or another durable medium; and

(b) the signature by the consumer of an order form shall not be required for the validity of the contract;

provided that such contracts, due to their nature, are usually concluded away from business premises.

Amendment 105
Proposal for a directive
Article 10 – paragraph 3

3. Member States shall not impose any formal requirements **other than those provided for in paragraphs 1 and 2.**

3. Member States shall not impose any **further** formal **pre-contractual information** requirements **for the fulfilment of the information obligations referred to in Article 9(1).**

Amendment 106
Proposal for a directive
Article 11 – title

Formal requirements for distance contracts

Formal *pre-contractual information* requirements for distance contracts

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendments 107, 235 and 236**Proposal for a directive****Article 11 – paragraph 1**

1. With respect to distance contracts, the information provided for in **Article 9(a)** shall be given or made available to the consumer **prior to the conclusion of the contract**, in plain and intelligible language and be legible, in a way appropriate to the means of distance communication used.

1. With respect to distance contracts, the information provided for in **Article 9** shall be given or made available to the consumer **on a durable medium**, in plain and intelligible language, and **shall** be legible, in a way appropriate to the means of distance communication used.

1a. If a distance contract, the terms of which have not been individually negotiated, to be concluded by electronic means for the delivery of a good or the provision of a service, places the consumer under an obligation to make a payment, the consumer shall be bound by the contract only if:

(a) the trader has made the consumer aware in a clear and prominent manner of the total price, including all related price components; and

(b) the consumer has confirmed that he has read and understood the information required under point (a). With regard to contracts concluded through websites, this requirement shall be deemed to be satisfied if the website is designed in such a way that a binding order cannot be placed unless the consumer has previously registered on the trader's website to use the trader's offer.

1b. By way of derogation from point (b) of paragraph 1a, where a distance contract referred to in that paragraph is to be concluded by telephone, the consumer shall be bound by that contract only if the trader has sent the consumer, on a durable medium, confirmation of his offer, including the information required under point (a) of paragraph 1a.

Amendment 108**Proposal for a directive****Article 11 – paragraph 2**

2. If the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and the commercial purpose of the call at the beginning of the conversation with the consumer.

2. If the trader **or an intermediary acting on behalf of the trader** makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and the commercial purpose of the call at the beginning of the conversation with the consumer.

2a. Trading websites shall indicate clearly and legibly on their homepage whether there are restrictions of any kind – including on means of payment – regarding delivery to certain Member States.

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 109
Proposal for a directive
Article 11 – paragraph 3

3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least the information regarding the main characteristics of the **product and** the total price referred to in **Articles 5(1)(a) and (c) on that particular medium prior to the conclusion of such a contract**. The other information referred to in **Articles 5 and 7** shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.

3. If the contract is concluded through a medium which allows limited space or time to display the information, the trader shall provide at least, **on that particular medium prior to the conclusion of such a contract**, the **pre-contractual** information regarding the main characteristics of the **good or service**, the total price, **the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract** referred to in **Article 9(1)(a), (b), (c), (e) and (g)**. The other information referred to in **Article 9** shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1.

Amendment 110
Proposal for a directive
Article 11 – paragraph 4

4. *The consumer shall receive confirmation of all the information referred to in Article 9(a) to (f), on a durable medium, in reasonable time after the conclusion of any distance contract, and at the latest at the time of the delivery of the goods or when the performance of the service has begun, unless the information has already been given to the consumer prior to the conclusion of any distance contract on a durable medium.*

deleted

Amendment 237
Proposal for a directive
Article 11 – paragraph 5

5. Member States shall not impose any **formal** requirements **other than those provided for in paragraphs 1 to 4**.

5. Member States shall not impose any **further formal pre-contractual information** requirements for **the fulfilment of the information obligations** referred to in Article 9(1).

Notwithstanding the first subparagraph, with respect to contracts referred to in paragraph 1b of this Article, Member States may introduce or maintain provisions of national law to the effect that the consumer is only bound by the contract if he has confirmed to the trader the conclusion of the contract on a durable medium. Member States shall notify those provisions to the Commission which shall make this information public in an easily accessible way.

Amendment 112
Proposal for a directive
Article 12 – paragraph 1 a (new)

1a. In the case of a distance or off-premises contract, the withdrawal period referred to in paragraph 1 shall begin from the day of the conclusion of the contract or on the day on which the consumer receives a copy of the signed contract document on a durable medium, if different from the day of conclusion of the contract.

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 113
Proposal for a directive
Article 12 – paragraph 2

2. In the case of an off-premises contract, the withdrawal period shall begin from the day **when the consumer signs the order form or in cases where the order form is not on paper, when the consumer receives a copy of the order form on another durable medium.**

In the case of a distance contract for the sale of goods, the withdrawal period shall begin from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered.

In the case of a distance contract for the provision of services, the withdrawal period shall begin from the day of the conclusion of the contract.

2. **Notwithstanding paragraph 1**, in the case of a **distance or off-premises contract for the delivery of goods**, the withdrawal period shall begin from the day **on which the consumer or a third party other than the carrier and indicated by the consumer acquires material possession of the goods ordered or:**

- (a) in the case of multiple goods ordered by the consumer in one order and delivered separately, of the last good delivered;*
- (b) in the case of a good consisting of multiple lots or pieces, of the last lot or piece;*
- (c) in the case of the recurring delivery of goods of the same kind during a defined period of time, of the first good delivered.*

Amendment 115
Proposal for a directive
Article 12 – paragraph 4

4. The Member States shall not prohibit the parties from performing their obligations **under the contract** during the withdrawal period.

4. The Member States shall not prohibit the parties from performing their **contractual** obligations during the withdrawal period. **Nevertheless, in the case of off-premises contracts, Member States may maintain existing national legislation prohibiting the trader from collecting the payment during a given period after the conclusion of the contract.**

Amendment 116
Proposal for a directive
Article 13

If the trader has not provided the consumer with the information on the right of withdrawal in breach of **Articles 9(b), 10(1) and 11(4)**, the withdrawal period shall expire **three months after the trader has fully performed his other contractual obligations.**

1. If the trader has not provided the consumer with the information on the right of withdrawal in breach of **point (e) of Article 9(1)**, the withdrawal period shall expire **one year from the end of the initial withdrawal period, as determined in accordance with Article 12(1a) and (2).**

2. **Nevertheless, Member States may maintain existing national legislation providing for a longer period of expiration of the withdrawal period.**

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendments 238 and 239**Proposal for a directive****Article 14 – paragraph 1**

1. The consumer shall inform the trader of his decision to withdraw **on a durable medium either in a statement addressed to the trader drafted in his own words or using the standard withdrawal form as set out in Annex I(B).**

1. **Before expiry of the withdrawal period,** the consumer shall inform the trader of his decision to withdraw. **For this purpose, the consumer may either:**

(a) **use the model withdrawal form set out in Annex I(B) or make any other clearly worded statement; or**

(b) **return the goods to the trader, accompanied by a clearly worded statement setting out the consumer's decision to withdraw.**

Member States shall not provide for any **other** formal requirements applicable to **this standard** withdrawal form.

Member States shall not provide for any formal requirements applicable to **the model** withdrawal form **other than those set out in Annex I(B).**

Amendment 240**Proposal for a directive****Article 14 – paragraph 2**

2. For distance contracts concluded on the Internet, the trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit the **standard** withdrawal form on the trader's website. In **that case** the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email without delay.

2. For distance contracts concluded on the Internet, the trader may, in addition to the possibilities referred to in paragraph 1, give the option to the consumer to electronically fill in and submit **either the model** withdrawal form **set out in Annex I(B) or any other clearly worded statement** on the trader's website. In **those cases** the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal by email **on a durable medium** without delay.

Amendment 119**Proposal for a directive****Article 15 – points a and b**

(a) to perform the distance or off-premises contract, or

(a) to perform the distance or off-premises contract, or

(b) to conclude **an** off-premises contract, in cases where an offer was made by the consumer.

(b) to conclude **the distance or** off-premises contract, in cases where an offer was made by the consumer.

Amendment 120**Proposal for a directive****Article 16 – paragraph 1**

1. The trader shall reimburse any payment received from the consumer **within thirty** days from the day on which he **receives the communication of withdrawal.**

1. The trader shall reimburse any payment received from the consumer, **including, if applicable, the costs of delivery, without undue delay, and in any event not later than fourteen** days from the day on which he **is informed of the consumer's decision to withdraw in accordance with Article 14.** **The trader may carry out such reimbursement by any means of payment which is legal tender in the country where the consumer receives it, and provided that the consumer does not incur any fees as a result of the reimbursement.**

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 241
Proposal for a directive
Article 16 – paragraph 2

2. For sales contracts, the trader may **withhold the reimbursement until he has received or collected the goods back, or** the consumer has supplied evidence of having sent back the goods, **whichever is the earliest.**

2. **Notwithstanding paragraph 1, the trader shall not be required to reimburse additional delivery costs, if the consumer has expressly opted for a type of delivery other than a standard delivery.** For sales contracts, the trader may **make** reimbursement **subject to the condition that** the consumer has supplied evidence of having sent back the goods.

Amendment 122
Proposal for a directive
Article 17 – paragraph 1

1. For **sales** contracts for **which the material possession of the goods has been transferred to the consumer or at his request, to a third party before the expiration of the withdrawal period,** the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive them, **within** fourteen days from the day on which he communicates his **withdrawal** to the trader, unless the trader has offered to collect the goods himself.

1. For **distance or off-premises** contracts for **the supply of goods** the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive them, **without undue delay and in any event not later than** fourteen days from the day on which he communicates his **decision to withdraw** to the trader **in accordance with Article 14,** unless the trader has offered to collect the goods himself.

The consumer shall only be charged for the direct cost of returning the goods **unless** the trader has agreed to bear **that cost.**

The consumer shall only be charged for the direct cost of returning the goods. **He shall not be charged for that cost if the trader has agreed in the contract to bear it or the price of the goods to be returned is more than EUR 40.**

Amendment 123
Proposal for a directive
Article 17 – paragraph 2

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to **ascertain** the nature and functioning of the goods. **He** shall not be liable for diminished value where the trader has failed to provide notice of the withdrawal **right** in accordance with **Article 9(b).** **For service contracts subject to a right of withdrawal, the consumer shall bear no cost for services performed, in full or in part, during the withdrawal period.**

2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to **establish** the nature, **qualities** and functioning of the goods. **The consumer** shall **in any event** not be liable for **any** diminished value **of the goods** where the trader has failed to provide notice of the **right of** withdrawal in accordance with **point (e) of Article 9(1).**

2a. Except as provided for in this Article, the consumer shall not incur any liability through the exercise of the right of withdrawal.

Amendment 125
Proposal for a directive
Article 18 – paragraph 1

1. Without prejudice to Article 15 of Directive 2008/48/EC, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 12 to 17, any **ancillary** contracts shall be automatically terminated, without any costs for the consumer.

1. Without prejudice to Article 15 of Directive 2008/48/EC, if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 12 to 17, any **linked** contracts shall be automatically terminated, without any costs for the consumer **that are not provided for in this Directive.**

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Amendment 126**Proposal for a directive****Article 19 – paragraph 1 – introductory part**

1. In respect of distance contracts, the right of withdrawal shall not apply as regards the following:

1. In respect of distance **and off-premises** contracts, the right of withdrawal shall not apply as regards the following:

Amendment 127**Proposal for a directive****Article 19 – paragraph 1 – point a**

(a) services where performance has begun, with the consumer's prior express consent, before the end of the fourteen day period referred to in Article 12;

(a) services where performance has begun, with the consumer's prior express consent **on a durable medium**, before the end of the fourteen day period referred to in Article 12; **in such cases, the consent should also extend to waiving the consumer's right of withdrawal;**

Amendment 128**Proposal for a directive****Article 19 – paragraph 1 – point b**

(b) the supply of goods or services for which the price is dependent on fluctuations in the **financial** market which cannot be controlled by the trader;

(b) the supply of goods or services for which the price is dependent on fluctuations in the market which cannot be controlled by the trader **and which might occur within the withdrawal period;**

Amendment 129**Proposal for a directive****Article 19 – paragraph 1 – point c**

(c) the supply of goods made to the consumer's specifications or clearly personalized or which are liable to deteriorate or expire rapidly;

(c) the supply of goods made **or services provided** to the consumer's specifications or clearly personalized, **requiring the trader to make individual arrangements which he can make no other use of**, or which are liable to deteriorate or expire rapidly;

Amendment 130**Proposal for a directive****Article 19 – paragraph 1 – point d**

(d) the supply **of wine, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place beyond the time-limit referred to in Article 22(1) and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;**

(d) the supply of:

— **foodstuffs,**

— **beverages,**

— **pharmaceuticals, or**

— **other hygienically sensitive goods, whose packaging or sealing has already been opened by the consumer, after having been informed about the exclusion of the right of withdrawal;**

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(da) contracts in respect of which the consumer, in order to respond to an immediate emergency, has requested immediate performance by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional goods or services;

(db) contracts for which the consumer has specifically requested the trader to visit him at home for the purpose of carrying out repairs or maintenance; if, on the occasion of such a visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;

Amendment 132
Proposal for a directive
Article 19 – paragraph 1 – point f

(f) the supply of newspapers, periodicals and magazines;

(f) the supply of newspapers, periodicals and magazines **with the exception of subscription contracts for the supply of such publications;**

Amendment 133
Proposal for a directive
Article 19 – paragraph 1 – point g

(g) gaming and lottery services;

deleted

Amendment 134
Proposal for a directive
Article 19 – paragraph 1 – point h

(h) contracts concluded at **an** auction.

(h) contracts concluded at **a public** auction.

(ha) the supply of digital content once the consumer has started to download that digital content.

Amendment 135
Proposal for a directive
Article 19 – paragraph 2

2. In respect of off-premises contracts, the right of withdrawal shall not apply as regards the following:

deleted

(a) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, selected in advance by the consumer by means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;

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- (b) *contracts for which the consumer, in order to respond to an immediate emergency, has requested the immediate performance of the contract by the trader; if, on this occasion, the trader provides or sells additional services or goods other than those which are strictly necessary to meet the immediate emergency of the consumer, the right of withdrawal shall apply to those additional services or goods;*
- (c) *contracts for which the consumer has specifically requested the trader, by means of distance communication, to visit his home for the purpose of repairing or performing maintenance upon his property; if on this occasion, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods.*

Amendment 136
Proposal for a directive
Article 19 – paragraph 3

3. The *parties* may agree not to apply *paragraphs 1 and 2*. 2. The *trader and the consumer* may agree not to apply *paragraph 1*.

Amendment 137
Proposal for a directive
Article 20

Article 20

*deleted**Excluded distance and off-premises contracts*

1. *Articles 8 to 19 shall not apply to distance and off-premises contracts:*
- (a) *for the sale of immovable property or relating to other immovable property rights, except for rental and works relating to immovable property;*
- (b) *concluded by means of automatic vending machines or automated commercial premises;*
- (c) *concluded with telecommunications operators through public payphones for their use;*
- (d) *for the supply of foodstuffs or beverages by a trader on frequent and regular rounds in the neighbourhood of his business premises.*
2. *Articles 8 to 19 shall not apply to off-premises contracts relating to:*
- (a) *insurance,*

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(b) *financial services whose price depends on fluctuations in the financial market outside the trader's control, which may occur during the withdrawal period, as defined in Article 6(2)(a) of Directive 2002/65/EC and*

(c) *credit which falls within the scope of Directive 2008/48/EC.*

3. *Articles 8 to 19 shall not apply to distance contracts for the provision of accommodation, transport, car rental services, catering or leisure services as regards contracts providing for a specific date or period of performance.*

Amendment 138
Proposal for a directive
Article 21

Article 21*deleted***Scope**

1. *This Chapter shall apply to sales contracts. Without prejudice to Article 24(5), where the contract is a mixed-purpose contract having as its object both goods and services, this Chapter shall only apply to the goods*

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 to the sale of second-hand goods at public auctions*

Amendment 139
Proposal for a directive
Article 22 – paragraph 1

1. *Unless the parties have agreed otherwise, the trader shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, other than the carrier and indicated by the consumer, within a maximum of thirty days from the day of the conclusion of the contract.*

1. *In the event that the parties have not agreed on the time of delivery, the trader shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, indicated by the consumer and other than the carrier, as soon as possible but not later than thirty days from the day of the conclusion of the contract.*

Amendment 140
Proposal for a directive
Article 22 – paragraph 2

2. *Where the trader has failed to fulfil his obligations to deliver, the consumer shall be entitled to a refund of any sums paid within seven days from the date of delivery provided for in paragraph 1.*

2. *Where the trader has failed to fulfil his obligations to deliver the goods at the time agreed on with the consumer, or in accordance with paragraph 1, the consumer shall be entitled to terminate the contract unless the goods are delivered within a new period to be determined by the consumer, which shall not exceed seven days. To that end, the consumer shall give prior notice in writing to the trader, specifying the new delivery period and stating his intention to terminate the contract in the event that the delivery does not*

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take place by the end of that new delivery period. If, upon expiry of that period, no action has been taken, the consumer shall be deemed to have withdrawn from the contract.

Notwithstanding the first subparagraph, the consumer shall be entitled to terminate the contract with immediate effect where the trader has implicitly or explicitly refused to deliver the goods, or where compliance with the agreed time of delivery is regarded as an essential element of the contract, taking into account the circumstances attending the conclusion of the contract.

2a. Upon termination of the contract, the trader shall immediately, and in any event not later than seven days after the termination of the contract, reimburse all sums paid under the contract.

2b. This Article shall be without prejudice to the right of the consumer to claim damages.

Amendment 141
Proposal for a directive
Article 22 a (new)

Article 22a

Right to delivery of goods to or supply of services in another Member State

In the case of a distance contract, the consumer shall be entitled to require the trader to deliver the goods or supply the service in another Member State. The trader shall meet the consumer's request if this is technically feasible and if the consumer agrees to bear all the related costs. The trader shall in any event state those costs in advance.

Amendment 142
Proposal for a directive
Article 22 b (new)

Article 22b

Means of payment

1. The trader and consumer may agree on an advance payment or a deposit on delivery.

2. In accordance with Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market ⁽¹⁾, Member States may prohibit or limit traders' right to request charges from consumers taking into account the need to encourage competition and promote the use of efficient payment instruments.

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3. Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.

⁽¹⁾ OJ L 319, 5.12.2007, p. 1.

**Amendment 143
Proposal for a directive
Article 23 – paragraph 1**

1. The risk of loss of or damage to the goods shall pass to the consumer when he or a third party, other than the carrier **and indicated by the consumer** has acquired the material possession of the goods.

1. The risk of loss of or damage to the goods shall pass to the consumer when he or a third party, **indicated by the consumer and** other than the carrier, has acquired the material possession of the goods. **The risk shall pass to the consumer upon delivery to the carrier, if the carrier was commissioned to carry the goods by the consumer and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.**

**Amendment 144
Proposal for a directive
Article 23 – paragraph 2**

2. The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if the consumer or a third party, other than the carrier and indicated by the consumer has failed to take reasonable steps to acquire the material possession of the goods.

2. The risk referred to in paragraph 1 shall pass to the consumer at the time of delivery as agreed by the parties, if the consumer or a third party, other than the carrier and indicated by the consumer has **manifestly** failed to take reasonable steps to acquire the material possession of the goods.

**Amendment 145
Proposal for a directive
Article 23 a (new)**

Article 23a

Duration of contracts

1. Without prejudice of the provisions of this Directive on unfair contract terms, contracts concluded between consumers and traders shall not stipulate an initial commitment period of more than 12 months.

2. At the end of the initial 12-month commitment period, consumers shall be entitled to terminate the contract at any time. Termination of the contract shall be subject to a period of prior notice, which shall not exceed two months. Consumers shall be entitled to give such prior notice before the end of the initial 12-month commitment period in order to terminate the contract with effect from the end of that period.

**Amendment 146
Proposal for a directive
Article 24 – paragraph 1**

1. The trader shall deliver the goods in conformity with the **sales** contract.

1. The trader shall deliver the goods in conformity with the contract, **in particular as regards quality and quantity, that were jointly agreed upon by the parties.**

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Amendment 147**Proposal for a directive****Article 24 – paragraph 2 – point a**

- | | |
|---|--|
| <p>(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;</p> | <p>(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, and</p> |
|---|--|

Amendment 148**Proposal for a directive****Article 24 – paragraph 2 – point b**

- | | |
|--|---|
| <p>(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 the conclusion of the contract and which the trader has accepted;</p> | <p>(b) they are fit, in the absence of an agreement on their characteristics, for the purpose for which the parties to the contract intended them at the time of the conclusion of the contract, and</p> |
|--|---|

Amendment 149**Proposal for a directive****Article 24 – paragraph 2 – points c and d**

- | | |
|---|---|
| <p>(c) they are fit for the purposes for which goods of the same type are normally used or</p> | <p>(c) they are fit for the purposes for which goods of the same type would normally be used and they show the quality and performance which are normal in goods of the same type, taking into account inter alia the purpose, the appearance, the durability and the finish, 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 or on labelling.</p> |
| <p>(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 or on labelling.</p> | |

Amendment 151**Proposal for a directive****Article 24 – paragraph 4 – point b**

- | | |
|--|--|
| <p>(b) by the time of conclusion of the contract the statement had been corrected;</p> | <p>(b) by the time of conclusion of the contract the statement had been corrected in due time and in a manner equivalent to that in which it was made or at least prominently in the contract document;</p> |
|--|--|

Amendment 152**Proposal for a directive****Article 24 – paragraph 5**

- | | |
|---|---|
| <p>5. Any lack of conformity resulting from the incorrect installation of the goods 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, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.</p> | <p>5. The trader shall be liable for any lack of conformity arising as a result of the packaging or resulting from the incorrect installation 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, intended to be installed by the consumer, are installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.</p> |
|---|---|

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Amendment 153
Proposal for a directive
Article 26 – paragraph 1

1. **As provided for in paragraphs 2 to 5**, where the goods do not conform to the contract, the consumer is entitled to:

(a) have the lack of conformity remedied by repair or replacement,

(b) *have the price reduced*,

(c) *have the contract rescinded*.

1. Where the goods do not conform to the contract, the consumer is entitled ***either*** to:

(a) have the lack of conformity remedied by repair or replacement ***in accordance with paragraphs 2, 3 and 5, or***

(b) ***a reasonable reduction in price or rescission of the contract in accordance with paragraphs 4, 5 and 5a.***

Amendment 154
Proposal for a directive
Article 26 – paragraph 2

2. The trader ***shall remedy the lack of conformity by either*** repair or ***replacement according to his choice***.

2. The ***consumer may first require the trader to*** repair ***the goods*** or ***to replace them if such a remedy is not impossible or disproportionate***.

Amendment 155
Proposal for a directive
Article 26 – paragraph 3

3. ***Where the trader has proved that remedying the lack of conformity by repair or replacement is unlawful, impossible or would cause the trader a disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded. A trader's effort is disproportionate if it imposes costs on him which, in comparison with the price reduction or the rescission of the contract, are excessive, taking into account the value of the goods if 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.

3. ***Either of the remedies provided for in paragraph 2 shall be deemed disproportionate if it would impose costs on the trader, which would be unreasonable by comparison with the alternative remedy (repair or replacement):***

(a) ***in the light of what would be the value of the goods if there were no lack of conformity,***

(b) ***taking into account the significance of the lack of conformity,***

(c) ***upon consideration of the question as to whether use could be made of other remedies (repair or replacement) without significant inconvenience for the consumer.***

Repair or replacement shall take place within a reasonable time and without significant inconvenience for the consumer.

Amendment 156
Proposal for a directive
Article 26 – paragraph 4

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

4. ***Without prejudice to paragraph 5b***, the consumer may ***insist on a reasonable reduction in price or rescission of the contract***, where one of the following situations exists:

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- (a) *the trader has implicitly or explicitly refused to remedy the lack of conformity;*
- (b) the trader has failed 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;
- (d) *the same defect has reappeared more than once within a short period of time.*

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- (a) *the consumer is entitled neither to repair nor replacement;*
- (aa) *the trader has refused explicitly or by his conduct to remedy the lack of conformity;*
- (b) the trader has failed to remedy the lack of conformity within a reasonable time;
- (c) the trader has **remedied** the lack of conformity, causing significant inconvenience to the consumer.

Amendment 158

Proposal for a directive

Article 26 – paragraph 5 a (new)

5a. *The consumer shall not be entitled to have the contract rescinded if the lack of conformity is minor.*

Amendment 159

Proposal for a directive

Article 26 – paragraph 5 b (new)

5b. *Member States may adopt or maintain provisions of national law giving consumers, in the event of lack of conformity, the right for a short period to terminate the contract and receive a full reimbursement or a free choice from among the remedies referred to in paragraph 1, in order to ensure a higher level of consumer protection.*

Amendment 160

Proposal for a directive

Article 27 – paragraph 2

2. Without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

2. *In accordance with the provisions of applicable national law, and* without prejudice to the provisions of this Chapter, the consumer may claim damages for any loss not remedied in accordance with Article 26.

Amendment 161

Proposal for a directive

Article 27 a (new)

Article 27a

Right of recourse

Where the trader, as final seller, is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the trader, as final seller, may pursue remedies against the person or persons liable in the contractual chain. The person or persons liable against whom the trader, as final seller, may pursue remedies, together with the relevant actions and procedure, shall be determined by national law, in such a way as to ensure the effectiveness of that right.

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A person established as being liable within the meaning of the first paragraph shall have the burden of proving an absence of responsibility for the lack of conformity, or that the remedy made by the final seller for the consumer was not in fact required.

Amendment 162

Proposal for a directive
Article 28 – paragraph 2

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 possession of the replaced goods. *deleted*

Amendment 163

Proposal for a directive
Article 28 – paragraph 4

4. In order to benefit from his rights under Article 25, the consumer shall inform the trader of the lack of conformity within two months from the date on which he detected the lack of conformity. *deleted*

Amendment 164

Proposal for a directive
Article 28 – paragraph 5 a (new)

5a. Member States may adopt or maintain provisions of national law providing for a longer liability period, a longer period for reversal of the burden of proof in the consumer's favour or specific rules on significant lack of conformity which becomes apparent after the liability period, in order to ensure a higher level of consumer protection.

Amendment 165

Proposal for a directive
Article 28 a (new)

Article 28 a

Communication and contactability

The trader shall ensure that throughout the duration of a service contract, or, following the conclusion of a sales contract, until the time limit referred to in Article 28(1) for formal offers, notifications and questions by the consumer relating to rights and obligations under the service contract or sales contract has expired, he can be contacted under reasonable conditions. In particular, he shall ensure that formal offers by the consumer in respect of the contract reach him without delay and that the consumer is notified of their receipt immediately. The cost of receiving and dealing with formal offers, notifications and questions concerning the service contract or the sales contract by telephone may not be charged to the consumer; the right of the telecommunications service provider to charge for such calls shall not be affected.

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Amendment 166**Proposal for a directive****Article 29 – paragraph 2 – introductory part**

2. The guarantee statement shall be drafted in plain intelligible language **and** be legible. It shall include the following:

2. The guarantee statement shall be drafted in plain intelligible language, be legible **and in the same font size**. It shall **be written in the same language as the contract**. The **guarantee statement shall** include the following:

Amendment 167**Proposal for a directive****Article 29 – paragraph 2 – points a, b and c**

(a) legal rights of the consumer, **as provided for in Article 26** and a clear statement that those rights are not affected by the commercial guarantee,

(a) legal rights of the consumer **under Articles 26 and 28, and the provisions of applicable national law, as well as** a clear statement that those rights are not affected by the commercial guarantee,

(b) set the contents of the commercial guarantee and the conditions for making claims, notably the duration, territorial scope and the name and address of the guarantor,

(b) set the contents of the commercial guarantee and the conditions for making claims, notably the duration, territorial scope and the name and address of the guarantor,

(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.

(c) **the information** that the commercial guarantee **can** be transferred to a subsequent buyer.

Amendment 168**Proposal for a directive****Article 29 – paragraph 3**

3. **If the consumer so requests**, the trader shall make the guarantee statement available in a durable medium.

3. The trader shall make the guarantee statement available in a durable medium **and, if so requested by the consumer, also on paper**.

Amendment 169**Proposal for a directive****Article 30 – paragraph 1**

1. This Chapter shall apply to contract terms drafted in advance by the trader or a third party, which the consumer **agreed to without having the possibility of influencing their content**, in particular where such contract **terms are** part of a pre-formulated standard contract.

1. This Chapter shall apply to contract terms drafted in advance by the trader or a third party, which **have not been individually negotiated**. A contract term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer **has therefore not been able to influence the substance of the contract term**, in particular where such contract **term is** part of a pre-formulated standard contract.

Amendment 170**Proposal for a directive****Article 30 – paragraph 2**

2. The fact that **the consumer had the possibility of influencing** the content of certain aspects of a contract term or one specific term, shall not exclude the application of this Chapter to other contract terms which form part of the contract.

2. The fact that the content of certain aspects of a contract term or one specific term **have been individually negotiated**, shall not exclude the application of this Chapter to other contract terms which form part of the contract.

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Amendment 171
Proposal for a directive
Article 30 – paragraph 3

3. This Chapter shall not apply to contract terms reflecting **mandatory** statutory or **regulatory** provisions, which comply with **Community** law and the provisions or principles of international conventions to which the **Community** or the Member States are party.

3. This Chapter shall not apply to contract terms reflecting statutory, **regulatory** or **public policy** provisions, which comply with **Union** law and the provisions or principles of international conventions to which the **Union** or the Member States are party.

Amendment 172
Proposal for a directive
Article 30 a (new)

Article 30a

Degree of harmonisation

Unless otherwise provided, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, including more or less stringent provisions to ensure a different level of consumer protection.

Amendment 173
Proposal for a directive
Article 31 – paragraph 1

1. Contract terms shall be expressed in plain, intelligible language and be legible.

1. **All** contract terms shall be expressed **in a clear and comprehensible manner. If a contract term is in writing, it shall always be drafted** in plain, intelligible language and be legible.

Amendment 174
Proposal for a directive
Article 31 – paragraph 4

4. Member States shall refrain from imposing any **presentational** requirements **as to the way** the contract terms **are expressed or made available to the consumer.**

4. Member States shall refrain from imposing any requirements **on the presentation of** contract terms, **except for presentational requirements in relation to persons with disabilities, or where the goods or services may present a particular risk to the health and safety of the consumer or a third person, or in respect of specific goods or services where there is evidence that demonstrates consumer detriment.**

Amendment 175
Proposal for a directive
Article 32 – paragraph 2

2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent. **When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the trader in accordance with Article 31.**

2. Without prejudice to Articles 34 and 38, the unfairness of a contract term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion and to all the other terms of the contract or of another contract on which the former is dependent.

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Amendment 176
Proposal for a directive
Article 32 – paragraph 2 a (new)

2a. When assessing the fairness of a contract term, the competent national authority shall also take into account the manner in which the contract was drafted and communicated to the consumer by the trader in accordance with Article 31(1) and (2). A term which has been supplied by the trader in breach of the duty of transparency imposed by Article 31(1) and (2) may on that ground alone be considered unfair.

Amendment 177
Proposal for a directive
Article 32 – paragraph 3

3. Paragraphs **1 and 2** shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the trader's main contractual obligation, provided that the trader fully complies with Article **31**.

3. Paragraphs **1, 2, and 2a of this Article** shall not apply to the assessment of the main subject matter of the contract or to the adequacy of the remuneration foreseen for the trader's main contractual obligation, provided that the trader fully complies with Article **31(1), (2) and (3)**.

Amendment 178
Proposal for a directive
Article 33

Where the trader claims that a contract term has been individually negotiated, the burden of proof shall be incumbent on him.

Where the trader claims that a contract term has been individually negotiated, **or that a contract term is compliant with the transparency requirements laid down in Article 31(1) and 31(2)**, the burden of proof shall be incumbent on him.

Amendment 179
Proposal for a directive
Article 34

Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. **That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.**

1. Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances.

2. Member States may provide in their national legislation for additional contract terms considered unfair in all circumstances. Member States shall notify to the Commission the contract terms referred to in paragraph 1.

The Commission shall make that information public in an easily accessible way.

Amendment 180
Proposal for a directive
Article 35

Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. **That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.**

1. Member States shall ensure that contract terms, as set out in the list point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32.

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2. *Member States may provide in their national legislation for additional contract terms presumed to be unfair. Member States shall notify to the Commission the contract terms referred to in paragraph 1.*

The Commission shall make that information public in an easily accessible way.

Amendment 181
Proposal for a directive
Article 37

Contract terms which are unfair shall not be binding on the consumer. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

Contract terms which are unfair *under this Directive* shall not be binding on the consumer *in accordance with national law*. The contract shall continue to bind the parties if it can remain in force without the unfair terms.

Amendment 182
Proposal for a directive
Article 38 – paragraph 1

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the *continued* use of unfair terms in contracts concluded with consumers by traders.

1. Member States shall ensure that, in the interests of consumers and competitors, adequate and effective means exist to prevent the use of unfair terms in contracts concluded with consumers by traders.

Amendment 184
Proposal for a directive
Article 39

Article 39

deleted

Review of the terms in Annexes 2 and 3

1. *Member States shall notify to the Commission the terms which have been found unfair by the competent national authorities and which they deem to be relevant for the purpose of amending this Directive as provided for by paragraph 2.*

2. *In the light of the notifications received under paragraph 1, the Commission shall amend Annex II and III. Those measures designed to amend non essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 40(2).*

Amendment 185
Proposal for a directive
Article 40

Article 40

deleted

The Committee

1. *The Commission shall be assisted by the Committee on unfair terms in consumer contracts (hereinafter referred to as ‘the Committee’).*

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2. *Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC¹ shall apply, having regard to the provisions of Article 8 thereof.*

Amendment 186
Proposal for a directive
Article 41 – paragraph 1

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

1. Member States **and the Commission** shall ensure that adequate and effective means exist to ensure compliance with **consumer rights as provided for in** this Directive.

Amendment 187
Proposal for a directive
Article 44

Member States shall take appropriate measures to inform consumers of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

Member States **and the Commission** shall take appropriate measures to inform consumers **and traders, especially via information and communication technology tools and public media**, of the national provisions transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

Amendment 188
Proposal for a directive
Article 45

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of **a product as** prohibited **by** Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. The absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

The consumer shall be exempted from the provision of any consideration in cases of unsolicited supply of **goods or provision of a service** prohibited **pursuant to** Article 5(5) and point 29 of Annex I of Directive 2005/29/EC. **In such cases**, the absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

Amendment 189
Proposal for a directive
Article 46 – paragraph 2

2. *Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.*

deleted

Amendment 190
Proposal for a directive
Article 46 a (new)

Article 46a

Reporting and mutual evaluation by Member States

1. By [the end of the transposition period], and every three years thereafter, Member States shall draw up a report containing the following information:

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- (a) *the text of any additional pre-contractual information requirements which Member States adopt or maintain pursuant to Article 9(5) and (6);*
- (b) *the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 12(4) and Article 13(2);*
- (c) *the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 22(2a);*
- (d) *the text of any diverging provisions of national law which Member States adopt or maintain pursuant to Article 26(5b) and Article 28(5a);*
- (e) *the text of any additional contract terms designated by Member States, pursuant to Article 34(1a), as unfair in all circumstances;*
- (f) *the text of any additional contract terms designated by Member States, pursuant to Article 35(1a), as terms presumed to be unfair;*
- (g) *the text of any decisions of fundamental importance – together with the grounds for them – taken by Member States' courts, arbitration bodies or competent administrative authorities in the field covered by this Directive.*

2. *The report referred to in paragraph 1 shall be submitted to the Commission. With regard to the information referred to in points (a) to (e) of paragraph 1, Member States shall explain why diverging provisions of national law are appropriate and proportionate with a view to attaining the purpose of the Directive.*

3. *The Commission shall ensure that the information referred to in points (d) and (e) of paragraph 1 is easily accessible to consumers and traders, inter alia on a dedicated website set up and maintained by the Commission.*

4. *The Commission shall forward the reports provided for in paragraph 1 to the other Member States and the European Parliament, which shall submit their observations on each of the reports within six months of receipt. Within the same period, the Commission shall consult stakeholders on those reports.*

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Amendment 191
Proposal for a directive
Article 46 b (new)

Article 46b

Reporting by consumer protection agents

Persons or organisations having a legitimate interest under national law in protecting consumers, within the meaning of Article 38(2), shall notify the Commission of the conclusions they have reached from the assessment of the application and impact of this Directive on consumer rights and the functioning of the internal market.

Amendment 192
Proposal for a directive
Article 46 c (new)

Article 46c

Reporting by the Commission and review

By [one year after transposition period], and every three years thereafter, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, taking account of the information gathered pursuant to Article 46a(4) and Article 46b. The report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of consumer rights.

Amendment 193
Proposal for a directive
Article -47 (new)
Directive 2002/65/EC

Article -47

Amendment of Directive 2002/65/EC

Point (a) of Article 2 of Directive 2002/65/EC shall be replaced by the following:

‘(a) “distance contract” means any contract for the supply of a good or the provision of a service concluded between a trader and a consumer under an organised distance sales or service-provision scheme where the trader and the consumer are not simultaneously physically present for the conclusion of the contract, but, rather, make exclusive use of one or more means of distance communication;’.

Amendment 194
Proposal for a directive
Article 47 – paragraph 1

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed.

Directives 85/577/EEC 93/13/EEC and 97/7/EC and Directive 1999/44/EC, as amended by the Directives listed in Annex IV, are repealed **as of [date of transposition]**.

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Amendment 195
Proposal for a directive
Article 48

Article 48*deleted***Review**

The Commission shall review this Directive and report to the European Parliament and the Council no later than [insert same date as in the second subparagraph of Article 46(1) +five years].

If necessary, it shall make proposals to adapt it to developments in the area. The Commission may request information from the Member States.

Amendment 196
Proposal for a directive
Article 48 a (new)

Article 48a

The Commission shall consider adopting a proposal for a regulation on distance and off-premises contracts, from which transport and health services will be exempted.

Amendment 197
Proposal for a directive
Annex I – part A

A. Information to be provided with the withdrawal form**A. Model instructions on withdrawal**

1. The name, geographical address and the email address of the trader to whom the withdrawal form must be sent.

Right of withdrawal

2. A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending the withdrawal form below on a durable medium to the trader referred to in paragraph 1:

You may withdraw on a durable medium from this contract within a period of 14 days without giving any reason [or – if the goods are delivered to you before the expiry of this period – by returning the goods].

(a) for off-premises contracts, within a period of fourteen days following his signature of the order form;

The period for withdrawal shall begin [on receipt of the goods ordered] (1). The day [on which the goods are received] (2) shall not be counted as part of the period for withdrawal. If the last day of the period for withdrawal falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.

The period for withdrawal shall be deemed to have been observed if your notice of withdrawal is sent, or the goods are sent, before its expiry. The sending of either the notice of withdrawal or the goods before the expiry of the withdrawal period must be provable (for example in the form of a postal receipt).

(b) for distance sales contracts, within a period of fourteen days following the material possession of the goods by the consumer or a third party, other than the carrier and indicated by the consumer;

Notice of withdrawal should be sent on a durable medium (for example in the form of a posted letter) (3) to: (4). The consumer may use the form below, but it is not obligatory.

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(c) for distance service contracts:

- within a period of fourteen days following the conclusion of the contract, where the consumer has not given his prior express consent for the performance of the contract to begin before the end of this fourteen day period;

- within a period ending when the performance of the contract begins, where the consumer has given his prior express consent for the performance of the contract to begin before the end of the fourteen day period.

3. For all sales contracts, a statement informing the consumer about the time-limits and modalities to send back the goods to the trader and the conditions for the reimbursement in accordance with Articles 16 and 17(2).

4. For distance contracts concluded on the Internet, a statement that the consumer can electronically fill in and submit the standard withdrawal form on the trader's website and that he will receive an acknowledgement of receipt of such a withdrawal from the trader by email without delay.

5. A statement that the consumer can use the withdrawal form set out in Part B.

Effects of withdrawal

For withdrawal to be valid you must send the goods back, at [our expense](5), within a period of 14 days of sending your notice of withdrawal. The period for reimbursement shall begin when we receive your notice of withdrawal or the goods. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.

If you are unable to return the goods in their original condition, you shall be liable for any diminished value of the goods. This provision shall apply only if the deterioration in value is attributable to the goods having been handled in a manner other than that necessary for ascertaining their nature and how they function. You can prevent deterioration by refraining from using the goods as you would your own property and by avoiding any form of handling liable to reduce their value.

In the case of valid withdrawal, we must reimburse within a period of 14 days any payment you have made to us. The period for reimbursement shall begin when we receive your notice of withdrawal. The day on which we receive the notice of withdrawal shall not be counted as part of the period for reimbursement. If the last day of this period falls on a public holiday, a Saturday or a Sunday, the period shall end on the first working day thereafter.

We may make reimbursement subject to the condition that we have received the returned goods.

Advice on alternative wording:

(1) In the following specific cases, the text in parentheses should read as indicated:

in the case of distance or off-premises contracts for the supply of services: 'from the day of the conclusion of the contract or on the day on which you received a copy of the signed contract on a durable medium if this is not the day of conclusion of the contract'.

(2) In the following specific cases, the text in parentheses should read as indicated:

in the case of distance or off-premises contracts for the supply of services: 'the conclusion of the contract or on the day on which you received a copy of the signed contract on a durable medium, if this is not the day of conclusion of the contract'.

(3) In the case of distance contracts, additional text should be inserted as follows:

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(a) if the trader allows the consumer to withdraw from the contract by e-mail: 'or by e-mail';

(b) if the trader allows the consumer to fill in a model form electronically on a website: 'or via our website'.

(4) To be inserted: the trader's name and business address. In the case of distance contracts, the following must also be indicated: the e-mail and/or web address of the trader which the consumer can use to withdraw from the contract.

(5) If the price of the goods to be returned is not more than EUR 40, the text in parentheses should read as follows: 'at your own expense'.

Amendment 198
Proposal for a directive
Annex I – part B

(complete and return this form only if you wish to withdraw from the contract)

To:

I/We* hereby give notice that I/We* withdraw from my/our* contract of sale of the following goods*/provision of the following service*

Ordered on*/*received on**

Name of consumer(s)

Address of consumer(s)

Signature of consumer(s) (only if *this form is notified in writing*)

Date

* *Delete as appropriate.*

To: *(trader's name, business address and, where appropriate, e-mail address)*(*)

I/We** hereby give notice that I/We** withdraw from my/our** contract of sale of the following goods**/provision of the following service**

Ordered on (***):

Name(s) of consumer(s) (***):

Address(es) of consumer(s) (***):

Consumer(s)' signature(s) (required only if *the form is sent on paper*) (***):

Date (***):

(*) *To be filled in by the trader before providing the form to the consumer*

(**) *Delete where non-applicable.*

(***) *To be filled in by the consumer(s).*

Amendment 199
Proposal for a directive
Annex II – paragraph 1 – point a a (new)

(aa) *excluding or limiting the liability of the trader for damage on the property of the consumer caused deliberately or as a result of gross negligence through an act or omission by the trader;*

Amendment 201
Proposal for a directive
Annex II – paragraph 1 – point c a (new)

(ca) *conferring exclusive jurisdiction for all disputes arising under the contract to the place where the trader is domiciled unless the chosen court is also the court for the place where the consumer is domiciled;*

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Amendment 202**Proposal for a directive****Annex III – paragraph 1 – point a a (new)**

(aa) makes binding on the consumer an obligation which is subject to a condition the fulfilment of which depends solely on the intention of the trader;

Amendment 203**Proposal for a directive****Annex III – paragraph 1 – point c a (new)**

(ca) requiring a consumer to purchase ancillary goods or services not advertised in the price of the main contract;

Amendment 204**Proposal for a directive****Annex III – paragraph 1 – point c b (new)**

(cb) applying contingent charges, such as penalties for breaching the contract terms, that are clearly disproportionate to the costs incurred by the trader due to the breach of terms;

Amendment 205**Proposal for a directive****Annex III – paragraph 1 – point d a (new)**

(da) excluding or hindering the consumer's right to instruct and authorise a third party to conclude a contract between the consumer and the trader and/or to take steps which are meant to lead to, or facilitate, the conclusion of a contract between the consumer and the trader.

Amendment 206**Proposal for a directive****Annex III – paragraph 1 – point e**

(e) enabling the trader to terminate *an open-ended contract* without reasonable notice except where *the consumer has committed a serious breach of contract*;

(e) enabling the trader to terminate *a contract of indeterminate duration* without reasonable notice, except where *there are serious grounds for doing so; this does not affect terms in financial services contracts where there is a valid reason, provided the supplier is required to inform the other contracting party thereof immediately*;

Amendment 207**Proposal for a directive****Annex III – paragraph 1 – point g**

(g) allowing the trader to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract;

(g) *providing that the price of goods or other assets is to be determined at the time of delivery or supply* or allowing the trader to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract *if the increased price is too high in relation to the price agreed at the conclusion of the contract; this does not affect price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described*;

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Amendment 208
Proposal for a directive
Annex III – paragraph 1 – point k

(k) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service;

(k) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service ***without a valid reason which is specified in the contract; this does not affect terms under which a supplier of financial services reserves the right to change the rate of interest to be paid by, or to, the consumer, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the consumer at the earliest opportunity and that the consumer is free to terminate the contractual relationship with immediate effect; neither does it affect terms under which a trader reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the trader is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contractual relationship;***

Amendment 209
Proposal for a directive
Annex III – paragraph 1 – point l a (new)

(la) allowing a trader, where what has been ordered is unavailable, to supply an equivalent without having expressly informed the consumer of this possibility and of the fact that the trader must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to withdraw.

Amendment 210
Proposal for a directive
Annex III – paragraph 2

2. Point 1(e) shall not apply to terms by which a supplier of financial service reserves the right to terminate unilaterally an open-ended contract without notice, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

deleted

Amendment 211
Proposal for a directive
Annex III – paragraph 3 – point c a (new)

(ca) package travel contracts regulated by Directive 90/314/EEC.

Amendment 212
Proposal for a directive
Annex III – paragraph 4 – introductory part

4. Point 1(k) shall not apply to

4. Point 1(e), (g) **and** (k) shall not apply to

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Amendment 213**Proposal for a directive****Annex III – paragraph 4 – point a**

- (a) *terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately;* *deleted*

Amendment 214**Proposal for a directive****Annex III – paragraph 4 – point b**

- (b) *transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control;* *deleted*

Amendment 215**Proposal for a directive****Annex III – paragraph 4 – point d**

- (d) *terms under which the trader reserves the right to alter unilaterally the conditions of an open-ended contract, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to terminate the contract.* *deleted*
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