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from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject:	Proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law - Outcome of the European Parliament's first reading (Strasbourg, 24 to 27 February 2014)

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**I. INTRODUCTION**

The Committee on Legal Affairs submitted 264 amendments (amendments 1 - 264) to the proposal for a Regulation.

Mrs GEBHARDT and other members tabled an amendment (amendment 265) to reject the Commission's proposal altogether.

Mrs Evelyn GEBHARDT (S&D - DE) and other members also submitted a further amendment (amendment 266).

## II. DEBATE

Mr Tadeusz ZWIEFKA (EPP - PL) opened the debate, which took place on 26 February 2014, speaking on behalf of one of the co-Rapporteurs, Mr Klaus-Heiner LEHNE (EPP - DE), who was absent, and:

- stated that it was absolutely necessary to establish a new mechanism for the legal regime of cross-border sales contracts. This will catalyse the common and single market. Some individuals and firms may be opposed, but the arguments in favour are overwhelming;
- stressed the fact that this is supposed to be an optional instrument. Both consumers and businesses would be able to choose whether to make use of this Community instrument or of a national instrument. Both parties would have to agree. If either party were to oppose the application of EU sales law, then it would not apply;
- emphasised the fact that consumers must clearly express their agreement to a contract - it cannot just be assumed. Consumers must receive prior information both of their rights under common European sales law and of what the contract entails; and
- anticipated that opponents would argue that harmonisation by means of a Directive would be a more appropriate approach than a Regulation. He did not accept this objection, however, because the current proposal was the only option available.

The other co-Rapporteur, Mr Luigi BERLINGUER (S&D - IT):

- recalled that all the major political groups and many of the smaller political groups had expressed their support for this initiative; and
- stated that the proposed Regulation is not a purely technical measure. It would break new ground in the movement for further European integration. It would affect the everyday life of European citizens. It would answer their everyday needs (for example, by expanding the range of products available for them to choose between) and would protect their interests.

Mr Ashley FOX (ECR - UK):

- stated that the Common European Sales Law would actually reduce consumer protection in the United Kingdom and in other countries such as Germany. He asked Mr Berlinguer to explain how this would improve consumer confidence; and
- stated that a German consumer making a purchase over the internet in the United Kingdom would have a lower level of protection if the business decided to use this optional instrument. Contrary to what Mr Zwiefka had said earlier, it would not be for both parties to agree - it would be the business alone that would decide, not the consumer. What Mr Berlinguer had said was completely flawed.

Mr BERLINGUER replied that:

- it would not be just for the business alone to opt for the optional approach, though he also conceded that the consumer might not be aware of this fact; and
- admitted that certain Member States currently have higher levels of protection than the proposed European regime, but also argued that the proposed European regime would increase the average level of protection of consumers in the EU as a whole.

Commissioner REDING:

- stated that the proposal would dramatically cut transaction costs for business and for SMEs in particular. They would no longer need to be familiar with 28 different legal regimes. They would no longer have to pay legal fees to adapt contracts to different national rules. They would need just one single law and one single IT platform to sell products throughout the EU;
- argued that consumers would have more choice because of increased competition and that prices would decrease;
- stated that the Common European Sales Law would also provide them with a guarantee of consumer protection which is equal to or higher than the existing EU harmonised rules. It is also comparable to and higher than almost all non-harmonised areas of national law. In particular, it is not inferior to the protection of British and German consumers (who are the ones who are always cited) or to French consumers. It is at least at the same level, if not higher. It is also optional - so consumers can still choose; and

- explained that one of the reasons why she had always opposed the idea of transforming the optional Common European Sales Law into a minimum harmonisation directive was precisely because that would entail a change of national laws. Such a change is not necessary, because there is nothing wrong with the national laws. Such a change would also require all businesses to adapt to new legal requirements. A harmonisation directive would provide less protection and create more red tape.

Speaking on behalf of the Committee on the Internal Market and Consumer Protection, Mrs Evelynne GEBHARDT (S&D - DE):

- warned that it would be a great mistake to follow the path proposed by the Commission. Careful scrutiny demonstrates that it would lead to legal uncertainty and a reduction in consumer protection;
- stated that the proposed European optional regime is in some cases worse than national laws;
- argued that consumer protection arrangements such as Rome I would no longer be available for use by consumers, because consumers are not legal experts and do not have all the necessary facts; and
- expressed the hope that the Council would reject the proposal.

Also speaking on behalf of the Committee on the Internal Market and Consumer Protection, Mr Hans-Peter MAYER (EPP - DE):

- expressed his total disagreement with the stance just outlined by Mrs Gebhardt; and
- highlighted some of the proposal's advantage, such as:
  - greater transparency in the single market;
  - greater opportunities for SMEs;
  - enhanced consumer access to a greater variety of products at cheaper prices;
  - the proposed regime would provide a higher level of consumer protection than is the average norm within the EU at present; and
  - the regime would be optional.

Speaking on behalf of the EPP political group, Mr Raffaele BALDASSARRE (EPP - IT):

- supported the proposal;
- highlighted the advantages of greater certainty for businesses, of higher consumer protection levels, and of a reduction of the administrative and legal burdens that currently result from different Member States having different legal regimes; and
- welcomed the prospect of consumers being able to benefit from a single and enhanced level of protection throughout the single market.

Speaking on behalf of the S&D political group, Mrs Lidia GERINGER DE OEDENBERG (S&D - PL) supported the proposal as a ground-breaking initiative that will benefit consumers and businesses alike, whilst also boosting the single market.

Speaking on behalf of the ALDE political group, Mrs Alexandra THEIN (ALDE - DE):

- welcomed the limitation of scope to distance and internet contracts;
- responded to Mr Fox by highlighting the relatively wider range of products on offer to German and British consumers - and the correspondingly narrower range of products on offer to consumers in smaller Member States; and
- welcomed the optional approach.

Speaking on behalf of the Greens/EFA political group, Mrs Eva LICHTENBERGER (Greens/EFA - AT) argued that the optional approach would provoke many legal questions which have yet to be answered. Only businesses will have freedom of choice. Commercial interests are already working to undo the high level of consumer protection. The Council has in recent years worked increasingly hard against consumer interests and will pick up on this optional approach. The Council pays most heed to business interests. Consumers will not necessarily have law degrees and will therefore not be able to take advantage of the possibilities made available to them.

Speaking on behalf of the ECR political group, Mr Ashley FOX (ECR - UK):

- characterised the Common European Sales Law ('CESL') as a deeply flawed system that would complicate consumer law and increase costs for businesses. Consumer groups and business organisations have queued up to condemn the proposal - including BEUC, the European consumers' organisation;
- stated that the proposal would not simplify matters, but instead introduce a new 29th regime;
- argued that the CESL might be optional, but that it would be for businesses to decide when it applies, not consumers. Commissioner Reding's argument that the CESL would benefit small businesses because they would not have to deal with 28 legal systems implied non-optionality for consumers. Consumers will be asked to tick a little box on the computer screen and, if they decline to do so, they will not be able to complete the transaction;
- expressed his fear that the proposal would undermine and fragment the single market, and would reduce consumer confidence;
- stated that the proposal was a vanity project on the part of Commissioner Reding. He asserted that she supported the proposal because it introduces a new body of European law and that, 'in her rather strange view of the world', anything that increases the power of the EU at the expense of the Member States, however flawed it might be, must be a good thing - even if consumers and businesses are opposed to it; and
- noted that his political group would vote against the proposal and stated that many EPP and S&D members would also support Mrs Gebhardt's motion to reject the proposal.

Speaking on behalf of the EFD political group, the EARL OF DARTMOUTH (EFD - UK):

- characterised the proposal as a 'minor masterpiece of legislative flatulence that will benefit only lawyers';
- warned that, whilst the current proposal was for an optional regime, this would in due course become compulsory; and
- argued that the Parliament would have a very different membership after the coming elections and that this future Parliament would vote down the proposal.

Commissioner REDING once more took the floor and:

- noted that, in the United Kingdom, the Federation of Small Businesses and the British Retail Consortium all very strongly support the proposal, because they face many problems in selling across borders;
- stated that British law grants consumers the right to return a product within thirty days of delivery. Under the current proposal, a consumer making a cross-border purchase could terminate the contract immediately within two years of discovering a defect. This would be an increase, not a decrease, in consumer protection; and
- stated her readiness to reduce the scope of the proposal to distance contracts only, if that is what the Council and the Parliament decide in negotiations.

Mr ZWIEFKA once more took the floor and argued that there is no contradiction between strengthening the position of SMEs through the optional formula on the one hand, and increasing consumer protection over and above its current level in many Member States on the other. He particularly highlighted the right to compensation for defective services and goods. The optional approach constitutes a step forward.

Mr BERLINGUER once more took the floor and argued that the optional instrument was the right way to proceed.

### **III. VOTE**

When it voted later the same day of 26 February 2014, the Parliament:

- first voted to reject amendment 265 to reject the Commission's proposal (186 voted for, 395 voted against, 58 abstentions); and
- then adopted the 264 amendments (amendments 1-264) submitted by the Committee on Legal Affairs.

No other amendments were adopted.

The text of the adopted amendments and the European Parliament's legislative resolution are set out in the Annex to this note <sup>1</sup>.

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<sup>1</sup> Amendments 43 and 217 do not concern all language versions.

## **Common European Sales Law \*\*\*I**

**European Parliament legislative resolution of 26 February 2014 on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law (COM(2011)0635 – C7-0329/2011 – 2011/0284(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0635),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0329/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Belgian Senate, the German Bundestag, the Austrian Federal Council and the United Kingdom House of Lords, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 29 March 2012<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Economic and Monetary Affairs (A7-0301/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 181, 21.6.2012, p. 75.



## Amendment 1

### Proposal for a regulation Recital 8

*Text proposed by the Commission*

(8) To overcome **these** contract-law-related barriers, parties should have the possibility to agree that **their** contracts should be governed by a single uniform set of contract law rules with the same meaning and interpretation in all Member States, a Common Sales Law. **The** Common European Sales Law should represent an additional option increasing the choice available to parties and open to use whenever jointly considered to be helpful in order to facilitate cross-border trade and reduce transaction and opportunity costs as well as other contract-law-related obstacles to cross-border trade. It should become the basis of a contractual relationship only where parties jointly decide to use it.

*Amendment*

**(8) Contract-law-related barriers prevent consumers and traders from fully exploiting the potential of the internal market and are particularly relevant in the area of distance selling, which should be one of the tangible results of the internal market. In particular, the digital dimension of the internal market is becoming vital for both consumers and traders as consumers increasingly make purchases over the internet and an increasing number of traders sell online. Given that communication and information technology means are constantly developing and becoming increasingly accessible, the growth potential of internet sales is very high. Against this background, and to overcome such contract-law-related barriers, parties should have the possibility to agree that contracts **they conclude at a distance, and, in particular, online,** should be governed by a single uniform set of contract law rules with the same meaning and interpretation in all Member States, a Common **European** Sales Law. **That** Common European Sales Law should represent an additional option **for distance selling and, in particular, internet trade,** increasing the choice available to parties and open to use whenever jointly considered to be helpful in order to facilitate cross-border trade and reduce transaction and opportunity costs as well as other contract-law-related obstacles to cross-border trade. It should become the basis of a contractual relationship only where parties jointly decide to use it.**

## Amendment 2

### Proposal for a regulation

## Recital 9

### *Text proposed by the Commission*

(9) This Regulation establishes a Common European Sales Law. It **harmonises** the contract laws of the Member States not by requiring amendments to the **pre-existing** national contract law, but by creating **within each Member State's national law** a second contract law regime for contracts within its scope. This second regime should be identical throughout the Union and exist alongside the pre-existing rules of national contract law. The Common European Sales Law should apply on a voluntary basis, upon an express agreement of the parties, to a cross-border contract.

### *Amendment*

(9) This Regulation establishes a Common European Sales Law **for distance contracts and in particular for online contracts**. It **approximates** the contract laws of the Member States not by requiring amendments to the **first** national contract-law **regime**, but by creating a second contract-law regime for contracts within its scope. This **directly applicable** second regime **should be an integral part of the legal order applicable in the territory of the Member States. In so far as its scope allows and where parties have validly agreed to use it, the Common European Sales Law should apply instead of the first national contract-law regime within that legal order.** It should be identical throughout the Union and exist alongside the pre-existing rules of national contract law. The Common European Sales Law should apply on a voluntary basis, upon an express agreement of the parties, to a cross-border contract.

## Amendment 3

### Proposal for a regulation

#### Recital 10

### *Text proposed by the Commission*

(10) The agreement to use the Common European Sales Law should be a choice exercised within the **scope of the** respective national **law** which is **applicable** pursuant to Regulation (EC) No 593/2008 or, in relation to pre-contractual information duties, pursuant to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Regulation (EC) No 864/2007), or any other relevant conflict of law rule. The agreement to use the Common European Sales Law **should** therefore not amount to, and not be

### *Amendment*

(10) The agreement to use the Common European Sales Law should be a choice exercised within the respective national **legal order** which is **determined as the applicable law** pursuant to Regulation (EC) No 593/2008 or, in relation to pre-contractual information duties, pursuant to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Regulation (EC) No 864/2007), or any other relevant conflict of law rule. The agreement to use the Common European Sales Law **results from a choice between two different**

confused with, a choice *of the applicable law* within the meaning of the conflict-of-law rules and should be without prejudice to them. This Regulation will therefore not affect any of the existing conflict of law rules.

*regimes within the same national legal order. That choice, therefore, does not amount to, and should not be confused with, a choice between two national legal orders* within the meaning of the conflict-of-law rules and should be without prejudice to them. This Regulation will therefore not affect any of the existing conflict of law rules *such as those contained in Regulation (EC) No 593/2008*.

#### Amendment 4

##### Proposal for a regulation

##### Recital 11

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

(11) The Common European Sales Law should comprise *of a complete* set of *fully harmonised* mandatory consumer protection rules. In line with Article 114(3) of the Treaty, those rules should guarantee a high level of consumer protection with a view to enhancing consumer confidence in the Common European Sales Law and thus provide consumers with an incentive to enter into cross-border contracts on that basis. The rules should maintain or improve the level of protection that consumers enjoy under Union consumer law.

###### *Amendment*

(11) The Common European Sales Law should comprise a *comprehensive* set of *uniform* mandatory consumer protection rules. In line with Article 114(3) of the Treaty, those rules should guarantee a high level of consumer protection with a view to enhancing consumer confidence in the Common European Sales Law and thus provide consumers with an incentive to enter into cross-border contracts on that basis. The rules should maintain or improve the level of protection that consumers enjoy under Union consumer law. *Furthermore, the adoption of this Regulation should not preclude revision of the Directive on consumer rights, with the aim of providing full high-level harmonisation of consumer protection in the Member States.*

#### Amendment 5

##### Proposal for a regulation

##### Recital 11 a (new)

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

###### *Amendment*

*(11a) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual-*

*purpose contracts, where the contract is concluded for purposes partly within and partly outside a person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer. In order to determine whether a natural person is acting fully or partly for purposes which come within that person's trade, business, craft or profession, the way in which the person in question behaves towards the contracting party should be taken into account.*

## Amendment 6

### Proposal for a regulation Recital 12

#### *Text proposed by the Commission*

(12) Since the Common European Sales Law contains a **complete** set of **fully** harmonised mandatory consumer protection rules, there will be no disparities between the laws of the Member States in this area, where the parties have chosen to use the Common European Sales Law. Consequently, Article 6(2) Regulation (EC) No 593/2008, which is predicated on the existence of differing levels of consumer protection in the Member States, has no practical **importance for** the issues covered by the Common European Sales Law.

#### *Amendment*

(12) ***Once there is a valid agreement to use the Common European Sales Law, only the Common European Sales Law should govern the matters falling within its scope.*** Since the Common European Sales Law contains a **comprehensive** set of **uniform** harmonised mandatory consumer protection rules, there will be no disparities between the laws of the Member States in this area, where the parties have chosen to use the Common European Sales Law. Consequently, Article 6(2) of Regulation (EC) No 593/2008, which is predicated on the existence of differing levels of consumer protection in the Member States, has no practical **relevance to** the issues covered by the Common European Sales Law, ***as it would amount to a comparison between the mandatory provisions of two identical second contract-law regimes.***

## Amendment 7

### Proposal for a regulation Recital 13

*Text proposed by the Commission*

(13) The Common European Sales Law should be available for cross-border contracts, because it is in that context that the disparities between national laws lead to complexity and additional costs and dissuade parties from entering into contractual relationships. The cross-border nature of a contract should be assessed on the basis of the habitual residence of the parties in business-to-business contracts. In a business-to-consumer contract the cross-border requirement should be met where either the general address indicated by the consumer, the delivery address for the goods or the billing address indicated by the consumer are located in a Member State, but outside the State where the trader has its habitual residence.

*Amendment*

(13) The Common European Sales Law should be available for cross-border contracts, because it is in that context that the disparities between national laws lead to complexity and additional costs and dissuade parties from entering into contractual relationships, ***and that distance trade, in particular trade online, has a high potential***. The cross-border nature of a contract should be assessed on the basis of the habitual residence of the parties in business-to-business contracts. In a business-to-consumer contract the cross-border requirement should be met where either the general address indicated by the consumer, the delivery address for the goods or the billing address indicated by the consumer are located in a Member State, but outside the State where the trader has its habitual residence.

**Amendment 8**

**Proposal for a regulation  
Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) Cloud computing is developing rapidly and has great potential for growth. The Common European Sales Law provides a coherent set of rules adapted to the distance supply, and in particular the supply online, of digital content and related services. It should be possible for those rules to also apply when digital content or related services are provided using a cloud, in particular when digital content can be downloaded from the seller's cloud or temporarily stored in the provider's cloud.***

**Amendment 9**

**Proposal for a regulation  
Recital 18**

(18) Digital content is often supplied not in exchange for a price but in combination with separate paid goods or services, involving a non-monetary consideration such as giving access to personal data or free of charge in the context of a marketing strategy based on the expectation that the consumer will purchase additional or more sophisticated digital content products at a later stage. In view of this specific market structure and of the fact that defects of the digital content provided may harm the economic interests of consumers irrespective of the conditions under which it has been provided, the availability of the Common European Sales Law should not depend on whether a price is paid for the specific digital content in question.

(18) Digital content is often supplied not in exchange for a price but in combination with separate paid goods or services, involving a non-monetary consideration such as giving access to personal data or free of charge in the context of a marketing strategy based on the expectation that the consumer will purchase additional or more sophisticated digital content products at a later stage. In view of this specific market structure and of the fact that defects of the digital content provided may harm the economic interests of consumers irrespective of the conditions under which it has been provided, the availability of the Common European Sales Law should not depend on whether a price is paid for the specific digital content in question.

***However, in such cases, the remedies of the buyer should be limited to damages. On the other hand, the buyer should be able to have recourse to the full range of remedies, except price reduction, even if he is not obliged to pay a price for the supply of digital content, provided that his counter-performance, such as the provision of personal data or other utility having commercial value for the supplier, equals the payment of the price, given that in such cases the digital content is not actually supplied free of charge.***

## **Amendment 10**

### **Proposal for a regulation**

#### **Recital 19**

(19) With a view to maximising the added value of the Common European Sales Law its material scope should also include certain services provided by the seller that are directly and closely related to specific goods or digital content supplied on the basis of the Common European Sales Law, and in practice often combined in the same

(19) With a view to maximising the added value of the Common European Sales Law its material scope should also include certain services provided by the seller that are directly and closely related to specific goods or digital content supplied on the basis of the Common European Sales Law, and in practice often combined in the same

or a linked contract at the same time, most notably repair, maintenance or installation of the goods or the digital content.

or a linked contract at the same time, most notably repair, maintenance or installation of the goods or the digital content *or temporary storage of digital content in the provider's cloud.*

## Amendment 11

### Proposal for a regulation Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) The Common European Sales Law may also be used for a contract that is linked to another contract between the same parties that is not a sales contract, a contract for the supply of digital content or a related services contract. The linked contract is governed by the respective national law which is applicable pursuant to the relevant conflict-of-law rule. The Common European Sales Law may also be used for a contract that includes any element other than the sale of goods, the supply of digital content or the provision of related contracts, provided those elements are divisible and their price can be apportioned.***

## Amendment 12

### Proposal for a regulation Recital 22

*Text proposed by the Commission*

*Amendment*

(22) The agreement of the parties to a contract is indispensable for the application of the Common European Sales Law. That agreement should be subject to strict requirements in business-to-consumer transactions. Since, in practice, it will usually be the trader who proposes the use of the Common European Sales Law, consumers must be fully aware of the fact that they are agreeing to the use of rules which are different from those of their pre-existing national law. Therefore, the

(22) The agreement of the parties to a contract ***to the use of the Common European Sales Law*** is indispensable for the application of the Common European Sales Law. That agreement should be subject to strict requirements in business-to-consumer transactions. Since, in practice, it will usually be the trader who proposes the use of the Common European Sales Law, consumers must be fully aware of the fact that they are agreeing to the use of rules which are different from those of

consumer's consent to use the Common European Sales Law should be admissible only in the form of an explicit statement separate from the statement indicating the agreement to the conclusion of the contract. It should therefore not be possible to offer the use of the Common European Sales Law as a term of the contract to be concluded, particularly as an element of the trader's standard terms and conditions. The trader should provide the consumer with a confirmation of the agreement to use the Common European Sales Law on a durable medium.

their pre-existing national law. Therefore, the consumer's consent to use the Common European Sales Law should be admissible only in the form of an explicit statement separate from the statement indicating the agreement to the conclusion of the contract. It should therefore not be possible to offer the use of the Common European Sales Law as a term of the contract to be concluded, particularly as an element of the trader's standard terms and conditions. The trader should provide the consumer with a confirmation of the agreement to use the Common European Sales Law on a durable medium.

## Amendment 13

### Proposal for a regulation Recital 23 a (new)

*Text proposed by the Commission*

*Amendment*

***(23a) Where the agreement of the parties to the use of the Common European Sales Law is invalid or where the requirements to provide the standard information notice are not fulfilled, questions as to whether a contract is concluded and on what terms should be determined by the respective national law which is applicable pursuant to the relevant conflict-of-law rules.***

## Amendment 14

### Proposal for a regulation Recital 27

*Text proposed by the Commission*

*Amendment*

(27) All the matters of a contractual or non-contractual nature that are not addressed in the Common European Sales Law are governed by the pre-existing rules of the national law outside the Common European Sales Law that is applicable under Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule. These issues include

(27) All the matters of a contractual or non-contractual nature that are not addressed in the Common European Sales Law are governed by the pre-existing rules of the national law outside the Common European Sales Law that is applicable under Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict of law rule. These issues include



legal personality, the invalidity of a contract arising from lack of capacity, illegality or immorality, the determination of the language of the contract, matters of non-discrimination, representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including the transfer of ownership, intellectual property law **and** the law of torts. **Furthermore**, the issue of whether concurrent contractual and non-contractual liability claims can be pursued together ***falls outside the scope of the Common European Sales Law.***

legal personality, the invalidity of a contract arising from lack of capacity, illegality or immorality ***unless the reasons for such illegality or immorality are addressed in the Common European Sales Law***, the determination of the language of the contract, matters of non-discrimination, representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including the transfer of ownership, intellectual property law, the law of torts ***and*** the issue of whether concurrent contractual and non-contractual liability claims can be pursued together. ***In the interest of clarity and legal certainty, the Common European Sales Law should clearly refer to those issues which are, and those which are not, addressed therein.***

## Amendment 15

### Proposal for a regulation Recital 27 a (new)

*Text proposed by the Commission*

*Amendment*

***(27a) The unfair commercial practices referred to in Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive')<sup>1</sup> would be covered by the Common European Sales Law in so far as they overlap with rules on contract law, including in particular those relating to unfair commercial practices that can lead to avoidance of a contract due to mistake, fraud, threat or unfair exploitation or to remedies for breach of the duty to provide information. Unfair commercial practices other than those that overlap with rules on contract law should fall outside the scope of the Common European Sales Law.***

## Amendment 16

### Proposal for a regulation

#### Recital 29

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

(29) ***Once there is a valid agreement to use the Common European Sales Law, only the Common European Sales Law should govern the matters falling within its scope.*** The rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union legislation. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law. The rules of the Common European Sales Law should be interpreted on the basis of the underlying principles and objectives and all its provisions.

##### *Amendment*

(29) The rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union legislation. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law. The rules of the Common European Sales Law should be interpreted on the basis of the underlying principles and objectives and all its provisions.

## Amendment 17

### Proposal for a regulation

#### Recital 31

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

(31) The principle of good faith and fair dealing should provide guidance on the way parties have to cooperate. As some rules constitute specific manifestations of the general principle of good faith and fair dealing, they should take precedent over the general principle. The general principle should therefore not be used as a tool to amend the specific rights and obligations of parties as set out in the specific rules. The concrete requirements resulting from the principle of good faith and fair dealing should depend, amongst others, on the relative level of expertise of the parties and

##### *Amendment*

(31) The ***general*** principle of good faith and fair dealing should provide guidance on the way parties have to cooperate. As some rules constitute specific manifestations of the general principle of good faith and fair dealing, they should take precedent over the general principle. The general principle should therefore not be used as a tool to amend the specific rights and obligations of parties as set out in the specific rules. The concrete requirements resulting from the ***general*** principle of good faith and fair dealing should depend, amongst others, on the

should therefore be different in business-to-consumer transactions and in business-to-business transactions. In transactions between traders, good commercial practice in the specific situation concerned should be a relevant factor in this context.

relative level of expertise of the parties and should therefore be different in business-to-consumer transactions and in business-to-business transactions. In transactions between traders, good commercial practice in the specific situation concerned should be a relevant factor in this context. ***The general principle of good faith and fair dealing should set a standard of conduct which ensures an honest, transparent and fair relationship. While it precludes a party from exercising or relying on a right, remedy or defence which that party would otherwise have, the principle as such should not give rise to any general right to damages. Rules of the Common European Sales Law constituting specific manifestations of the general principle of good faith and fair dealing, such as avoidance for fraud or the non-performance of an obligation created by an implied term, can give rise to a right to damages, but only in very specific cases.***

## Amendment 18

### Proposal for a regulation Recital 34

#### *Text proposed by the Commission*

(34) In order to enhance legal certainty by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of the Common European Sales Law or any other provision of this Regulation accessible to the public, the Commission should create a database comprising the final relevant decisions. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission.

#### *Amendment*

(34) In order to enhance legal certainty by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of the Common European Sales Law or any other provision of this Regulation accessible to the public, the Commission should create a database comprising the final relevant decisions. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission. ***A database should be established which is easily accessible, fully systematised and easily searchable. In order to overcome problems relating to different approaches to judgments within the Union and to enable the database to be operated efficiently and economically, judgments***

*should be communicated on the basis of a standard judgment summary which should accompany the judgment. It should be succinct, thus rendering it easily accessible. It should be divided into five sections which should set out the main elements of the judgment communicated, namely: the issue and the relevant Common European Sales Law article; a brief summary of the facts; a short summary of the main arguments; the decision; and the reasons for the decision, clearly stating the principle decided.*

## **Amendment 19**

### **Proposal for a regulation Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

*(34a) A commentary on the Common European Sales Law could be a valuable tool, as it would provide clarity and guidance on that law. Such a commentary should provide a clear and comprehensive exegesis of the articles of the Common European Sales Law together, where appropriate, with an explanation of the policy choices which underpin specific articles. A clear explanation of such choices would enable courts across the Member States to interpret and apply properly the Common European Sales Law, as well as enabling them to fill any gaps. As such, it will facilitate the development of a consistent, uniform application of the Common European Sales Law. The Commission should explore the possibilities of providing for such a commentary.*

## **Amendment 20**

### **Proposal for a regulation Recital 34 b (new)**

***(34b) An additional obstacle to cross-border trade is the lack of access to efficient and inexpensive redress mechanisms. Therefore, a consumer and a trader concluding a contract on the basis of the Common European Sales Law should consider submitting disputes arising from that contract to an existing alternative dispute resolution entity within the meaning of point (h) of Article 4(1) of Directive 2013/11/EU of the European Parliament and of the Council<sup>1</sup>. This should be entirely without prejudice to the possibility for the parties to initiate proceedings before the competent courts without first having recourse to alternative dispute resolution.***

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<sup>1</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p, 63).

## **Amendment 21**

### **Proposal for a regulation Recital 34 c (new)**

***(34c) To help facilitate the use of the Common European Sales Law, the Commission should work towards the development of European model contract terms with the assistance of a working group, composed mainly of groups representing consumers and businesses and supported by academics and practitioners. Such model contract terms could usefully complement the Common Sales Law rules when describing the specific features of a given contract, and***

*should take into account the particularities of relevant commercial sectors. They should respond to stakeholders' needs and draw lessons from the initial practical experience of the use of the Common European Sales Law. The model contract terms should be made available to the public as they would provide added value to traders who choose to conclude cross-border contracts using the Common European Sales Law. In order for those model contract terms to effectively accompany the Common European Sales Law, the Commission's work should start as soon as possible.*

## Amendment 22

### Proposal for a regulation Recital 35

#### *Text proposed by the Commission*

(35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to *extend* further *the scope in relation to business-to-business contracts*, market and technological developments in respect of digital content and future developments of the Union acquis.

#### *Amendment*

(35) It is also appropriate to review the functioning of the Common European Sales Law or any other provision of this Regulation after five years of operation. The review should take into account, amongst other things, the need to *include* further *rules relating to retention of title clauses*, market and technological developments in respect of digital content and future developments of the Union acquis. *Particular consideration should be given, in addition, to the question whether the limitation to distance contracts, and in particular online contracts, remains appropriate or whether a wider scope, including on-premises contracts, may be feasible.*

## Amendment 23

### Proposal for a regulation Table of contents (new)

#### *Text proposed by the Commission*

#### *Amendment*

#### *Table of contents*

[...]

*(A table of contents is inserted at the beginning of the operative part. It will be adapted in order to reflect the content of the instrument. See amendment deleting the table of contents at the beginning of the Annex).*

## Amendment 24

### Proposal for a regulation

#### Title I (new) – title

*Text proposed by the Commission*

*Amendment*

#### **Title I**

#### **General provisions**

## Amendment 25

### Proposal for a regulation

#### Part -I (new)

*Text proposed by the Commission*

*Amendment*

#### **Part -I: Application of the instrument**

## Amendment 26

### Proposal for a regulation

#### Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The purpose of this Regulation is to improve the conditions for the establishment and the functioning of the internal market by making available a uniform set of contract law rules as set out in Annex I ('the Common European Sales Law'). These rules can be used for cross-border transactions for the sale of goods, for the supply of digital content and for related services where the parties to a contract agree to do so.

1. The purpose of this Regulation is to improve the conditions for the establishment and the functioning of the internal market by making available, ***within the legal order of each Member State***, a uniform set of contract law rules as set out in Annex I ('the Common European Sales Law'). These rules can be used for cross-border transactions for the sale of goods, for the supply of digital content and for related services ***which are conducted at a distance, in particular online***, where the parties to a contract agree to do so.

## Amendment 27

### Proposal for a regulation Article 1 – paragraph 2

*Text proposed by the Commission*

2. This Regulation enables traders to rely on a common set of rules and use the same contract terms for all their cross-border transactions thereby reducing unnecessary costs while providing a high degree of legal certainty.

*Amendment*

2. This Regulation enables traders, ***in particular small or medium-sized enterprises ('SMEs')***, to rely on a common set of rules and use the same contract terms for all their cross-border transactions thereby reducing unnecessary costs while providing a high degree of legal certainty.

## Amendment 28

### Proposal for a regulation Article 2 – point b

*Text proposed by the Commission*

***(b) 'good faith and fair dealing' means a standard of conduct characterised by honesty, openness and consideration for the interests of the other party to the transaction or relationship in question;***

*Amendment*

***deleted***

*(See amendment for new point fe; the text has been amended)*

## Amendment 29

### Proposal for a regulation Article 2 – point c

*Text proposed by the Commission*

***(c) 'loss' means economic loss and non-economic loss in the form of pain and suffering, excluding other forms of non-economic loss such as impairment of the quality of life and loss of enjoyment;***

*Amendment*

***deleted***

*(See amendment for new point fg)*

## Amendment 30

### Proposal for a regulation



## Article 2 – point d

*Text proposed by the Commission*

*Amendment*

**(d) ‘standard contract terms’ means contract terms which have been drafted in advance for several transactions involving different parties, and which have not been individually negotiated by the parties within the meaning of Article 7 of the Common European Sales Law;**

**deleted**

*(See amendment for new point ff)*

## Amendment 31

### Proposal for a regulation Article 2 – point e

*Text proposed by the Commission*

*Amendment*

(e) ‘trader’ means any natural **or** legal person who is acting for purposes relating to that person's trade, business, craft, or profession;

(e) ‘trader’ means any natural **person or any** legal person, **irrespective of whether privately or publicly owned**, who is acting for purposes relating to that person's trade, business, craft or profession **in relation to contracts**;

## Amendment 32

### Proposal for a regulation Article 2 – point f

*Text proposed by the Commission*

*Amendment*

(f) ‘consumer’ means any natural person who is acting for purposes which are outside that person's trade, business, craft, or profession;

(f) ‘consumer’ means any natural person who is acting for purposes which are outside that person's trade, business, craft, or profession; **where the contract is concluded for purposes partly within and partly outside that person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person shall also be considered to be a consumer**;

*(See the wording of recital 17 of Directive 2011/83/EU)*

## **Amendment 33**

### **Proposal for a regulation Article 2 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(fa) 'service provider' means a seller of goods or supplier of digital content who undertakes to provide a customer with a service related to those goods or that digital content;***

*(See amendment for point n)*

## **Amendment 34**

### **Proposal for a regulation Article 2 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

***(fb) 'customer' means any person who purchases a related service;***

*(See amendment for point o)*

## **Amendment 35**

### **Proposal for a regulation Article 2 – point f c (new)**

*Text proposed by the Commission*

*Amendment*

***(fc) 'creditor' means a person who has a right to performance of an obligation, whether monetary or non-monetary, by another person, the debtor;***

*(See amendment for point w)*

## **Amendment 36**

### **Proposal for a regulation Article 2 – point f d (new)**

*Text proposed by the Commission*

*Amendment*

***(fd) 'debtor' means a person who has an obligation, whether monetary or non-monetary, to another person, the creditor;***

*(See amendment for point x)*

## **Amendment 37**

**Proposal for a regulation  
Article 2 – point f e (new)**

*Text proposed by the Commission*

*Amendment*

***(fe) 'good faith and fair dealing' means a standard of conduct characterised by honesty, openness and, in so far as may be appropriate, reasonable consideration for the interests of the other party to the transaction or relationship in question;***

## **Amendment 38**

**Proposal for a regulation  
Article 2 – point f f (new)**

*Text proposed by the Commission*

*Amendment*

***(ff) 'standard contract terms' means contract terms which have been drafted in advance for several transactions involving different parties, and which have not been individually negotiated by the parties within the meaning of Article 7 of the Common European Sales Law;***

*(See amendment for point d)*

## **Amendment 39**

**Proposal for a regulation  
Article 2 – point f g (new)**

*Text proposed by the Commission*

*Amendment*

***(fg) 'loss' means economic loss and non-***

*economic loss in the form of pain and suffering, excluding other forms of non-economic loss such as impairment of quality of life and loss of enjoyment;*

*(See amendment for point c)*

#### **Amendment 40**

##### **Proposal for a regulation Article 2 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

*(ga) 'mandatory rule' means any provision the application of which the parties cannot exclude, or derogate from, or the effect of which they cannot vary;*

*(See amendment for point v)*

#### **Amendment 41**

##### **Proposal for a regulation Article 2 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

*(gb) 'obligation' means a duty to perform which one party to a legal relationship owes to another party and which that other party is entitled to enforce as such;*

*(See amendment for point y)*

#### **Amendment 42**

##### **Proposal for a regulation Article 2 – point g c (new)**

*Text proposed by the Commission*

*Amendment*

*(gc) 'express' means, in relation to a statement or agreement, that it is made separately from other statements or agreements and by way of active and unequivocal conduct, including by ticking a box or activating a button or similar*

*function;*

#### Amendment 44

##### Proposal for a regulation

##### Article 2 – point m – introductory part

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

(m) ‘related service’ means any service related to goods or digital content, such as installation, maintenance, repair **or any other processing**, provided by the seller of the goods or the supplier of the digital content under the sales contract, the contract for the supply of digital content or a separate related service contract which was concluded at the same time as the sales contract or the contract for the supply of digital content; it excludes:

###### *Amendment*

(m) ‘related service’ means any service related to goods or digital content, such as **storage or any other processing, including** installation, maintenance **or** repair, provided by the seller of the goods or the supplier of the digital content under the sales contract, the contract for the supply of digital content or a separate related service contract which was concluded at the same time as the sales contract or the contract for the supply of digital content **or provided for, even if only as an option, in the sales contract or in the contract for the supply of digital content**; it excludes:

#### Amendment 45

##### Proposal for a regulation

##### Article 2 – point m – point ii

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

**(ii) training services,**

###### *Amendment*

**deleted**

#### Amendment 46

##### Proposal for a regulation

##### Article 2 – point m – point iv

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

(iv) financial services;

###### *Amendment*

(iv) financial services, **including payment services and the issue of electronic money and insurance of any kind, whether for goods and digital content or otherwise;**

## Amendment 47

### Proposal for a regulation Article 2 – point n

*Text proposed by the Commission*

*Amendment*

***(n) ‘service provider’ means a seller of goods or supplier of digital content who undertakes to provide a customer with a service related to those goods or that digital content;***

***deleted***

*(See amendment for point fa)*

## Amendment 48

### Proposal for a regulation Article 2 – point o

*Text proposed by the Commission*

*Amendment*

***(o) ‘customer’ means any person who purchases a related service;***

***deleted***

*(See amendment for point fb)*

## Amendment 49

### Proposal for a regulation Article 2 – point p

*Text proposed by the Commission*

*Amendment*

**(p) ‘distance contract’ means any contract between the trader and the consumer under an organised distance sales scheme concluded without the simultaneous physical presence of the trader or, *in case* the trader is a legal person, a natural person representing the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;**

**(p) ‘distance contract’ means any contract between the trader and the consumer *or another trader* under an organised distance sales scheme concluded without the simultaneous physical presence of the trader or, *where* the trader is a legal person, a natural person representing the trader and the consumer *or the other trader*, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;**

## Amendment 50

### Proposal for a regulation

#### Article 2 – point q

*Text proposed by the Commission*

*Amendment*

*(q) ‘off-premises contract’ means any contract between a trader and a consumer:*

*deleted*

*(i) concluded in the simultaneous physical presence of the trader or, where the trader is a legal person, the natural person representing the trader and the consumer in a place which is not the trader's business premises, or concluded on the basis of an offer made by the consumer in the same circumstances; or*

*(ii) concluded on the trader's business premises or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the trader's business premises in the simultaneous physical presence of the trader or, where the trader is a legal person, a natural person representing the trader and the consumer; or*

*(iii) concluded during an excursion organised by the trader or, where the trader is a legal person, the natural person representing the trader with the aim or effect of promoting and selling goods or supplying digital content or related services to the consumer;*

## Amendment 51

### Proposal for a regulation

#### Article 2 – point r

*Text proposed by the Commission*

*Amendment*

*(r) ‘business premises’ means:*

*deleted*

*(i) any immovable retail premises where a trader carries out activity on a permanent basis, or*

*(ii) any movable retail premises where a trader carries out activity on a usual basis;*

## Amendment 52

### Proposal for a regulation Article 2 – point s

#### *Text proposed by the Commission*

(s) ‘commercial guarantee’ means any undertaking by the trader or a producer to the consumer, in addition to legal ***obligations under Article 106 in case of lack*** of conformity to reimburse the price paid or to replace ***or*** repair, or service goods or digital ***content*** in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;

#### *Amendment*

(s) ‘commercial guarantee’ means any undertaking by the trader or a producer ***(the guarantor)*** to the consumer, in addition to ***his*** legal ***obligation relating to the guarantee*** of conformity, to reimburse the price paid or to replace, repair or service goods or digital ***contents*** in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of, the contract;

## Amendment 53

### Proposal for a regulation Article 2 – point s a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(sa) 'repair' means, in the event of lack of conformity, the act of processing non-conforming goods or digital content to bring them into conformity with the contract;***

## Amendment 54

### Proposal for a regulation Article 2 – point v

#### *Text proposed by the Commission*

#### *Amendment*

***(v) ‘mandatory rule’ means any provision the application of which the parties cannot exclude, or derogate from or the***

***deleted***



*effect of which they cannot vary;*

*(See amendment for point ga)*

## **Amendment 55**

### **Proposal for a regulation**

#### **Article 2 – point w**

*Text proposed by the Commission*

*Amendment*

**(w) ‘creditor’ means a person who has a right to performance of an obligation, whether monetary or non-monetary, by another person, the debtor;** **deleted**

*(See amendment for point fc)*

## **Amendment 56**

### **Proposal for a regulation**

#### **Article 2 – point x**

*Text proposed by the Commission*

*Amendment*

**(x) ‘debtor’ means a person who has an obligation, whether monetary or non-monetary, to another person, the creditor;** **deleted**

*(See amendment for point fd)*

## **Amendment 57**

### **Proposal for a regulation**

#### **Article 2 – point y**

*Text proposed by the Commission*

*Amendment*

**(y) ‘obligation’ means a duty to perform which one party to a legal relationship owes to another party.** **deleted**

*(See amendment for point gb)*

## **Amendment 58**

### **Proposal for a regulation**

## Article 2 – point y a (new)

*Text proposed by the Commission*

*Amendment*

**(ya) 'free of charge' means free of the costs necessarily incurred in order to bring the goods into conformity, particularly the cost of postage, labour and materials.**

## Amendment 59

### Proposal for a regulation Article 3

*Text proposed by the Commission*

*Amendment*

The parties may agree that the Common European Sales Law governs their cross-border contracts for the sale of goods, for the supply of digital content and for the provision of related services within the territorial, material and personal scope as set out in Articles 4 to 7.

The parties may agree, **subject to the requirements laid down in Articles 8 and 9**, that the Common European Sales Law governs their cross-border contracts for the sale of goods, for the supply of digital content and for the provision of related services within the territorial, material and personal scope as set out in Articles 4 to 7.

## Amendment 60

### Proposal for a regulation Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Common European Sales Law may be used for cross-border contracts.

1. The Common European Sales Law may be used for **distance contracts which are** cross-border contracts.

## Amendment 61

### Proposal for a regulation Article 5 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

The Common European Sales Law may be used for:

The Common European Sales Law may be used for **distance contracts, including**

*online contracts, which are:*

## Amendment 62

### Proposal for a regulation

#### Article 5 – paragraph 1 – point b

*Text proposed by the Commission*

(b) contracts for the supply of digital content whether ***or not*** supplied on a tangible medium which can be stored, processed or accessed, and re-used by the user, irrespective of whether the digital content is supplied in exchange for the payment of a price.

*Amendment*

(b) contracts for the supply of digital content, whether supplied on a tangible medium ***or through any other means***, which can be stored, processed or accessed, and re-used by the user, irrespective of whether the digital content is supplied in exchange for the payment of a price ***or in exchange for a counter-performance other than the payment of a price, or is not supplied in exchange for any other counter-performance.***

## Amendment 63

### Proposal for a regulation

#### Article 6 – title

*Text proposed by the Commission*

***Exclusion of mixed-purpose contracts and contracts linked to a consumer credit***

*Amendment*

***Linked contracts and mixed-purpose contracts***

## Amendment 64

### Proposal for a regulation

#### Article 6 – paragraph 1

*Text proposed by the Commission*

1. The Common European Sales Law may ***not*** be used for ***mixed-purpose contracts including*** any elements other than the sale of goods, the supply of digital content ***and*** the provision of related services within the meaning of Article 5.

*Amendment*

1. The Common European Sales Law may ***also*** be used for:

***(a) cases where a contract governed by the Common European Sales Law is linked to a contract other than a sales contract, a contract for the supply of digital content***

*or a related service contract, or*

*(b) cases where a contract includes any elements other than the sale of goods, the supply of digital content or the provision of related services within the meaning of Article 5, provided those elements are divisible and their price can be apportioned.*

## **Amendment 65**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. In the cases referred to in point (a) of paragraph 1, the linked contract shall be governed by the otherwise applicable law.*

## **Amendment 66**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 b – introductory wording and point a (new)**

*Text proposed by the Commission*

*Amendment*

*1b. In the cases referred to in point (a) of paragraph 1, and*

*(a) where, in the context of the contract governed by the Common European Sales Law, either of the parties exercises any right, remedy or defence, or that contract is invalid or not binding, the national law applicable to the linked contract shall determine the effects on the linked contract;*

## **Amendment 67**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 b – point b (new)**

*Text proposed by the Commission*

*Amendment*

*(b) where, in the context of the linked contract, either of the parties exercises*

*any right, remedy or defence, or that contract is invalid or not binding under the national law applicable to that contract, the obligations of the parties under the contract governed by the Common European Sales Law shall be unaffected unless a party would not have concluded that contract governed by the Common European Sales Law but for the linked contract, or would have done so only on fundamentally different contract terms, in which case that party shall be entitled to terminate the contract governed by the Common European Sales Law.*

## **Amendment 68**

### **Proposal for a regulation Article 6 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

*1c. In the cases referred to in point (b) in paragraph 1, the other elements included in the contract shall be deemed to have been agreed upon under a linked contract.*

## **Amendment 69**

### **Proposal for a regulation Article 6 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. The Common European Sales Law may not be used for contracts between a trader and a consumer where the trader grants or promises to grant to the consumer credit in the form of a deferred payment, loan or other similar financial accommodation. The Common European Sales Law may be used for contracts between a trader and a consumer where goods, digital content or related services of the same kind are supplied on a continuing basis and the consumer pays for such goods, digital content or related services for the duration of the supply by*

*deleted*

*means of instalments.*

## Amendment 70

### Proposal for a regulation Article 7

*Text proposed by the Commission*

#### Article 7

##### Parties to the contract

**1.** The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader.

***Where all the parties to a contract are traders, the Common European Sales Law may be used if at least one of those parties is a small or medium-sized enterprise ('SME').***

**2. For the purposes of this Regulation, an SME is a trader which**

***(a) employs fewer than 250 persons; and  
(b) has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME which has its habitual residence in a Member State whose currency is not the euro or in a third country, the equivalent amounts in the currency of that Member State or third country.***

*Amendment*

#### Article 7

##### Parties to the contract

The Common European Sales Law may be used only if the seller of goods or the supplier of digital content is a trader.

## Amendment 71

### Proposal for a regulation Article 8 – paragraph 2

*Text proposed by the Commission*

2. In relations between a trader and a consumer the agreement on the use of the Common European Sales Law shall be valid only if the consumer's consent is given by an explicit statement which is separate from the statement indicating the agreement to conclude a contract. The

*Amendment*

2. In relations between a trader and a consumer the agreement on the use of the Common European Sales Law shall be valid only if the consumer's consent is given by an explicit statement which is separate from the statement indicating the agreement to conclude a contract ***and if the***

trader shall provide the consumer with a confirmation of that agreement on a durable medium.

***requirements under Article 9 are fulfilled.***  
The trader shall provide the consumer with a confirmation of that agreement on a durable medium.

## Amendment 72

### Proposal for a regulation Article 8 – paragraph 3

*Text proposed by the Commission*

3. In relations between a trader and a consumer the Common European Sales Law may not be chosen partially, but only in its entirety.

*Amendment*

3. In relations between a trader and a consumer the Common European Sales Law may not be chosen partially, but only in its entirety. ***In relations between traders, the Common European Sales Law may be chosen partially, provided that exclusion of the respective provisions is not prohibited therein.***

## Amendment 73

### Proposal for a regulation Article 11 – paragraph 1

*Text proposed by the Commission*

Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules. ***Provided that the contract was actually concluded, the Common European Sales Law shall also govern the compliance with and remedies for failure to comply with the pre-contractual information duties.***

*Amendment*

***1.*** Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules, ***instead of the contract-law regime that would, in the absence of such an agreement, govern the contract within the legal order determined as the applicable law.***

## Amendment 74

### Proposal for a regulation Article 11 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Where the parties enter into negotiations, or otherwise take***

*preparatory steps for the conclusion of a contract, with reference to the Common European Sales Law, the Common European Sales Law shall also govern compliance with, and remedies for, failure to comply with the pre-contractual duty to provide information, and other matters that are relevant prior to the conclusion of a contract.*

*The application of the Common European Sales Law as referred to in the first subparagraph shall be without prejudice to the law applicable under the relevant conflict-of-laws rules, where the trader has also made reference to other legal regimes.*

## **Amendment 75**

### **Proposal for a regulation**

#### **Article 11 a (new) – paragraph 1**

*Text proposed by the Commission*

*Amendment*

#### **Article 11a**

##### **Matters covered by the Common European Sales Law**

**1. The Common European Sales Law addresses in its rules the following matters:**

- (a) pre-contractual duties to provide information;**
- (b) the conclusion of a contract including formal requirements;**
- (c) the right of withdrawal and its consequences;**
- (d) avoidance of the contract as a result of mistake, fraud, threat or unfair exploitation and the consequences of such avoidance;**
- (e) interpretation;**
- (f) contents and effects, including those of the relevant contract;**
- (g) the assessment and the effects of unfairness of contract terms;**



- (h) the rights and obligations of the parties;*
- (i) remedies for non-performance;*
- (j) restitution after avoidance or termination or in the case of a non-binding contract;*
- (k) prescription and preclusion of rights;*
- (l) sanctions available in the event of breach of the obligations and duties arising under its application.*

## **Amendment 76**

### **Proposal for a regulation**

#### **Article 11 a (new) – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Matters not addressed in the Common European Sales law are governed by the relevant rules of the national law applicable under Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict-of-law rule. Such matters include:***

- (a) legal personality;***
- (b) the invalidity of a contract arising from lack of capacity, illegality or immorality, except where the grounds giving rise to illegality or immorality are addressed in the Common European Sales Law;***
- (c) determination of the language of the contract;***
- (d) matters of non-discrimination;***
- (e) representation;***
- (f) plurality of debtors and creditors and change of parties, including assignment;***
- (g) set-off and merger;***
- (h) the creation, acquisition or transfer of immovable property or of rights in immovable property;***
- (i) intellectual property law; and***
- (j) the law of torts, including the issue of whether concurrent contractual and non-***

*contractual liability claims can be pursued together.*

#### **Amendment 77**

##### **Proposal for a regulation**

##### **Article 11 a (new) – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. This Article is without prejudice to any mandatory rules of a non-Member State which may be applicable according to the relevant rules governing the conflict of laws.***

#### **Amendment 78**

##### **Proposal for a regulation**

##### **Article 14**

*Text proposed by the Commission*

*Amendment*

##### ***Article 14***

***deleted***

##### ***Communication of judgments applying this Regulation***

***1. Member States shall ensure that final judgments of their courts applying the rules of this Regulation are communicated without undue delay to the Commission.***

***2. The Commission shall set up a system which allows the information concerning the judgments referred to in paragraph 1 and relevant judgements of the Court of Justice of the European Union to be consulted. That system shall be accessible to the public.***

*(See amendment for Article 186a; the text has been amended)*

#### **Amendment 79**

##### **Proposal for a regulation**

##### **Article 15**

**Article 15**

*deleted*

**Review**

***1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, in particular on the level of acceptance of the Common European Sales Law, the extent to which its provisions have given rise to litigation and on the state of play concerning differences in the level of consumer protection between the Common European Sales Law and national law. That information shall include a comprehensive overview of the case law of the national courts interpreting the provisions of the Common European Sales Law.***

***2. By ... [5 years after the date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a detailed report reviewing the operation of this Regulation, and taking account of, amongst others, the need to extend the scope in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis.***

*(See amendment for Article 186b)*

**Amendment 80**

**Proposal for a regulation**

**Article 16**

**Article 16**

*deleted*

**Entry into force and application**

*1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.*

*2. It shall apply from [ 6 months after its the entry into force].*

*This Regulation shall be binding in its entirety and directly applicable in the Member States.*

*(See amendment for Article 186f)*

## **Amendment 81**

### **Proposal for a regulation Annex I – Table of contents**

*Text proposed by the Commission*

*Amendment*

***Table of contents***

***deleted***

***[...]***

*(See amendment inserting the table of contents at the beginning of operative part).*

## **Amendment 82**

### **Proposal for a regulation Title II (new) – title**

*Text proposed by the Commission*

*Amendment*

***Title II***

***Provisions of the Common European  
Sales Law***

## **Amendment 83**

### **Proposal for a regulation Annex I – Article 2 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Breach of this duty may preclude the party in breach from exercising or relying on a right, remedy or defence which that

2. Breach of this duty may preclude the party in breach from exercising or relying on a right, remedy or defence which that

party would otherwise have, *or may make the party liable for any loss thereby caused to the other party.*

party would otherwise have, *but shall not give rise directly to remedies for non-performance of an obligation.*

#### **Amendment 84**

##### **Proposal for a regulation Annex I – Article 9 – title**

*Text proposed by the Commission*

*Mixed-purpose contracts*

*Amendment*

*Contracts including the provision of related services*

#### **Amendment 85**

##### **Proposal for a regulation Annex I – Article 10 – paragraph 1**

*Text proposed by the Commission*

*1. This Article applies in relation to the giving of notice for any purpose under the rules of the Common European Sales Law and the contract. ‘Notice’ includes the communication of any statement which is intended to have legal effect or to convey information for a legal purpose.*

*Amendment*

1. 'Notice' includes the communication of any statement which is intended to have legal effect or to convey information for a legal purpose.

#### **Amendment 86**

##### **Proposal for a regulation Annex I – Article 11 – paragraph 1**

*Text proposed by the Commission*

*1. The provisions of this Article apply in relation to the computation of time for any purpose under the Common European Sales Law.*

*Amendment*

*deleted*

#### **Amendment 87**

##### **Proposal for a regulation Annex I – Article 11 – paragraph 1 a(new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where a period expressed in days, weeks, months or years is to be calculated from a specified event, action or time, the day during which the event occurs, the action takes place or the specified time arrives shall not be considered as falling within the period in question.***

*(See amendment for paragraph 3.)*

## **Amendment 88**

### **Proposal for a regulation**

#### **Annex I – Article 11 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Where a period expressed in days, weeks, months or years is to be calculated from a specified event, action or time the day during which the event occurs, the action takes place or the specified time arrives does not fall within the period in question.*** ***deleted***

*(See amendment for paragraph 1a.)*

## **Amendment 89**

### **Proposal for a regulation**

#### **Annex I – Article 11 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

***6. Where a person sends another person a document which sets a period of time within which the addressee has to reply or take other action but does not state when the period is to begin, then, in the absence of indications to the contrary, the period is calculated from the moment the document reaches the addressee.*** ***deleted***

*(See amendment for paragraph 7a.)*

## Amendment 90

### Proposal for a regulation

#### Annex I – Article 11 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

***7a. Where a person sends another person a document which sets a period of time within which the addressee has to reply or take other action but does not state when that period is to begin, then, in the absence of indications to the contrary, the period shall be calculated from the moment the document reaches the addressee.***

*(See amendment for paragraph 6; the text has been amended)*

## Amendment 91

### Proposal for a regulation

#### Annex I – Article 12 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***3. Articles 59 to 65 apply with appropriate adaptations to the interpretation of unilateral statements indicating intention.*** ***deleted***

*(See amendment for Article 58(3a))*

## Amendment 92

### Proposal for a regulation

#### Annex I – Article 12 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***4. The rules on defects in consent in Chapter 5 apply with appropriate adaptations to unilateral statements indicating intention.*** ***deleted***

*(See amendment for Article -48(2))*

## Amendment 93

### Proposal for a regulation Annex I – Article 13 – title

*Text proposed by the Commission*

*Amendment*

Duty to provide information ***when concluding a distance or off-premises contract***

Duty to provide information

## Amendment 94

### Proposal for a regulation Annex I – Article 13 – paragraph 1 – introductory wording

*Text proposed by the Commission*

*Amendment*

1. A trader concluding a ***distance contract or off-premises contract*** has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer:

1. A trader concluding a contract has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer:

## Amendment 95

### Proposal for a regulation Annex I – Article 13 – paragraph 3 – introductory wording

*Text proposed by the Commission*

*Amendment*

3. ***For a distance contract, the*** information required by this Article must:

3. ***The*** information required by this Article must:

## Amendment 96

### Proposal for a regulation Annex I – Article 13 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. ***For an off-premises contract, the information required by this Article must:***  
***(a) be given on paper or, if the consumer***

***deleted***



*agrees, on another durable medium; and*  
*(b) be legible and in plain, intelligible language.*

#### **Amendment 97**

##### **Proposal for a regulation**

##### **Annex I – Article 13 – paragraph 5 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) concluded by means of an automatic vending machine or automated commercial premises;* *deleted*

#### **Amendment 98**

##### **Proposal for a regulation**

##### **Annex I – Article 13 – paragraph 5 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) an off-premises contract if the price or, where multiple contracts were concluded at the same time, the total price of the contracts does not exceed EUR 50 or the equivalent sum in the currency agreed for the contract price.* *deleted*

#### **Amendment 99**

##### **Proposal for a regulation**

##### **Annex I – Article 13 – paragraph 5 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

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

## Amendment 100

### Proposal for a regulation Annex I – Article 17 – title

*Text proposed by the Commission*

*Amendment*

Information about rights of withdrawal  
***when concluding a distance or off-  
premises contract***

Information about rights of withdrawal

## Amendment 101

### Proposal for a regulation Annex I – Article 18

*Text proposed by the Commission*

*Amendment*

***Article 18***

***deleted***

***Off-premises contracts: additional  
information requirements and  
confirmation***

***1. The trader must provide the consumer  
with a copy of the signed contract or the  
confirmation of the contract, including  
where applicable, the confirmation of the  
consumer's consent and acknowledgment  
as provided for in point (d) of Article  
40(3) on paper or, if the consumer agrees,  
on a different durable medium.***

***2. Where the consumer wants the  
provision of related services to begin  
during the withdrawal period provided for  
in Article 42(2), the trader must require  
that the consumer makes such an express  
request on a durable medium.***

## Amendment 102

### Proposal for a regulation Annex I – Article 19 – title

*Text proposed by the Commission*

*Amendment*

***Distance contracts: additional*** information  
and other requirements

***Additional*** information and other  
requirements

## Amendment 103

### Proposal for a regulation

#### Annex I – Article 20

*Text proposed by the Commission*

*Amendment*

#### *Article 20*

*deleted*

*Duty to provide information when concluding contracts other than distance and off-premises contracts*

*1. In contracts other than distance and off-premises contracts, a trader has a duty to provide the following information to the consumer, in a clear and comprehensible manner before the contract is concluded or the consumer is bound by any offer, if that information is not already apparent from the context:*

*(a) the main characteristics of the goods, digital content or related services to be supplied, to an extent appropriate to the medium of communication and to the goods, digital content or related services;*

*(b) the total price and additional charges and costs, in accordance with Article 14(1);*

*(c) the identity of the trader, such as the trader's trading name, the geographical address at which it is established and its telephone number;*

*(d) the contract terms in accordance with points (a) and (b) of Article 16;*

*(e) where applicable, the existence and the conditions of the trader's after-sale services, commercial guarantees and complaints handling policy;*

*(f) where applicable, the functionality, including applicable technical protection measures of digital content; and*

*(g) where applicable, any relevant interoperability of digital content with hardware and software which the trader is aware of or can be expected to have been aware of.*

*2. This Article does not apply where the contract involves a day-to-day transaction*

*and is performed immediately at the time of its conclusion.*

#### Amendment 104

##### Proposal for a regulation

##### Annex I – Article 24 – paragraph 3 – point e

*Text proposed by the Commission*

(e) the **contract terms**.

*Amendment*

(e) the **terms on the basis of which the trader is prepared to conclude the contract**.

#### Amendment 105

##### Proposal for a regulation

##### Annex I – Article 24 – paragraph 4

*Text proposed by the Commission*

4. The trader must ensure that the **contract** terms referred to in point (e) of paragraph 3 are made available in alphabetical or other intelligible characters and on a durable medium by means of any support which permits reading, recording of the information contained in the text and its reproduction in tangible form.

*Amendment*

4. **Without prejudice to any stricter requirements for a trader dealing with a consumer under Section 1**, the trader must ensure that the terms referred to in point (e) of paragraph 3 are made available in alphabetical or other intelligible characters and on a durable medium by means of any support which permits reading, recording of the information contained in the text and its reproduction in tangible form.

#### Amendment 106

##### Proposal for a regulation

##### Annex I – Article 24 – paragraph 5

*Text proposed by the Commission*

5. The trader must acknowledge by electronic means and without undue delay the receipt of an offer or an acceptance sent by the other party.

*Amendment*

5. The trader must acknowledge by electronic means and without undue delay the receipt of an offer or an acceptance sent by the other party. **Such acknowledgement shall display the content of the offer or of the acceptance.**

## Amendment 107

### Proposal for a regulation

#### Annex I – Article 29 – paragraph 1

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

1. A party which has failed to comply with any duty imposed by this Chapter is liable for any loss caused to the other party by such failure.

##### *Amendment*

1. A party which has failed to comply with any duty imposed by this Chapter is liable ***under Chapter 16*** for any loss caused to the other party by such failure.

## Amendment 108

### Proposal for a regulation

#### Annex I – Article 30 – paragraph 2

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

2. Agreement is reached by acceptance of an offer. ***Acceptance may be made explicitly or by other statements or conduct.***

##### *Amendment*

2. Agreement is reached by acceptance of an offer.

## Amendment 109

### Proposal for a regulation

#### Annex I – Article 31 – paragraph 1 – point b

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

(b) it has sufficient content and certainty for there to be a contract.

##### *Amendment*

(b) it has sufficient content and certainty for there to be a contract. ***In relations between a trader and a consumer, an offer shall only be considered to have sufficient content and certainty if it contains an object, a quantity or duration, and a price.***

## Amendment 110

### Proposal for a regulation

#### Annex I – Article 34 – paragraph 2

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

2. Silence or inactivity does not in itself

##### *Amendment*

2. Silence or inactivity does not in itself constitute acceptance. ***In particular, in***

constitute acceptance.

*cases of unsolicited delivery of goods, supply of digital content or provision of related services, the absence of a response from the consumer shall not constitute acceptance.*

## **Amendment 111**

### **Proposal for a regulation**

#### **Annex I – Article 38 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*4a. In relations between a trader and a consumer, a reply by the offeree which states or implies additional or different contract terms shall in any event constitute a rejection and a new offer.*

## **Amendment 112**

### **Proposal for a regulation**

#### **Annex I – Chapter 4 – title**

*Text proposed by the Commission*

*Amendment*

Right to withdraw *in distance and off-premises contracts between traders and consumers*

Right to withdraw

## **Amendment 113**

### **Proposal for a regulation**

#### **Annex I – Article 40 – paragraph 2 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

*(ia) a contract which, in accordance with the laws of Member States, is established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with*

*knowledge of its legal scope.*

## Amendment 114

### Proposal for a regulation Annex I – Article -48 (new)

*Text proposed by the Commission*

*Amendment*

#### *Article -48*

##### *Scope*

- 1. This Chapter shall apply to the avoidance of a contract on account of defects in consent and similar defects.*
- 2. The rules laid down in this Chapter shall apply, with appropriate adaptations, to the avoidance of an offer, acceptance or other unilateral statement indicating intention, or equivalent conduct.*

*(For paragraph 2, see amendment for Article 12(4))*

## Amendment 115

### Proposal for a regulation Annex I – Article 48 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different contract terms *and the other party knew or could be expected to have known this*; and

(a) the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different contract terms; and

## Amendment 116

### Proposal for a regulation Annex I – Article 48 – paragraph 1 – point b – point i

*Text proposed by the Commission*

*Amendment*

(i) caused the mistake;

(i) caused the mistake; *or*

## Amendment 117

### Proposal for a regulation

#### Annex I – Article 48 – paragraph 1 – point b – point ii

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

(ii) caused the contract to be concluded *in* mistake by failing to comply with any pre-contractual information duty under Chapter 2, Sections 1 to 4;

##### *Amendment*

(ii) caused the contract to be concluded *by* mistake by failing to comply with any pre-contractual information duty under Chapter 2, Sections 1 to 4; **or**

## Amendment 118

### Proposal for a regulation

#### Annex I – Article 49 – paragraph 3 – introductory part

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

3. In determining whether good faith and fair dealing require a party to disclose particular information, regard ***should*** be ***had*** to all the circumstances, including:

##### *Amendment*

3. In determining whether good faith and fair dealing require a party to disclose particular information, regard ***is to be had*** to all the circumstances, including:

## Amendment 119

### Proposal for a regulation

#### Annex I – Article 49 – paragraph 3 – point e

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

(e) the ***apparent*** importance of the information to the other party; and

##### *Amendment*

(e) the ***likely*** importance of the information to the other party; and

## Amendment 120

### Proposal for a regulation

#### Annex I – Article 50 a (new)

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

##### *Amendment*

##### ***Article 50a***

##### ***Third parties***

***1. Where a third party for whose acts a person is responsible or who, with that person's assent, is involved in the making of a contract:***



*(a) causes a mistake, or knows of, or could be expected to know of, a mistake, or*

*(b) is guilty of fraud or threats or unfair exploitation,*

*remedies under this Chapter shall be available as if the behaviour or knowledge had been that of the person with responsibility or giving assent.*

*2. Where a third party for whose acts a person is not responsible and who does not have the person's assent to be involved in the making of a contract is guilty of fraud or threats, remedies under this Chapter shall be available if that person knew or could reasonably be expected to have known of the relevant facts, or at the time of avoidance did not act in reliance on the contract.*

## **Amendment 121**

### **Proposal for a regulation**

#### **Annex I – Article 55**

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

A party who has the right to avoid a contract under this Chapter or who had such a right before it was lost by the effect of time limits or confirmation is entitled, whether or not the contract is avoided, to damages from the other party for loss suffered as a result of the mistake, fraud, threats or unfair exploitation, provided that the other party knew or could be expected to have known of the relevant circumstances.

##### *Amendment*

A party who has the right to avoid a contract under this Chapter or who had such a right before it was lost by the effect of time limits or confirmation is entitled, whether or not the contract is avoided, to damages ***under Chapter 16*** from the other party for loss suffered as a result of the mistake, fraud, threats or unfair exploitation, provided that the other party knew or could be expected to have known of the relevant circumstances.

## **Amendment 122**

### **Proposal for a regulation**

#### **Annex I – Article 58 – paragraph 2**

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

2. Where one party intended an expression

##### *Amendment*

2. Where one party intended an expression

used in the contract to have a particular meaning, and at the time of the conclusion of the contract the other party was aware, or could be expected to have been aware, of that intention, the expression is to be interpreted in the way intended by the first party.

used in the contract ***or equivalent conduct*** to have a particular meaning, and at the time of the conclusion of the contract the other party was aware, or could be expected to have been aware, of that intention, the expression ***or equivalent conduct*** is to be interpreted in the way intended by the first party.

## Amendment 123

### Proposal for a regulation

#### Annex I – Article 58 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Expressions used in a contract shall be interpreted in the light of the contract as a whole.***

*(See amendment for Article 60; the text has been amended)*

## Amendment 124

### Proposal for a regulation

#### Annex I – Article 58 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***3b. The rules in this Chapter shall apply to the interpretation of an offer, acceptance or other unilateral statement indicating intention, or equivalent conduct, with appropriate adaptations.***

*(See amendment for Article 12(3); the text has been amended)*

## Amendment 125

### Proposal for a regulation

#### Annex I – Article 59 – point a

*Text proposed by the Commission*

*Amendment*

(a) the circumstances in which it was concluded, ***including the preliminary negotiations***;

(a) the circumstances in which it was concluded;

## Amendment 126

### Proposal for a regulation Annex I – Article 59 – point b

*Text proposed by the Commission*

(b) the conduct of the parties, ***even*** subsequent to the conclusion of the contract;

*Amendment*

(b) the conduct of the parties, ***prior, during and*** subsequent to the conclusion of the contract;

## Amendment 127

### Proposal for a regulation Annex I – Article 59 – point c

*Text proposed by the Commission*

(c) the interpretation which ***has already been given by the parties*** to expressions which are identical to or similar to those used in the contract;

*Amendment*

(c) the interpretation which ***the parties have previously given*** to expressions which are identical to or similar to those used in the contract;

## Amendment 128

### Proposal for a regulation Annex I – Article 60

*Text proposed by the Commission*

***Article 60***

***Reference to contract as a whole***

***Expressions used in a contract are to be interpreted in the light of the contract as a whole.***

*Amendment*

***deleted***

*(See amendment for Article 58(3a))*

## **Amendment 129**

### **Proposal for a regulation**

#### **Annex I – Article 61 – paragraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***Where a contract document in the consumer's national language has been used, that version shall be considered as the authoritative one. The parties may not, to the detriment of the consumer, exclude the application of this paragraph or derogate from or vary its effects.***

## **Amendment 130**

### **Proposal for a regulation**

#### **Annex I – Article 61 a (new)**

*Text proposed by the Commission*

*Amendment*

##### ***Article 61a***

***Preference for interpretation which gives effect to contract terms***

***An interpretation which gives effect to contract terms shall prevail over one which does not.***

*(See amendment for Article 63)*

## **Amendment 131**

### **Proposal for a regulation**

#### **Annex I – Article 61 b (new)**

*Text proposed by the Commission*

*Amendment*

##### ***Article 61b***

***Interpretation in favour of consumers***

***1. Where there exists any doubt about the meaning of a contract term in a contract between a trader and a consumer, the interpretation most favourable to the consumer shall prevail unless the term in question was supplied by the consumer.***

**2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from, or vary, its effects.**

*(See amendment for Article 64)*

## **Amendment 132**

### **Proposal for a regulation Annex I – Article 62 – title**

*Text proposed by the Commission*

***Preference for*** individually negotiated  
***contract terms***

*Amendment*

***Contract terms which are not*** individually  
negotiated

## **Amendment 133**

### **Proposal for a regulation Annex I – Article 62 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where, despite Article 61b, there exists doubt about the meaning of a contract term which has not been individually negotiated within the meaning of Article 7, an interpretation of the term against the party who supplied it shall prevail.***

*(See amendment for Article 65)*

## **Amendment 134**

### **Proposal for a regulation Annex I – Article 63**

*Text proposed by the Commission*

*Amendment*

***Article 63***

***deleted***

***Preference for interpretation which gives  
contract terms effect***

***An interpretation which renders the  
contract terms effective prevails over one  
which does not.***

*(See amendment for Article 61a)*

## **Amendment 135**

### **Proposal for a regulation Annex I – Article 64**

*Text proposed by the Commission*

*Amendment*

#### **Article 64**

**deleted**

#### ***Interpretation in favour of consumers***

- 1. Where there is doubt about the meaning of a contract term in a contract between a trader and a consumer, the interpretation most favourable to the consumer shall prevail unless the term was supplied by the consumer.***
- 2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.***

*(See amendment for Article 61b)*

## **Amendment 136**

### **Proposal for a regulation Annex I – Article 65**

*Text proposed by the Commission*

*Amendment*

#### **Article 65**

**deleted**

#### ***Interpretation against supplier of a contract term***

***Where, in a contract which does not fall under Article 64, there is doubt about the meaning of a contract term which has not been individually negotiated within the meaning of Article 7, an interpretation of the term against the party who supplied it shall prevail.***

*(See amendment for Article 62(1a))*

## Amendment 137

### Proposal for a regulation

#### Annex I – Title II – Part III – Chapter 7 – section 1 (new) – title

*Text proposed by the Commission*

*Amendment*

#### **Section 1: General provisions**

## Amendment 138

### Proposal for a regulation

#### Annex I – Article 67 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Usages and practices do not bind the parties to the extent to which they conflict with ***contract terms which have been individually negotiated*** or any mandatory rules of the Common European Sales Law.

3. Usages and practices do not bind the parties to the extent to which they conflict with ***the agreement of the parties*** or any mandatory rules of the Common European Sales Law.

## Amendment 139

### Proposal for a regulation

#### Annex I – Article 68 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Any contract term implied under paragraph 1 is, as far as possible, to be such as to give effect to what the parties would probably have agreed, ***had they provided for the matter.***

2. Any contract term implied under paragraph 1 is, as far as possible, to be such as to give effect to what the parties would probably have agreed.

## Amendment 140

### Proposal for a regulation

#### Annex I – Article 69 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Where the trader makes a statement before the contract is concluded, either to the other party or publicly, about the characteristics of what is to be supplied by that trader under the contract, the statement is incorporated as a term of the contract

1. Where the trader, ***or a person engaged in advertising or marketing for the trader,*** makes a statement before the contract is concluded, either to the other party or publicly, about the characteristics of what is to be supplied by that trader under the

unless:

(a) the other party was aware, or could be expected to have been aware when the contract was concluded that the statement was incorrect or could not otherwise be relied on as such a term; **or**

(b) the other party's decision to conclude the contract could not have been influenced by the statement.

contract, the statement is incorporated as a term of the contract unless ***the trader shows that***:

(a) the other party was aware, or could be expected to have been aware when the contract was concluded, that the statement was incorrect or could not otherwise be relied on as such a term;

***(aa) the statement had been corrected by the time of conclusion of the contract; or***

(b) the other party's decision to conclude the contract could not have been influenced by the statement.

## Amendment 141

### Proposal for a regulation

#### Annex I – Article 69 – paragraph 2

*Text proposed by the Commission*

***2. For the purposes of paragraph 1, a statement made by a person engaged in advertising or marketing for the trader is regarded as being made by the trader.***

*Amendment*

***deleted***

## Amendment 142

### Proposal for a regulation

#### Annex I – Article 69 – paragraph 3

*Text proposed by the Commission*

3. Where the other party is a consumer then, for the purposes of paragraph 1, a public statement made by or on behalf of a producer or other person in earlier links of the chain of transactions leading to the contract is regarded as being made by the trader unless the trader, at the time of conclusion of the contract, did not know and could not be expected to have known of it.

*Amendment*

3. Where the other party is a consumer then, for the purposes of paragraph 1, a public statement made by or on behalf of a producer or other person in earlier links of the chain of transactions leading to the contract is regarded as being made by the trader unless the trader ***shows that***, at the time of conclusion of the contract, ***the trader*** did not know and could not be expected to have known of it.

## Amendment 143

### Proposal for a regulation

#### Annex I – Article 70



**Article 70**

**deleted**

***Duty to raise awareness of not individually negotiated contract terms***

***1. Contract terms supplied by one party and not individually negotiated within the meaning of Article 7 may be invoked against the other party only if the other party was aware of them, or if the party supplying them took reasonable steps to draw the other party's attention to them, before or when the contract was concluded.***

***2. For the purposes of this Article, in relations between a trader and a consumer contract terms are not sufficiently brought to the consumer's attention by a mere reference to them in a contract document, even if the consumer signs the document.***

***3. The parties may not exclude the application of this Article or derogate from or vary its effects.***

*(See amendment for paragraph 76a, the text has been amended)*

**Amendment 144**

**Proposal for a regulation  
Annex I – Article 71**

**Article 71**

**deleted**

***Additional payments in contracts between a trader and a consumer***

***1. In a contract between a trader and a consumer, a contract term which obliges the consumer to make any payment in addition to the remuneration stated for the trader's main contractual obligation, in particular where it has been incorporated by the use of default options which the consumer is required to reject in order to avoid the additional payment,***

*is not binding on the consumer unless, before the consumer is bound by the contract, the consumer has expressly consented to the additional payment. If the consumer has made the additional payment, the consumer may recover it.*

*2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.*

*(See amendment for paragraph 76b)*

#### **Amendment 145**

##### **Proposal for a regulation**

##### **Annex I – Article 74 – paragraph 2**

*Text proposed by the Commission*

2. The parties may not exclude the application of this Article or derogate from or vary its effects.

*Amendment*

*2. **In relations between a trader and a consumer**, the parties may not, **to the detriment of the consumer**, exclude the application of this Article or derogate from or vary its effects.*

#### **Amendment 146**

##### **Proposal for a regulation**

##### **Annex I – Title II – Part III – Chapter 7 – Section 2 (new)– title**

*Text proposed by the Commission*

*Amendment*

***Section 2: Specific provisions governing contracts between traders and consumers***

#### **Amendment 147**

##### **Proposal for a regulation**

##### **Annex I – Article 76 a (new) – title**

*Text proposed by the Commission*

*Amendment*

***Article 76a***

***Duty to raise awareness of contract terms which have not been individually***

*negotiated*

## **Amendment 148**

### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***1. Contract terms supplied by a trader and not individually negotiated within the meaning of Article 7 may be invoked against a consumer only if the consumer was aware of them, or if the trader took reasonable steps to draw the consumer's attention to them, before or when the contract was concluded.***

*(See amendment for paragraph 70(1))*

## **Amendment 149**

### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 2 (new)**

*Text proposed by the Commission*

*Amendment*

***2. For the purposes of this Article, contract terms are not sufficiently brought to the consumer's attention unless they are:***

***(a) presented in a way which is suitable to attract the attention of a consumer to their existence; and***

***(b) given or made available to a consumer by a trader in a manner which provides the consumer with an opportunity to comprehend them before the contract is concluded.***

*(See amendment for paragraph 70(2), the text has been amended)*

## **Amendment 150**

### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 3 (new)**

*Text proposed by the Commission*

*Amendment*

**3. Contract terms shall not be considered as having been sufficiently brought to the consumer's attention by a mere reference to them in a contract document, even if the consumer signs that document.**

*(See amendment for Article 70(2))*

## **Amendment 151**

### **Proposal for a regulation**

#### **Annex I – Article 76 a – paragraph 4 (new)**

*Text proposed by the Commission*

*Amendment*

**4. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from, or vary, its effects.**

## **Amendment 152**

### **Proposal for a regulation**

#### **Annex I – Article 76 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 76b**

##### ***Additional payments in contracts between a trader and a consumer***

**1. In a contract between a trader and a consumer, a contract term which obliges the consumer to make any payment in addition to the remuneration stated for the trader's main contractual obligation, in particular where it has been incorporated by the use of default options which the consumer is required to reject in order to avoid the additional payment, shall not be binding on the consumer unless, before the consumer is bound by the contract, the consumer has expressly consented to the additional payment. If the consumer makes the additional payment without having expressly**

*consented to it, the consumer may recover it.*

*2. The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from, or vary, its effects.*

*(See amendment for paragraph 71)*

## **Amendment 153**

### **Proposal for a regulation**

#### **Annex I – Article 80 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. Section 2 does not apply to the definition of the main subject matter of the contract, or to the appropriateness of the price to be paid in so far as the trader has complied with the duty of transparency set out in Article 82.*

*deleted*

## **Amendment 154**

### **Proposal for a regulation**

#### **Annex I – Article 82**

*Text proposed by the Commission*

*Amendment*

Where a trader supplies contract terms *which have not been individually negotiated with the consumer within the meaning of Article 7*, it has a duty to ensure that they are drafted and communicated in plain, intelligible language.

Where a trader supplies contract terms, it has a duty to ensure that they are drafted and communicated in plain, *clear and* intelligible language.

## **Amendment 155**

### **Proposal for a regulation**

#### **Annex I – Article 83 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. In a contract between a trader and a consumer, a contract term supplied by the

1. In a contract between a trader and a consumer, a contract term supplied by the

trader ***which has not been individually negotiated within the meaning of Article 7*** is unfair for the purposes of this Section if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, contrary to good faith and fair dealing.

trader is unfair for the purposes of this Section if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, contrary to good faith and fair dealing.

## **Amendment 156**

### **Proposal for a regulation**

#### **Annex I – Article 83 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) whether it is of such a surprising nature that the consumer could not have expected the proposed term;***

## **Amendment 157**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) inappropriately exclude or limit the remedies available to the consumer against the trader or a third party for non-performance by the trader of obligations under the contract;***

## **Amendment 158**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) restrict the evidence available to the consumer or impose on the consumer a burden of proof which legally lies with the trader;***

## **Amendment 159**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) enable a trader to alter contract terms unilaterally without a valid reason which is specified in the contract; this does not affect contract terms under which a trader reserves the right to alter unilaterally the terms of a contract of indeterminate duration, provided that the trader is required to inform the consumer of the alteration with reasonable notice, and that the consumer is free to terminate the contract at no cost to the consumer;*

## **Amendment 160**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

*(fb) enable a trader to alter unilaterally, without a valid reason, any characteristics of the goods, digital content or related services to be provided or any other features of performance;*

## **Amendment 161**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point f c (new)**

*Text proposed by the Commission*

*Amendment*

*(fc) allow a trader to demand a higher price for his services than that which was fixed when the contract was concluded, unless the contract also allows for a price reduction if price change requirements have been agreed upon, the circumstances required for a price change are set out in the contract and are objectively justified and a price change cannot be brought*

*about arbitrarily by the trader;*

## **Amendment 162**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

*(ga) oblige a consumer to perform all his obligations under the contract where the trader fails to perform its own;*

## **Amendment 163**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

*(gb) entitle a trader to withdraw from or terminate the contract within the meaning of Article 8 on a discretionary basis without giving the same right to the consumer, or entitle a trader to keep money paid for related services not yet supplied in the event that the trader withdraws from or terminates the contract;*

## **Amendment 164**

### **Proposal for a regulation**

#### **Annex I – Article 84 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

*(ha) impose an excessive burden on the consumer in order to terminate a contract of indeterminate duration;*

## **Amendment 165**

### **Proposal for a regulation**

#### **Annex I – Article 85 – point a**



*Text proposed by the Commission*

*Amendment*

***(a) restrict the evidence available to the consumer or impose on the consumer a burden of proof which should legally lie with the trader;***

***deleted***

#### **Amendment 166**

##### **Proposal for a regulation**

##### **Annex I – Article 85 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) inappropriately exclude or limit the remedies available to the consumer against the trader or a third party for non-performance by the trader of obligations under the contract;***

***deleted***

#### **Amendment 167**

##### **Proposal for a regulation**

##### **Annex I – Article 85 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(ea) consider specific consumer behaviour equivalent to the issue or non-issue of a statement, unless the significance of the consumer's behaviour is specifically pointed out to him at the beginning of the period intended for this purpose and the consumer has an appropriate length of time in which to make an explicit statement;***

#### **Amendment 168**

##### **Proposal for a regulation**

##### **Annex I – Article 85 – point f**

*Text proposed by the Commission*

*Amendment*

***(f) entitle a trader to withdraw from or terminate the contract within the meaning of Article 8 on a discretionary basis***

***deleted***

*without giving the same right to the consumer, or entitle a trader to keep money paid for related services not yet supplied in the case where the trader withdraws from or terminates the contract;*

#### **Amendment 169**

##### **Proposal for a regulation Annex I – Article 85 – point i**

*Text proposed by the Commission*

*Amendment*

*(i) enable a trader to alter contract terms unilaterally without a valid reason which is specified in the contract; this does not affect contract terms under which a trader reserves the right to alter unilaterally the terms 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 contract at no cost to the consumer;* **deleted**

#### **Amendment 170**

##### **Proposal for a regulation Annex I – Article 85 – point j**

*Text proposed by the Commission*

*Amendment*

*(j) enable a trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or related services to be provided or any other features of performance;* **deleted**

#### **Amendment 171**

##### **Proposal for a regulation Annex I – Article 85 – point k**

*Text proposed by the Commission*

*Amendment*

(k) provide that the price of goods, digital content or related services is to be

(k) provide that the price of goods, digital content or related services is to be

determined at the time of delivery or supply, *or allow a trader to increase the price without giving the consumer the right to withdraw 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;*

determined at the time of delivery or supply;

## Amendment 172

### Proposal for a regulation Annex I – Article 85 – point l

*Text proposed by the Commission*

*Amendment*

*(l) oblige a consumer to perform all their obligations under the contract where the trader fails to perform its own;*

*deleted*

## Amendment 173

### Proposal for a regulation Annex I – Article 85 – point n

*Text proposed by the Commission*

*Amendment*

(n) allow 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 reject performance;

(n) allow 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 reject performance, *and without the consumer having expressly required the supply of an equivalent;*

## Amendment 174

### Proposal for a regulation Annex I – Article 85 – point v

*Text proposed by the Commission*

*Amendment*

*(v) impose an excessive burden on the consumer in order to terminate a contract*

*deleted*

*of indeterminate duration;*

## Amendment 175

### Proposal for a regulation

#### Annex I – Article 86 – paragraph 1 – point b

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

(b) it is of such a nature that its use grossly deviates from **good** commercial practice, contrary to good faith and fair dealing.

##### *Amendment*

(b) it is of such a nature that its use grossly deviates from **customary** commercial practice, contrary to good faith and fair dealing.

## Amendment 176

### Proposal for a regulation

#### Annex I – Article 88 – paragraph 3

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

3. The party who is unable to perform has a duty to ensure that notice of the impediment and of its effect on the ability to perform reaches the other party without undue delay after the first party becomes, or could be expected to have become, aware of these circumstances. The other party is entitled to damages for any loss resulting from the breach of this duty.

##### *Amendment*

3. The party who is unable to perform has a duty to ensure that notice of the impediment and of its effect on the ability to perform reaches the other party without undue delay after the first party becomes, or could be expected to have become, aware of these circumstances. The other party is entitled to damages **under Chapter 16** for any loss resulting from the breach of this duty.

## Amendment 177

### Proposal for a regulation

#### Annex I – Article 89 – paragraph 3 – point c

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

(c) the aggrieved party did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances.

##### *Amendment*

(c) the aggrieved party, **relying on the change of circumstances**, did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances.

## Amendment 178

### Proposal for a regulation

#### Annex I – Article 91 – paragraph 1 – point b

*Text proposed by the Commission*

(b) transfer the ownership of the goods, including the tangible medium on which the digital content is supplied;

*Amendment*

(b) ***transfer or undertake to*** transfer the ownership of the goods, including the tangible medium on which the digital content is supplied;

## Amendment 179

### Proposal for a regulation

#### Annex I – Article 91 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 91a***

##### ***Retention of title***

***If a retention of title clause has been agreed, the seller shall not be obliged to transfer ownership of the goods until the buyer has fulfilled the obligation to pay the price as agreed.***

## Amendment 180

### Proposal for a regulation

#### Annex I – Article 93 – paragraph 1 – point a

*Text proposed by the Commission*

(a) in the case of a consumer sales contract or a contract for the supply of digital content ***which is a distance or off-premises contract, or in which the seller has undertaken to arrange carriage to the buyer***, the consumer's place of residence at the time of the conclusion of the contract;

*Amendment*

(a) in the case of a consumer sales contract or a contract ***between a trader and a consumer*** for the supply of digital content, the consumer's place of residence at the time of the conclusion of the contract;

## Amendment 181

### Proposal for a regulation

#### Annex I – Article 94 – paragraph 1 – point a

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

(a) in the case of a consumer sales contract or a contract for the supply of digital content ***which is a distance or off-premises contract or in which the seller has undertaken to arrange carriage to the buyer***, by transferring the physical possession or control of the goods or the digital content to the consumer;

##### *Amendment*

(a) in the case of a consumer sales contract or a contract ***between a trader and a consumer*** for the supply of digital content, by transferring the physical possession or control of the goods or the digital content to the consumer;

## Amendment 182

### Proposal for a regulation

#### Annex I – Article 95 – paragraph 1

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

1. Where the time of delivery cannot be otherwise determined, the goods or the digital content must be delivered ***without undue delay*** after the ***conclusion of the contract***.

##### *Amendment*

1. Where the time of delivery cannot be otherwise determined, the goods or the digital content must be delivered ***within a reasonable time*** after the ***contract was concluded***.

## Amendment 183

### Proposal for a regulation

#### Annex I – Article 98

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

##### ***Article 98***

##### ***Effect on passing of risk***

***The effect of delivery on the passing of risk is regulated by Chapter 14.***

##### *Amendment*

***deleted***

## Amendment 184

### Proposal for a regulation

#### Annex I – Article 99 – paragraph 3

*Text proposed by the Commission*

3. In a **consumer sales** contract, any agreement derogating from the requirements of Articles 100, 102 **and 103** to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods or the digital content and accepted the goods or the digital content as being in conformity with the contract when concluding it.

*Amendment*

3. In a contract **between a trader and a consumer**, any agreement derogating from the requirements of Articles 100, **101 and 102** to the detriment of the consumer is valid only if, at the time of the conclusion of the contract, the consumer knew of the specific condition of the goods or the digital content and accepted the goods or the digital content as being in conformity with the contract when concluding it.

**Amendment 185**

**Proposal for a regulation**

**Annex I – Article 100 – point g**

*Text proposed by the Commission*

(g) possess such qualities and performance capabilities as the buyer may expect. When determining what the **consumer** may expect of the digital content regard is to be had to whether or not the digital content was supplied in exchange for the payment of a price.

*Amendment*

(g) possess such qualities and performance capabilities as the buyer may expect, **including appearance and the absence of defects**. When determining what the **buyer** may expect of the digital content, regard is to be had to whether or not the digital content was supplied in exchange for the payment of a price **or any counter-performance**.

**Amendment 186**

**Proposal for a regulation**

**Annex I – Article 102 – paragraphs 3 and 4**

*Text proposed by the Commission*

3. **In contracts between businesses**, **paragraph 2** does not apply where the buyer knew or could be expected to have known of the rights or claims based on intellectual property at the time of the conclusion of the contract.

*Amendment*

3. **Paragraph 2** does not apply where

**(a) in contracts between traders**, the buyer knew or could be expected to have known of the rights or claims based on intellectual property at the time of the conclusion of

4. In contracts between a trader and a consumer, ***paragraph 2 does not apply where*** the consumer knew of the rights or claims based on intellectual property at the time of the conclusion of the contract.

the contract;

***(b)*** in contracts between a trader and a consumer, the consumer knew of the rights or claims based on intellectual property at the time of the conclusion of the contract.

## Amendment 187

### Proposal for a regulation Annex I – Article 103

*Text proposed by the Commission*

*Amendment*

#### ***Article 103***

***deleted***

#### ***Limitation on conformity of digital content***

***Digital content is not considered as not conforming to the contract for the sole reason that updated digital content has become available after the conclusion of the contract.***

## Amendment 188

### Proposal for a regulation Annex I – Article 104

*Text proposed by the Commission*

*Amendment*

***In a contract between traders,*** the seller is not liable for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew ***or*** could not have been unaware of the lack of conformity.

The seller is not liable for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew ***of that lack of conformity. In a contract between traders, that also applies if the buyer*** could not have been unaware of the lack of conformity.

## Amendment 189

### Proposal for a regulation Annex I – Article 105 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. In a ***consumer sales*** contract, any lack

2. In a contract ***between a trader and a***



of conformity which becomes apparent within six months of the time when risk passes to the buyer is presumed to have existed at that time unless this is incompatible with the nature of the goods or digital content or with the nature of the lack of conformity.

**consumer**, any lack of conformity which becomes apparent within six months of the time when risk passes to the buyer is presumed to have existed at that time unless this is incompatible with the nature of the goods or digital content or with the nature of the lack of conformity.

## Amendment 190

### Proposal for a regulation

#### Annex I – Article 105 – paragraph 4

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

4. Where the digital content must be subsequently updated by the trader, the trader must ensure that the digital content remains in conformity with the contract throughout the duration of the contract.

##### *Amendment*

4. Where the digital content must be subsequently updated by the trader, **or where the trader supplies its components separately**, the trader must ensure that the digital content remains in conformity with the contract throughout the duration of the contract.

## Amendment 191

### Proposal for a regulation

#### Annex I – Article 106 – paragraph 1 – introductory part

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

1. In the case of non-performance of an obligation by the seller, the buyer may do any of the following:

##### *Amendment*

1. In the case of non-performance of an obligation by the seller, the buyer may, **where the specific requirements for the respective remedies are met**, do any of the following:

## Amendment 192

### Proposal for a regulation

#### Annex I – Article 106 – paragraph 3 – point a

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

(a) the buyer's rights are not subject to cure by the seller; **and**

##### *Amendment*

(a) the buyer's rights are not subject to cure by the seller, **except where they relate to goods or digital content which are manufactured, produced or modified in accordance with the consumer's specifications or which are clearly**

*personalised; or*

## Amendment 193

### Proposal for a regulation Annex I – Article 107

#### *Text proposed by the Commission*

Limitation of remedies for digital content  
not supplied in exchange for a price

Where digital content is not supplied in exchange for ***the payment of a price***, the buyer may not resort to the remedies referred to in points (a) to (d) of Article 106(1). The buyer may only claim damages under point (e) of Article 106 (1) for loss or damage caused to the buyer's property, including hardware, software and data, by the lack of conformity of the supplied digital content, except for any gain of which the buyer has been deprived by that damage.

#### *Amendment*

Limitation of remedies for digital content  
not supplied in exchange for ***payment of a price or any other counter-performance***

***- 1. Where digital content is supplied in exchange for a counter-performance other than the payment of a price, the buyer may resort to any of the remedies referred to in Article 106(1) except for price reduction under point (d) thereof.***

***1.*** Where digital content is not supplied in exchange for ***any counter-performance***, the buyer may not resort to the remedies referred to in points (a) to (d) of Article 106(1). The buyer may only claim damages under point (e) of Article 106 (1) for loss or damage caused to the buyer's property, including hardware, software and data, by the lack of conformity of the supplied digital content, except for any gain of which the buyer has been deprived by that damage.

## Amendment 194

### Proposal for a regulation Annex I – Article 109 – paragraph 4 – point -a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(-a) where the buyer is a consumer, the buyer's remedies are not subject to cure by the seller under point (a) of Article 106(3);***

## Amendment 195

### Proposal for a regulation Annex I – Article 109 – paragraph 5

*Text proposed by the Commission*

*Amendment*

5. The seller has a reasonable period of time to effect cure.

5. The seller has a reasonable period of time to effect cure. ***In contracts between a trader and a consumer, that reasonable period shall not exceed 30 days.***

**Amendment 196**

**Proposal for a regulation**

**Annex I – Article 109 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

7. Notwithstanding cure, the buyer retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

7. Notwithstanding cure, the buyer retains the right to claim damages ***under Chapter 16*** for delay as well as for any harm caused or not prevented by the cure.

**Amendment 197**

**Proposal for a regulation**

**Annex I – Article 110 – paragraphs 1 and 2**

*Text proposed by the Commission*

*Amendment*

1. The buyer is entitled to require performance of the seller's obligations.

1. The buyer is entitled to require performance of the seller's obligations, ***which includes the remedying, free of charge, of a performance which is not in conformity with the contract.***

***2. The performance which may be required includes the remedying free of charge of a performance which is not in conformity with the contract.***

**Amendment 198**

**Proposal for a regulation**

**Annex I – Article 111 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Where, in a consumer sales contract, the trader is required to remedy a lack of conformity pursuant to Article ***110(2)*** the

1. Where, in a consumer sales contract, the trader is required to remedy a lack of conformity pursuant to Article ***110***, the

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

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

## Amendment 199

### Proposal for a regulation

#### Annex I – Article 111 – paragraph 2

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

2. If the consumer has required the remedying of the lack of conformity by repair or replacement pursuant to paragraph 1, the consumer may resort to other remedies only if the trader has not completed repair or replacement within a reasonable time, not exceeding 30 days.  
***However, the consumer may withhold performance during that time.***

##### *Amendment*

2. If the consumer has required the remedying of the lack of conformity by repair or replacement pursuant to paragraph 1, the consumer may resort to other remedies only if:

***(a) the trader has not completed repair or replacement within a reasonable time, not exceeding 30 days;***

***(b) the trader has implicitly or explicitly refused to remedy the lack of conformity;***

***(c) the same fault has occurred again following repair or replacement.***

## Amendment 200

### Proposal for a regulation

#### Annex I – Article 113 – paragraph 3 a (new)

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

##### *Amendment*

***3a. In a contract between a trader and a consumer, the entire performance may be withheld, unless such withholding is disproportionate to the significance of the lack of conformity.***

## Amendment 201

### Proposal for a regulation

#### Annex I – Article 119

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

1. The buyer loses the right to terminate under this Section if notice of termination is not given within **a reasonable time** from when the right arose or the buyer became, or could be expected to have become, aware of the non-performance, whichever is later.

2. Paragraph 1 does not apply:

**(a) where the buyer is a consumer; or**

**(b) where no performance at all has been rendered.**

##### *Amendment*

1. The buyer loses the right to terminate under this Section if notice of termination is not given within **two months** from when the right arose or the buyer became, or, **if the buyer is a trader that buyer** could be expected to have become, aware of the non-performance, whichever is later.

2. Paragraph 1 does not apply where no performance at all has been rendered.

## Amendment 202

### Proposal for a regulation

#### Annex I – Article 120 – paragraph 3

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

3. A buyer who reduces the price cannot also recover damages for the loss thereby compensated but remains entitled to damages for any further loss suffered.

##### *Amendment*

3. A buyer who reduces the price cannot also recover damages **under Chapter 16** for the loss thereby compensated but remains entitled to damages for any further loss suffered.

## Amendment 203

### Proposal for a regulation

#### Annex I – Article 121 – paragraph 1

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

1. In a contract between traders the buyer is expected to examine the goods, or cause them to be examined, within as short a period as is reasonable not exceeding 14 days from the date of delivery of the goods, supply of digital content or provision of related services.

##### *Amendment*

1. In a contract between traders the buyer is expected to examine the goods **or digital content**, or cause them to be examined, within as short a period as is reasonable not exceeding 14 days from the date of delivery of the goods, supply of digital content or provision of related services.

## Amendment 204

### Proposal for a regulation

#### Annex I – Article 122 – paragraph 1 – subparagraph 1

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

1. In a contract between traders the buyer may not rely on a lack of conformity if the buyer does not give notice to the seller within a reasonable time specifying the nature of the lack of conformity.

##### *Amendment*

1. In a contract between traders the buyer may not rely on a lack of conformity if the buyer does not give notice to the seller within a reasonable time specifying the nature of the lack of conformity. ***However, the buyer may still reduce the price or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.***

## Amendment 205

### Proposal for a regulation

#### Annex I – Article 123 – paragraph 2

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

2. Point (a) of paragraph 1 does not apply to contracts for the supply of digital content where the digital content is not supplied in exchange for the payment of a price.

##### *Amendment*

***2. For contracts for the supply of digital content:***

***(a)*** point (a) of paragraph 1 does not apply where the digital content is not supplied in exchange for the payment of a price;

***(b)*** point (b) of paragraph 1 does not apply where the digital content is not supplied on a tangible medium.

## Amendment 206

### Proposal for a regulation

#### Annex I – Article 127 – paragraph 4

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

4. Where the seller accepts payment by a third party in circumstances not covered by paragraphs 1 or 2 the buyer is discharged

##### *Amendment*

4. Where the seller accepts payment by a third party in circumstances not covered by paragraphs 1 or 2 the buyer is discharged

from liability to the seller but the seller is liable to the buyer for any loss caused by that acceptance.

from liability to the seller but the seller is liable to the buyer ***under Chapter 16*** for any loss caused by that acceptance.

## Amendment 207

### Proposal for a regulation

#### Annex I – Article 131 – paragraph 1 – introductory part

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

1. In the case of a non-performance of an obligation by the buyer, the seller may do any of the following:

##### *Amendment*

1. In the case of a non-performance of an obligation by the buyer, the seller may, ***where the specific criteria for the respective remedies are met***, do any of the following:

## Amendment 208

### Proposal for a regulation

#### Annex I – Article 131 – paragraph 2

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

2. If the buyer's non-performance is excused, the seller may resort to any of the remedies referred to in paragraph 1 except ***requiring performance and*** damages.

##### *Amendment*

2. If the buyer's non-performance is excused, the seller may resort to any of the remedies referred to in paragraph 1 except damages.

## Amendment 209

### Proposal for a regulation

#### Annex I – Article 142 – paragraph 3

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

***3. Except where the contract is a distance or off-premises contract, paragraphs 1 and 2 do not apply where the consumer fails to perform the obligation to take over the goods or the digital content and the non-performance is not excused under Article 88. In this case, the risk passes at the time when the consumer, or the third party designated by the consumer, would have acquired the physical possession of the goods or obtained the control of the digital content if the obligation to take***

##### *Amendment*

***deleted***

*them over had been performed.*

## **Amendment 210**

### **Proposal for a regulation Annex I – Article 143 – title**

*Text proposed by the Commission*

***Time when risk passes***

*Amendment*

***Passing of risk in contracts between  
traders***

## **Amendment 211**

### **Proposal for a regulation Annex I – Article 143 – paragraph 2**

*Text proposed by the Commission*

***2. Paragraph 1 is subject to Articles 144,  
145 and 146.***

*Amendment*

***2. If the goods or the digital content are  
placed at the buyer's disposal and the  
buyer is aware of this, the risk passes to  
the buyer at the time when the goods or  
digital content should have been taken  
over, unless the buyer was entitled to  
withhold taking of delivery pursuant to  
Article 113.***

***If the goods or the digital content are  
placed at the buyer's disposal at a place  
other than a place of business of the  
seller, the risk passes when delivery is due  
and the buyer is aware of the fact that the  
goods or digital content are placed at the  
buyer's disposal at that place.***

*(See amendment for Article 144)*

## **Amendment 212**

### **Proposal for a regulation Annex I – Article 143 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. In a contract of sale which involves  
the carriage of goods, regardless of  
whether the seller is authorised to retain***



*documents controlling the disposition of the goods:*

*(a) if the seller is not bound to hand over the goods at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract;*

*(b) if the seller is bound to hand over the goods to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place.*

*(See amendment for Article 145; structure has been changed)*

## **Amendment 213**

### **Proposal for a regulation**

#### **Annex I – Article 143 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*2b. Where goods are sold in transit the risk passes to the buyer as from the time when the goods were handed over to the first carrier or when the contract is concluded, depending on the circumstances. Risk does not pass to the buyer if, at the time of conclusion of the contract, the seller knew, or could be expected to have known, that the goods had been lost or damaged and did not disclose this to the buyer.*

*(See amendment for Article 146; text has been amended)*

## **Amendment 214**

### **Proposal for a regulation**

#### **Annex I – Article 144**

*Text proposed by the Commission*

*Amendment*

*Article 144*

*deleted*

*Goods placed at buyer's disposal*

*1. If the goods or the digital content are*

*placed at the buyer's disposal and the buyer is aware of this, the risk passes to the buyer at the time when the goods or digital content should have been taken over, unless the buyer was entitled to withhold taking of delivery pursuant to Article 113.*

*2. If the goods or the digital content are placed at the buyer's disposal at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods or digital content are placed at the buyer's disposal at that place.*

*(See amendment for Article 143(2))*

## **Amendment 215**

### **Proposal for a regulation Annex I – Article 145**

*Text proposed by the Commission*

*Amendment*

#### *Article 145*

*deleted*

#### *Carriage of the goods*

*1. This Article applies to a contract of sale which involves carriage of goods.*

*2. If the seller is not bound to hand over the goods at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract.*

*3. If the seller is bound to hand over the goods to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place.*

*4. The fact that the seller is authorised to retain documents controlling the disposition of the goods does not affect the passing of the risk.*

*(See amendment for Article 143(3))*

## Amendment 216

### Proposal for a regulation

#### Annex I – Article 146

*Text proposed by the Commission*

*Amendment*

#### **Article 146**

**deleted**

##### ***Goods sold in transit***

***1. This Article applies to a contract of sale which involves goods sold in transit.***

***2. The risk passes to the buyer as from the time the goods were handed over to the first carrier. However, if the circumstances so indicate, the risk passes to the buyer when the contract is concluded.***

***3. If at the time of the conclusion of the contract the seller knew or could be expected to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.***

*(See amendment for Article 143(4))*

## Amendment 218

### Proposal for a regulation

#### Annex I – Article 155 – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

(e) to claim damages.

(e) to claim damages ***under Chapter 16.***

## Amendment 219

### Proposal for a regulation

#### Annex I – Article 155 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Without prejudice to paragraph 3, the customer's remedies are subject to a right of the service provider to cure ***whether or not the customer is a consumer.***

2. Without prejudice to paragraph 3, the customer's remedies are subject to a right of the service provider to cure.

## Amendment 220

### Proposal for a regulation

#### Annex I – Article 155 – paragraph 5 – point a

*Text proposed by the Commission*

*Amendment*

*(a) in relation to the right of the service provider to cure, in contracts between a trader and a consumer, the reasonable period under Article 109 (5) must not exceed 30 days;*

*deleted*

## Amendment 221

### Proposal for a regulation

#### Annex I – Article 155 – paragraph 5 – point b

*Text proposed by the Commission*

*Amendment*

*(b) in relation to the remedying of a non-conforming performance Articles 111 and 112 do not apply; and*

*deleted*

## Amendment 222

### Proposal for a regulation

#### Annex I – Article 157 – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

(d) to claim interest on the price or damages.

(d) to claim interest on the price or damages *under Chapter 16*.

## Amendment 223

### Proposal for a regulation

#### Annex I – Article 172 – title

*Text proposed by the Commission*

*Amendment*

Restitution *on* avoidance *or termination*

Restitution *in the event of* avoidance, *termination or invalidity*

## Amendment 224

### Proposal for a regulation

## Annex I – Article 172 – paragraph 1

### *Text proposed by the Commission*

1. Where a contract is avoided or terminated by either party, each party is obliged to return what that party ('the recipient') has received from the other party.

### *Amendment*

1. Where a contract ***or part of a contract*** is avoided or terminated by either party ***or is invalid or not binding for reasons other than avoidance or termination***, each party is obliged to return what that party ("the recipient") has received from the other party ***under the contract affected or part thereof***.

## Amendment 225

### Proposal for a regulation

#### Annex I – Article 172 – paragraph 2 a (new)

### *Text proposed by the Commission*

### *Amendment*

***2a. Restitution shall be made without undue delay and in any event not later than 14 days from receipt of the notice of avoidance or termination. Where the recipient is a consumer, this deadline shall be considered met if the consumer takes the necessary steps before the period of 14 days has expired.***

## Amendment 226

### Proposal for a regulation

#### Annex I – Article 172 – paragraph 2 b (new)

### *Text proposed by the Commission*

### *Amendment*

***2b. The recipient bears the cost of returning what was received.***

## Amendment 227

### Proposal for a regulation

#### Annex I – Article 172 – paragraph 2 c (new)

### *Text proposed by the Commission*

### *Amendment*

***2c. A party may withhold the performance of an obligation to return, where that***

*party has a legitimate interest in doing so, for instance where this is necessary in order to ascertain the existence of a lack of conformity.*

## **Amendment 228**

### **Proposal for a regulation**

#### **Annex I – Article 172 – paragraph 2 d (new)**

*Text proposed by the Commission*

*Amendment*

***2d. In the case of non-performance of an obligation to return or to pay under this Chapter by one party, the other party may claim damages under Articles 159 to 163.***

## **Amendment 229**

### **Proposal for a regulation**

#### **Annex I – Article 172 a (new) – title**

*Text proposed by the Commission*

*Amendment*

#### ***Article 172a***

***Returning digital content and returning the counter-performance in the case of supply of digital content***

## **Amendment 230**

### **Proposal for a regulation**

#### **Annex I – Article 172 a (new) – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Digital content shall only be considered returnable where:***

***(a) the digital content was supplied on a tangible medium and the medium is still sealed or the seller did not seal it before delivery; or***

***(b) it is otherwise clear that the recipient who sends back a tangible medium cannot have retained a usable copy of the digital content; or***

*(c) the seller can, without significant effort or expense, prevent any further use of the digital content on the part of the recipient, for instance by deleting the recipient's user account.*

## **Amendment 231**

### **Proposal for a regulation**

#### **Annex I – Article 172 a (new) – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. The recipient of digital content supplied on a tangible medium which is returnable in accordance with points (a) and (b) of paragraph 1 shall be considered to have fulfilled the obligation to return by sending back the tangible medium.*

## **Amendment 232**

### **Proposal for a regulation**

#### **Annex I – Article 172 a (new) – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Where digital content is supplied in exchange for a counter-performance other than the payment of a price, such as the provision of personal data, and that counter-performance cannot be returned, the recipient of the counter-performance shall refrain from further use of what was received, for instance by deleting received personal data. The consumer shall be informed of the deletion of personal data.*

## **Amendment 233**

### **Proposal for a regulation**

#### **Annex I – Article 173 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Where what was received, including fruits where relevant, cannot be returned,  
*or, in a case of digital content whether or*

1. Where what was received, including fruits where relevant, cannot be returned,  
the recipient must pay its monetary value.

*not it was supplied on a tangible medium*, the recipient must pay its monetary value. Where the return is possible but would cause unreasonable effort or expense, the recipient may choose to pay the monetary value, provided that this would not harm the other party's proprietary interests.

Where the return is possible but would cause unreasonable effort or expense, the recipient may choose to pay the monetary value, provided that this would not harm the other party's proprietary interests.

## Amendment 234

### Proposal for a regulation

#### Annex I – Article 173 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. *Where the recipient has obtained a substitute in money or in kind in exchange for goods or digital content when the recipient knew or could be expected to have known of the ground for avoidance or termination, the other party may choose to claim the substitute or the monetary value of the substitute. A recipient who has obtained a substitute in money or kind in exchange for goods or digital content when the recipient did not know and could not be expected to have known of the ground for avoidance or termination may choose to return the monetary value of the substitute or the substitute.***

***deleted***

## Amendment 235

### Proposal for a regulation

#### Annex I – Article 173 – paragraph 6

*Text proposed by the Commission*

*Amendment*

**6. *In the case of* digital content *which* is not supplied in exchange for the payment of a price, *no restitution will be made.***

**6. *Where the* digital content is not supplied in exchange for the payment of a price, *but for a counter-performance other than the payment of a price or without counter-performance, and the digital content cannot be considered as returnable under Article 172a(1), the recipient of the digital content does not have to pay its monetary value.***



## Amendment 236

### Proposal for a regulation

#### Annex I – Article 173 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

**6a. Without prejudice to Article 172a(3), where the digital content is supplied in exchange for a counter-performance other than the payment of a price and that counter-performance cannot be returned, the recipient of the counter-performance does not have to pay its monetary value.**

## Amendment 237

### Proposal for a regulation

#### Annex I – Article 174 – title

*Text proposed by the Commission*

*Amendment*

Payment for use and interest on money received

Payment for use and interest on money received **and diminution in value**

## Amendment 238

### Proposal for a regulation

#### Annex I – Article 174 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. A recipient who has made use of goods must pay the other party the monetary value of that use for any period where:

- (a) the recipient caused the ground for avoidance or termination;
- (b) the recipient, prior to the start of that period, was aware of the ground for avoidance or termination; or
- (c) having regard to the nature of the goods, the nature and amount of the use and the availability of remedies other than termination, it would be inequitable to allow the recipient the free use of the

1. A recipient who has made use of goods **or digital content** must pay the other party the monetary value of that use for any period where:

- (a) the recipient caused the ground for avoidance or termination;
- (b) the recipient, prior to the start of that period, was aware of the ground for avoidance or termination; or
- (c) having regard to the nature of the goods **or digital content**, the nature and amount of the use and the availability of remedies other than termination, it would be inequitable to allow the recipient the free

goods for that period.

use of the goods *or digital content* for that period.

#### **Amendment 239**

##### **Proposal for a regulation**

##### **Annex I – Article 174 – paragraph 3**

*Text proposed by the Commission*

3. For the purposes of this Chapter, a recipient is not obliged to pay for use of goods received or interest on money received in any circumstances other than those set out in paragraphs 1 and 2.

*Amendment*

3. For the purposes of this Chapter, a recipient is not obliged to pay for use of goods *or digital content* received or interest on money received in any circumstances other than those set out in paragraphs 1, *1a* and 2.

#### **Amendment 240**

##### **Proposal for a regulation**

##### **Annex I – Article 174 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3a. The recipient is liable under Articles 159 to 163 for any diminution in the value of the goods, the digital content or their fruits to the extent that the diminishment in value exceeds depreciation through regular use.*

#### **Amendment 241**

##### **Proposal for a regulation**

##### **Annex I – Article 174 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

*3b. The payment for use or diminution in value shall not exceed the price agreed for the goods or the digital content.*

#### **Amendment 242**

##### **Proposal for a regulation**

##### **Annex I – Article 174 – paragraph 3 c (new)**

**3c. Where the digital content is not supplied in exchange for the payment of a price, but for a counter-performance other than the payment of a price or without any counter-performance, the recipient of the digital content does not have to pay for use or diminished value.**

## **Amendment 243**

### **Proposal for a regulation**

#### **Annex I – Article 174 – paragraph 3 d (new)**

*Text proposed by the Commission*

*Amendment*

**3d. Without prejudice to Article 172a(3), where the digital content is supplied in exchange for a counter-performance other than the payment of a price, the recipient of the counter-performance does not have to pay for use or diminished value of what was received.**

## **Amendment 244**

### **Proposal for a regulation**

#### **Annex I – Article 175 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Where a recipient has incurred expenditure on goods or digital content, the recipient is entitled to compensation to the extent that the expenditure benefited the other party provided that the expenditure was made when the recipient did not know and could not be expected to know of the ground for avoidance or termination.

1. Where a recipient has incurred expenditure on goods or digital content **or the fruits thereof**, the recipient is entitled to compensation to the extent that the expenditure benefited the other party, provided that the expenditure was made when the recipient did not know, and could not be expected to know, of the ground for avoidance or termination.

## **Amendment 245**

### **Proposal for a regulation**

#### **Annex I – Article 175 – paragraph 2**

*Text proposed by the Commission*

2. A recipient who knew or could be expected to know of the ground for avoidance or termination is entitled to compensation only for expenditure that was necessary to protect the goods or the digital content from being lost or diminished in value, provided that the recipient had no opportunity to ask the other party for advice.

*Amendment*

2. A recipient who knew or could be expected to know of the ground for avoidance or termination is entitled to compensation only for expenditure that was necessary to protect the goods or the digital content, ***or the fruits thereof***, from being lost or diminished in value, provided that the recipient had no opportunity to ask the other party for advice.

**Amendment 246**

**Proposal for a regulation  
Annex I – Article 177**

*Text proposed by the Commission*

In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Chapter or derogate from or vary its effects.

*Amendment*

In relations between a trader and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Chapter, or derogate from or vary its effects, ***before notice of avoidance or termination is given***.

**Amendment 247**

**Proposal for a regulation  
Annex I – Article 177 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 177a***

***Commercial guarantees***

***1. A commercial guarantee shall be binding on the guarantor under the conditions laid down in the guarantee statement. In the absence of a guarantee statement, or if the guarantee statement is less advantageous than advertised, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee.***

***2. The guarantee statement shall be***

*drafted in plain, intelligible language and shall be legible. It shall be drafted in the language of the contract concluded with the consumer and shall include the following:*

*(a) a statement of the rights of the consumer, as provided for in Chapter 11, and a clear statement that those rights are not affected by the commercial guarantee, and*

*(b) the terms of the commercial guarantee, in particular those relating to its duration, transferability and territorial scope, the name and address of the guarantor and, if different from the guarantor, the person against whom any claim is to be made and the procedure by which the claim is to be made.*

*3. If not otherwise provided for in the guarantee document, the guarantee is also binding without acceptance in favour of every owner of the goods within the duration of the guarantee.*

*4. At the consumer's request, the trader shall make the guarantee statement available in a durable medium.*

*5. Non compliance with paragraph 2, 3 or 4 shall not affect the validity of the guarantee.*

## Amendment 248

### Proposal for a regulation Annex I – Article 178

#### *Text proposed by the Commission*

A right to enforce performance of an obligation, and any right ancillary to such a right, is subject to prescription by the expiry of a period of time in accordance with this Chapter.

#### *Amendment*

A right to enforce performance of an obligation, and any right ancillary to such a right, ***including the right to any remedy for non-performance except withholding performance***, is subject to prescription by the expiry of a period of time in accordance with this Chapter.

## Amendment 249

### Proposal for a regulation

#### Annex I – Article 179 – paragraph 2

*Text proposed by the Commission*

2. The long period of prescription is **ten** years or, in the case of a right to damages for personal injuries, thirty years.

*Amendment*

2. The long period of prescription is **six** years or, in the case of a right to damages for personal injuries, thirty years.

## Amendment 250

### Proposal for a regulation

#### Annex I – Article 179 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Prescription takes effect when either of the two periods has expired, whichever is the earlier.***

## Amendment 251

### Proposal for a regulation

#### Annex I – Article -181

*Text proposed by the Commission*

*Amendment*

#### ***Article -181***

***Suspension in the case of repair or replacement***

***1. Where a lack of conformity is remedied by repair or replacement, the running of the short period of prescription is suspended from the time when the creditor has informed the debtor of the lack of conformity.***

***2. Suspension lasts until the time when the non-conforming performance has been remedied.***

## Amendment 252

### Proposal for a regulation

## **Annex I – Article 183 a (new)**

*Text proposed by the Commission*

*Amendment*

### **Article 183a**

#### ***Suspension in cases of force majeure***

***1. The running of the short period of prescription shall be suspended for the period during which the creditor is prevented from pursuing proceedings to assert the right by an impediment which is beyond the creditor's control and which the creditor could not reasonably have been expected to avoid or overcome.***

***2. Paragraph 1 shall apply only if the impediment arises, or subsists, within the last six months of the prescription period.***

***3. Where the duration or nature of the impediment is such that it would be unreasonable to expect the creditor to take proceedings to assert the right within the part of the period of prescription which has still to run after the suspension comes to an end, the period of prescription shall not expire before six months have passed after the impediment was removed.***

## **Amendment 253**

### **Proposal for a regulation Title III (new) – title**

*Text proposed by the Commission*

*Amendment*

### ***Title III***

#### ***Flanking measures***

## **Amendment 254**

### **Proposal for a regulation Annex I – Article 186 a (new) – paragraph 1**

*Text proposed by the Commission*

*Amendment*

### **Article 186a**

***Communication of judgments applying  
this Regulation***

***1. Member States shall ensure that final judgments of their courts applying the rules of this Regulation are communicated without undue delay to the Commission.***

**Amendment 255**

**Proposal for a regulation**

**Annex I – Article 186 a (new) – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. The Commission shall set up a system which allows the information concerning the judgments referred to in paragraph 1 and relevant judgements of the Court of Justice of the European Union to be consulted. That system shall be accessible to the public. It shall be fully systematised and easily searchable.***

**Amendment 256**

**Proposal for a regulation**

**Annex I – Article 186 a (new) – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Judgments which are communicated under paragraph 1 shall be accompanied by a standard judgment summary comprising the following sections:***

***(a) the issue and the relevant article(s) of the Common European Sales Law;***

***(b) a brief summary of the facts;***

***(c) a brief summary of the main arguments;***

***(d) the decision; and***

***(e) the reasons for the decision, clearly stating the principle decided.***



## **Amendment 257**

### **Proposal for a regulation Annex I – Article 186 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186b**

##### ***Alternative dispute resolution***

***1. In contracts between a consumer and a trader, parties are encouraged to consider submitting disputes arising from a contract for which they have agreed to use the Common European Sales Law to an ADR entity within the meaning of point (h) of Article 4(1) of Directive 2013/11/EU.***

***2. This Article shall not exclude or restrict the parties' right to refer their case at any moment to a court or tribunal instead of submitting their dispute to an ADR entity.***

## **Amendment 258**

### **Proposal for a regulation Annex I – Article 186 c (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186c**

##### ***Development of 'European model contract terms'***

***1. As soon as possible and at the latest within three months of the entry into force of this Regulation, the Commission shall set up an expert group to assist it in developing 'European model contract terms' based on, and complementary to, the Common European Sales Law, and to foster its practical application.***

***2. The Commission shall endeavour, with the assistance of the expert group, to present first European model contract terms within [xxx] of the entry into force of this Regulation.***

***3. The expert group shall comprise members representing, in particular, the***

*interests of users of the Common Sales Law within the Union. It may decide to set up specialist sub-groups to consider separate areas of commercial activity.*

## **Amendment 259**

### **Proposal for a regulation Title IV (new) – title**

*Text proposed by the Commission*

*Amendment*

#### **Title IV**

#### **Final provisions**

## **Amendment 260**

### **Proposal for a regulation Annex I – Article 186 d (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186d**

#### **Review**

*1. By ... [4 years after the date of application of this Regulation], Member States shall provide the Commission with information relating to the application of this Regulation, covering in particular the level of acceptance of the Common European Sales Law, the extent to which its provisions have given rise to litigation and the state of play concerning differences in the level of consumer protection between the Common European Sales Law and national law. That information shall include a comprehensive overview of the case-law of the national courts interpreting the provisions of the Common European Sales Law.*

*2. By ... [5 years after the date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a detailed report reviewing the operation of*

*this Regulation, and taking account of, inter alia, the need to extend the scope of the Common European Sales Law in relation to business-to-business contracts, market and technological developments in respect of digital content and future developments of the Union acquis. Particular consideration shall further be given to whether the limitation in respect of distance, and in particular online contracts, remains appropriate or whether it may be feasible to widen its scope to cover, inter alia, on-premises contracts.*

*(See amendment for Article 15; the text has been amended)*

## **Amendment 261**

### **Proposal for a regulation Annex I – Article 186 e (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 186e**

#### **Amendment to Regulation (EC) No 2006/2004**

*In the Annex to Regulation (EC) No  
2006/2004<sup>1</sup>, the following point shall be  
added:*

*'18. Regulation of the European  
Parliament and of the Council on a  
Common European Sales Law (OJ L ...).'*

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<sup>1</sup> *Regulation (EC) No 2006/2004 of the  
European Parliament and of the Council  
of 27 October 2004 on cooperation  
between national authorities responsible  
for the enforcement of consumer  
protection laws (the Regulation on  
consumer protection cooperation) (OJ L  
364, 9.12.2004, p. 1).*

## **Amendment 262**

### **Proposal for a regulation Annex I – Article 186 f (new)**

**Article 186f**

**Entry into force and application**

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

**2. It shall apply from [ 6 months after its the entry into force].**

**This Regulation shall be binding in its entirety and directly applicable in the Member States.**

*(See amendment for Article 16)*

**Amendment 263**

**Proposal for a regulation**

**Annex I – Appendix 1 – point 5 – point b – indent 4**

**– If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense."**

**deleted**

**Amendment 264**

**Proposal for a regulation**

**Annex II – Your rights before signing the contract**

The trader has to give you the important information on the contract, for instance on the product and its price including all taxes and charges and his contact details. **The information has to be more detailed when you buy something outside the trader's shop or if you do not meet the trader**

The trader has to give you the important information on the contract, for instance on the product and its price including all taxes and charges and his contact details. You are entitled to damages if this information is incomplete or wrong.

*personally at all, for instance if you buy online or by telephone.* You are entitled to damages if this information is incomplete or wrong.