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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on certain aspects concerning contracts for the online and other distance sales of goods - Outcome of the European Parliament's first reading, (Strasbourg, 25 to 28 March 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure[1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

[1] OJ C 145, 30.6.2007, p.5

In this context, the rapporteur Pascal ARIMONT (EPP, BE) presented a compromise amendment (amendment number 123) to the proposal for a Directive on behalf of the Committee on the Internal Market and Consumer Protection. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 26 March 2019, the plenary adopted the compromise amendment (amendment number 123) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto[2].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[2] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

Contracts for the sale of goods ***I

European Parliament legislative resolution of 26 March 2019 on the amended proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council (COM(2017)0637 – C8-0379/2017 – 2015/0288(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2015)0635) and the amended proposal (COM(2017)0637),

– 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 (C8-0379/2017),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to the opinions of the European Economic and Social Committee of 27 April 2016[3] and of 15 February 2018[4],

– having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 6 February 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on the Internal Market and Consumer Protection (A8-0043/2018),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

[3] OJ C 264, 20.7.2016, p. 57.
[4] OJ C 227, 28.6.2018, p. 58

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2015)0288

Position of the European Parliament adopted at first reading on 26 March 2019 with a view to the adoption of Directive (EU) 2019/… of the European Parliament and of the Council on certain aspects concerning contracts for the sale of goods*, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[5],

Acting in accordance with the ordinary legislative procedure[6],

Whereas:

5 **OJ C 264, 20.7.2016, p. 57.**

6 **Position of the European Parliament of** 26 March 2019·

(1) In order to remain competitive on global markets, the Union needs to ***improve the functioning of the internal market and*** successfully meet the multiple challenges posed today by an increasingly technology-driven economy. The Digital Single Market Strategy lays down a comprehensive framework facilitating the integration of the digital dimension into the ***internal market***. The first pillar of the Digital Single Market Strategy tackles fragmentation in intra-EU trade by looking at all major obstacles to the development of cross-border e-commerce***, which constitutes the most significant part of cross-border business-to-consumer sales of goods***.

(2) Article 26(1) and (2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to adopt measures with the aim of establishing or ensuring the functioning of the internal market, which is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. Article 169(1) and point (a) of Article 169(2) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU in the context of the completion of the internal market. This Directive aims to strike the right balance between achieving a high level of consumer protection and promoting the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.

(3) ▌Certain aspects concerning contracts for the sale of goods ***should be harmonised***, taking as a base a high level of consumer protection, ***in order to achieve a genuine digital single market, increase legal certainty and reduce transaction costs, in particular for small and medium-sized enterprises ('SMEs')***.

(4) E-commerce is ***a key*** driver for growth within the ***internal market***. However, its growth potential is far from being fully exploited. In order to strengthen Union competitiveness and to boost growth, the Union needs to act swiftly and encourage economic actors to unleash the full potential offered by the ***internal market***. The full potential of the ***internal market*** can only be unleashed if all market participants enjoy smooth access ***to cross-border*** sales of goods ***including*** in e-commerce transactions. The contract law rules on the basis of which market participants conclude transactions are among the key factors shaping business decisions as to whether to offer goods ▌cross-border. Those rules also influence consumers' willingness to embrace and trust this type of purchase.

(5) ***Technological evolution has led to a growing market for goods that incorporate or are inter-connected with digital content or digital services. Due to the increasing number of such devices and their rapidly growing uptake by consumers, action at Union level is needed in order to ensure that there is a high level of consumer protection and to increase legal certainty as regards the rules applicable to contracts for the sale of such products. Increasing legal certainty would help to reinforce the trust of consumers and sellers.***

(6) ▌ Union rules applicable to ***the*** sales of goods are still fragmented***,*** although rules on ***delivery conditions and, as regards distance or off-premises contracts,*** pre-contractual information requirements ***and*** the right of withdrawal ▌ have already been fully harmonised ***by Directive 2011/83/EU of the European Parliament and of the Council***[7]. Other key contractual elements, such as the conformity criteria, the remedies ***for a lack of conformity with the contract and the main*** modalities for their exercise, ***are currently*** subject to minimum harmonisation ***under*** Directive 1999/44/EC of the European Parliament and of the Council[8]. Member States have been allowed to go beyond the Union standards and introduce or maintain rules that ensure that an even higher level of consumer protection is achieved. In doing so, they have acted on different elements and to different extents. Thus, national provisions transposing ***Directive 1999/44/EC*** significantly diverge today on essential elements ▌, such as the absence or existence of a hierarchy of remedies ▌.

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7 ***Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).***

8 **Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).**

(7) Existing disparities can adversely affect businesses and consumers. Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council[9], businesses directing their activities to consumers in other Member States are required to take account of the mandatory consumer contract law rules of the consumer's country of habitual residence. As those rules differ among Member States, businesses can be faced with additional costs. Consequently, many businesses might prefer to continue trading domestically or only export to one or two Member States. That choice of minimising exposure to costs and risks associated with cross-border ***trade*** results in lost opportunities for commercial expansion and economies of scale. SMEs in particular, are affected.

(8) While consumers enjoy a high level of protection when they purchase ▌ from abroad as a result of the application of Regulation (EC) No 593/2008, legal fragmentation also negatively affects consumers' levels of confidence in ***cross-border transactions***. While several factors contribute to this mistrust, uncertainty about key contractual rights ranks prominently among consumers' concerns. This uncertainty exists independently of whether or not consumers are protected by the mandatory consumer contract law rules of their own Member State in the event that sellers direct their cross-border activities to them, or of whether or not consumers conclude cross-border contracts with sellers without the respective seller pursuing commercial activities in the consumer's Member State.

▌

9 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

(9) While online sales of goods constitute the vast majority of cross-border sales in the Union, differences in national contract laws equally affect retailers using distance sales channels and retailers selling face-to-face and prevent them from expanding across borders. This Directive should cover all sales channels, in order to create a level playing field for all businesses selling goods to consumers. By laying down uniform rules across sales channels, this Directive should avoid any divergence that would create disproportionate burdens for the growing number of omni-channel retailers in the Union. The need for retaining consistent rules on sales and guarantees for all sales channels was confirmed in the Commission´s Fitness Check on consumer and marketing law published on 29 May 2017, which also covered Directive 1999/44/EC.

(10) This Directive ***should cover*** rules applicable to the ▌ sales of goods***, including goods with digital elements,*** only in relation to key contract elements needed to overcome contract-law related barriers in the ***internal market***. For this purpose, rules on requirements for conformity, remedies available to consumers for ***a*** lack of conformity of the goods with the contract and on the ***main*** modalities for their exercise should be fully harmonised, and the level of consumer protection, as compared to Directive 1999/44/EC, should be increased. ***Fully harmonised rules on some essential elements of consumer contract law would make it easier for businesses, especially SMEs, to offer their products in other Member States. Consumers would benefit from a high level of consumer protection and welfare gains by fully harmonising key rules.***

(11) This Directive complements Directive 2011/83/EU. While Directive 2011/83/EU mainly lays down provisions regarding pre-contractual information requirements, the right of withdrawal from distance and off-premises contracts and rules on delivery and passing of risk, this Directive introduces rules on conformity of the goods, remedies in the event of a lack of conformity and modalities for their exercise.

(12) This Directive should only apply to tangible movable items that constitute goods within the meaning laid down in this Directive. Member States should therefore be free to regulate contracts for the sale of immovable property, such as residential buildings, and its main components intended to constitute a major part of such immovable property.

(13) This Directive and Directive (EU) 2019/... of the European Parliament and of the Council[10+] should complement each other. While Directive (EU) 2019/...[++] lays down rules on certain requirements concerning contracts for the supply of digital content or digital services, this Directive lays down rules on certain requirements concerning contracts for the sale of goods. Accordingly, in order to meet the expectations of consumers and ensure a clear-cut and simple legal framework for traders of digital content or digital services, Directive (EU) 2019/... [++] applies to the supply of digital content or digital services, including digital content supplied on a tangible medium, such as DVDs, CDs, USB sticks and memory cards, as well as to the tangible medium itself, provided that the tangible medium serves exclusively as a carrier of the digital content. In contrast, this Directive should apply to contracts for the sale of goods, including goods with digital elements which require digital content or a digital service in order to perform their functions.

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10 Directive (EU) 2019/ ... of the European Parliament and of the Council of ... (OJ ...).

+ OJ: Please insert in the text the serial number of the Directive contained in document PE-CONS 26/ 19 (2015/0287(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.

++ OJ: Please insert in the text the serial number of the Directive contained in document PE-CONS 26/19 (2015/0287(COD)).

(14) The term 'goods' as provided for under this Directive should be understood to include 'goods with digital elements', and therefore to also refer to any digital content or digital service that is incorporated in or inter-connected with such goods, in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions. Digital content that is incorporated in or inter-connected with a good can be any data which is produced and supplied in digital form, such as operating systems, applications and any other software. Digital content can be pre-installed at the moment of the conclusion of the sales contract or, where that contract so provides, can be installed subsequently. Digital services inter-connected with a good can include services which allow the creation, processing or storage of, data in digital form, or access thereto, such as software-as-a-service offered in the cloud computing environment, the continuous supply of traffic data in a navigation system, or the continuous supply of individually adapted training plans in the case of a smart watch.

(15) This Directive should apply to contracts for the sale of goods, including goods with digital elements where the absence of the incorporated or inter-connected digital content or digital service would prevent the goods from performing their functions and where that digital content or service is provided with the goods under the sales contract concerning those goods. Whether the supply of the incorporated or inter-connected digital content or digital service forms part of the sales contract with the seller, should depend on the content of this contract. This should include incorporated or inter-connected digital content or digital services the supply of which is explicitly required by the contract. It should also include sales contracts which can be understood as covering the supply of specific digital content or a specific digital service because they are normal for goods of the same type and the consumer could reasonably expect them given the nature of the goods and taking into account any public statement made by or on behalf of the seller or other persons in previous links of the chain of transactions, including the producer. If, for example, a smart TV were advertised as including a particular video application, that video application would be considered to be part of the sales contract. This should apply regardless of whether the digital content or digital service is pre-installed in the good itself or has to be downloaded subsequently on another device and is only inter-connected to the good. For example, a smart phone could come with a standardised pre-installed application provided under the sales contract, such as an alarm application or a camera application. Another possible example is that of a smart watch. In such a case, the watch itself would be considered to be the good with digital elements, which can perform its functions only with an application that is provided under the sales contract but has to be downloaded by the consumer onto a smart phone; the application would then be the inter-connected digital element. This should also apply if the incorporated or inter-connected digital content or digital service is not supplied by the seller itself but is supplied, under the sales contract, by a third party. In order to avoid uncertainty for both sellers and consumers, in the event of doubt as to whether the supply of the digital content or the digital service forms part of the sales contract, the rules of this Directive should apply. Furthermore, ascertaining a bilateral contractual relationship, between the seller and the consumer, of which the supply of the incorporated or inter-connected digital content or digital service forms part should not

be affected by the mere fact that the consumer has to consent to a licensing agreement with a third party in order to benefit from the digital content or the digital service.

(16) In contrast, if the absence of the incorporated or inter-connected digital content or digital service does not prevent the goods from performing their functions, or if the consumer concludes a contract for the supply of digital content or a digital service which does not form part of the contract concerning the sale of goods with digital elements, that contract should be considered to be separate from the contract for the sale of the goods, even if the seller acts as an intermediary of that second contract with the third-party supplier, and could fall within the scope of Directive (EU) 2019/...[+] if the conditions of that Directive are met. For instance, if the consumer downloads a game application from an app store onto a smart phone, the contract for the supply of the game application is separate from the contract for the sale of the smart phone itself. This Directive should therefore only apply to the sales contract concerning the smart phone, while the supply of the game application should fall under Directive (EU) 2019/...[+], if the conditions of that Directive are met. Another example would be where it is expressly agreed that the consumer buys a smart phone without a specific operating system and the consumer subsequently concludes a contract for the supply of an operating system from a third party. In such a case, the supply of the separately bought operating system would not form part of the sales contract and therefore would not fall within the scope of this Directive but could fall within the scope of Directive (EU) 2019/... [+], if the conditions of that Directive are met.

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[+] OJ: Please insert in the text the serial number of the Directive contained in document PE-CONS 26/ 19 (2015/0287(COD)).

(17) For the purpose of legal clarity ***this*** Directive ***should lay down*** a definition of a sales contract ***and also clearly define its scope***. The scope of this ***Directive should also cover*** contracts for goods that are yet to be produced or manufactured, including under ***the*** consumer's specifications. ***Furthermore, an installation of the goods could fall within the scope of this Directive if the installation forms part of the sales contract and has to be carried out by the seller or under the seller's responsibility. Where a contract includes elements of both sales of goods and provision of services, it should be left to national law to determine whether the whole contract can be classified as a sales contract within the meaning of this Directive.***

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(18) This Directive should not affect national law to the extent that the matters concerned are not regulated by this Directive, in particular with regard to the legality of the goods, damages and general contract law aspects such as the formation, validity, nullity or effects of contracts. The same should apply in relation to the consequences of the termination of the contract and to certain aspects regarding repair and replacement that are not regulated in this Directive. When regulating the rights of parties to withhold the performance of their obligations or part thereof until the other party performs its obligations, Member States should remain free to regulate the conditions and modalities regarding the withholding of payment of the price by the consumer. Member States should also remain free to regulate the consumer's entitlement to compensation for damage suffered as a consequence of an infringement by the seller of this Directive. This Directive should also not affect national rules that do not specifically concern consumer contracts and provide for specific remedies for certain types of defects that were not apparent at the time of conclusion of the sales contract, namely national provisions which may lay down specific rules for the seller's liability for hidden defects. This Directive should also not affect national laws providing for non-contractual remedies for the consumer, in the event of lack of conformity of goods, against persons in previous links of the chain of transactions, for example manufacturers, or other persons that fulfil the obligations of such persons.

(19) This Directive should not affect the freedom of Member States to allow consumers to choose a specific remedy if the lack of conformity of the goods becomes apparent shortly after delivery, namely national provisions which provide for a right for the consumer to reject goods with a defect and to treat the contract as repudiated or ask for immediate replacement, within a specific short period of time after the delivery of the goods, which should not exceed 30 days.

(20) Member States should remain free to regulate information obligations of the seller in connection with the conclusion of the contract or the duty of the seller to warn the consumer about, for instance, certain characteristics of the good, the suitability of materials provided by the consumer or possible disadvantages resulting from specific requests of the consumer, for example a request by the consumer to use a specific fabric for the tailoring of a ball gown.

(21) Member States should also remain free to extend the application of the rules of this Directive to contracts that are excluded from the scope of this Directive, or to otherwise regulate such contracts. For instance, Member States should remain free to extend the protection afforded to consumers by this Directive also to natural or legal persons that are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or SMEs.

(22) ***The definition of a consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, Member States should also remain free to determine in the case of dual purpose contracts, where the contract is concluded for purposes that are partly within and partly outside the person's trade, and where the trade purpose is so limited as not to be predominant in the overall context of the contract, whether, and under which conditions, that person should also be considered a consumer.***

(23) ***This Directive should apply to any contract whereby the seller transfers or undertakes to transfer the ownership of goods to the consumer. Platform providers could be considered to be sellers under this Directive if they act for purposes relating to their own business and as the direct contractual partner of the consumer for the sale of goods. Member States should remain free to extend the application of this Directive to platform providers that do not fulfil the requirements for being considered a seller under this Directive.***

(24) In order to balance the need for legal certainty with an appropriate flexibility of the legal rules, any reference ***in this Directive*** to what can be expected ***from*** or by a person ▌ should be understood as a reference to what can reasonably be expected. The standard of reasonableness should be objectively ascertained, having regard to the nature and purpose of the contract, the circumstances of the case and to the usages and practices of the parties involved. ▌

(25) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in the event of failure to deliver what is expected, it is essential to fully harmonise rules for determining whether ***goods are in conformity. Any reference to conformity in this Directive should refer to conformity of the goods with the sales contract. In order to*** safeguard ***the*** legitimate interests of both parties to a sales contract ▌ conformity ▌ should be assessed ***based on both subjective and objective requirements for conformity.***

(26) Therefore, the goods should comply with the requirements agreed between the seller and the consumer in the sales contract. Such requirements could cover inter alia, the quantity, quality, type and description of the goods, their fitness for a specific purpose, as well as the delivery of the goods with the agreed accessories and any instructions. The requirements in the sales contract should include those resulting from pre-contractual information which, in accordance with Directive 2011/83/EU, forms an integral part of the sales contract.

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(27) ***The notion of functionality should be understood to refer to the ways in which the goods can perform their functions having regard to their purpose. The notion of interoperability relates to whether and to what extent the goods are able to function with hardware or software that is different from those with which goods of the same type are normally used. Successful functioning could include, for instance, the ability of the goods to exchange information with such other software or hardware and to use the information exchanged.***

(28) ***Given that the digital content or digital services incorporated in or inter-connected with goods are constantly developing, sellers may agree with consumers to provide updates for such goods. Updates, as agreed in the sales contract, can improve and enhance the digital content or digital service element of goods, extend their functionalities, adapt them to technical developments, protect them against new security threats or serve other purposes. The conformity of goods with digital content or digital services which are incorporated in or inter-connected with the goods should, therefore, also be assessed in relation to whether the digital content or digital service element of such goods is updated in accordance with the sales contract. Failure to supply updates that had been agreed in the sales contract should be considered as a lack of conformity of the goods. Moreover, defective or incomplete updates should also be considered as a lack of conformity of the goods, given that that would mean that such updates are not performed in the manner stipulated in the sales contract.***

(29) In order to be in conformity, the goods should not only comply with the subjective requirements for conformity but should in addition comply with the objective requirements for conformity set out in this Directive. Conformity should be assessed, inter alia, by considering the purpose for which goods of the same type would normally be used, whether they are supplied with the accessories and instructions that the consumer can reasonably expect to receive or whether they correspond to the sample or model that the seller made available to the consumer. The goods should also possess the qualities and features which are normal for goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statement made by or on behalf of the seller or other persons in previous links of the chain of transactions.

(30) ***In addition to contractually agreed updates, the seller should also provide updates, including security updates, in order to ensure that goods with digital elements remain in conformity. The seller's obligation should be limited to updates which are necessary for such goods to maintain their conformity with the objective and subjective requirements for conformity laid down in this Directive. Unless the parties have contractually agreed otherwise, the seller should not be obliged to provide upgraded versions of the digital content or digital service of the goods or to improve or extend the functionalities of goods beyond the conformity requirements. If an update provided by the seller, or by a third party supplying the digital content or digital service under the sales contract, causes a lack of conformity of the good with digital elements, the seller should be liable for bringing the good into conformity again. The consumer should remain free to choose whether to install the updates provided. Where the consumer decides not to install the updates which are necessary for the goods with digital elements to maintain their conformity, the consumer should however not expect such goods to remain in conformity. The seller should inform the consumer that the consumer's decision not to install updates which are necessary for keeping the goods with digital elements in conformity, including security updates, will affect the seller's liability for conformity of those features of the goods with digital elements which the relevant updates are supposed to maintain in conformity. This Directive should not affect obligations to provide security updates laid down in other Union law or in national law.***

(31) ***In principle, in the case of goods with digital elements whereby the digital content or digital service incorporated in or inter-connected with the goods is supplied through a single act of supply, the seller should only be liable for a lack of conformity that exists at the time of delivery. However, the obligation to provide updates should reflect the fact that the digital environment of any such good constantly changes. Therefore, updates are a necessary tool in order to ensure that the goods are able to function in the same way that they did at the time of delivery. Furthermore, in contrast to traditional goods, goods with digital elements are not completely separate from the seller's sphere because the seller, or a third person supplying the digital content or digital service under the sales contract, is able to update the goods from a distance, usually over the internet. Therefore, if the digital content or digital service is supplied by a single act of supply, the seller should be liable to provide the updates necessary to keep the goods with digital elements in conformity for a period of time that the consumer can reasonably expect, even if the goods were in conformity at the time of delivery. The period of time during which the consumer can reasonably expect to receive updates should be assessed based on the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the sales contract. A consumer would normally expect to receive updates for at least as long as the period during which the seller is liable for a lack of conformity, while in some cases the consumer's reasonable expectation could extend beyond that period, as might be the case particularly with regard to security updates. In other cases, for instance as regards goods with digital elements the purpose of which is limited in time, the seller's obligation to provide updates would normally be limited to that time.***

(32) Ensuring longer durability of goods is important for achieving more sustainable consumption patterns and a circular economy. Similarly, keeping non-compliant products out of the Union market by strengthening market surveillance and providing the right incentives to economic operators is essential in order to increase trust in the ***functioning of the internal*** market. For those purposes, product-specific Union legislation is the most appropriate means of introducing durability and other product-related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should therefore be complementary to the objectives pursued in ***such Union product-specific legislation, and should include durability as an objective criterion for the assessment of conformity of goods. Durability in this Directive should refer to the ability of the goods to maintain their required functions and performance through normal use. In order for goods to be in conformity, they should possess the durability which is normal for goods of the same type and which the consumer can reasonably expect given the nature of the specific goods, including the possible need for reasonable maintenance of the goods, such as the regular inspection or changing of filters in a car, and any public statement made by or on behalf of any person constituting a link in the chain of transactions. The assessment should also take into account all other relevant circumstances, such as the price of the goods and the intensity or frequency of the use that the consumer makes of the goods. In addition, in***sofar as specific durability information is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the ***subjective*** requirements for conformity.

(33) Under this Directive, the seller should be obliged to deliver to the consumer goods which are in conformity at the time of delivery. It is possible that sellers would make use of spare parts in order to fulfil their obligation to repair goods in the event of a lack of conformity that existed at the time of delivery. While this Directive should not impose an obligation on sellers to ensure the availability of spare parts throughout a period of time as an objective requirement for conformity, it should not affect other provisions of national law obliging the seller, the producer or other person constituting a link in the chain of transactions, to ensure that spare parts are available or to inform consumers about such availability.

(34) A large number of goods have to be installed before they can be used effectively by the consumer. In addition, in the case of goods with digital elements, the installation of the digital content or digital service is usually necessary for the consumer to be able to use such goods in line with their intended purpose. Therefore any lack of conformity resulting from an incorrect installation of the goods, including from the incorrect installation of the digital content or digital service incorporated in or inter-connected with the goods, should be regarded as a lack of conformity, where the installation was performed by the seller or under the seller's control. Where the goods were intended to be installed by the consumer, a lack of conformity resulting from incorrect installation should be regarded as a lack of conformity of the goods, irrespective of whether the installation was performed by the consumer or by a third party under the consumer's responsibility, if the incorrect installation was due to shortcomings in the installation instructions, such as incompleteness or a lack of clarity making the installation instructions difficult to use for the average consumer.

(35) ***Conformity should cover material defects as well as legal defects. Restrictions resulting from a violation of third-party rights, in particular intellectual property rights, could prevent or limit the use of the goods in accordance with the contract. Member States should ensure that in such cases the consumer is entitled to remedies for the lack of conformity as set out in this Directive, unless national law provides for the nullity of the contract or for its rescission in such cases.***

(36) ***In order to ensure that there is sufficient flexibility in the rules, for instance in relation to the sale of second-hand goods, it should be possible for the parties to deviate from the objective requirements for conformity provided for in this Directive. Such a deviation should only be possible if the consumer was specifically informed about it and if the consumer accepts it separately from other statements or agreements, and by way of active and unequivocal conduct.***

(37) Enhancing legal certainty for both consumers and sellers requires a clear indication of the time when the conformity of the goods should be assessed. ***The relevant time for assessing the conformity of the goods should be the time when the goods are delivered. This should also apply to goods which incorporate or are inter-connected with digital content or a digital service supplied through a single act of supply. However, where the digital content or digital service incorporated in or inter-connected with the goods is to be supplied continuously over a period of time, the relevant time for the purpose of establishing conformity of that digital content or digital service element should not be one specific moment in time but rather a period of time, starting from the time of delivery. For reasons of legal certainty, that period of time should be equal to the period during which the seller is liable for a lack of conformity.***

(38) This Directive should not regulate the meaning of 'delivery', which should be left to national law, in particular, as regards the question of what the seller has to do in order to fulfil the seller's obligation to deliver the goods. Furthermore, references to the time of delivery in this Directive should be without prejudice to the rules on the passing of risk provided for in Directive 2011/83/EU and accordingly implemented in the law of the Member States.

(39) Goods with digital elements should be deemed to have been delivered to the consumer when both the physical component of the goods has been delivered and the single act of supply of the digital content or digital service has been performed or the continuous supply of the digital content or digital service over a period of time has begun. This means that the seller should also make the digital content or digital service available or accessible to the consumer in such a way that the digital content or digital service, or any means suitable for downloading or accessing it, has reached the sphere of the consumer and no further action is required by the seller in order to enable the consumer to use the digital content or digital service in accordance with the contract, for example by providing a link or a download option. Therefore, the relevant moment for establishing conformity should be the time when the digital content or digital service is supplied, if the physical component was delivered earlier. As a result, it can be ensured that there is a uniform starting point for the liability period for the physical component, on the one hand, and for the digital element on the other hand. Moreover, in many cases the consumer is unable to notice a defect in the physical component before the digital content or digital service is supplied.

(40) Where goods require installation by the seller, the consumer in certain cases is unable to use the goods or notice a defect before the installation has been completed. Accordingly, where, under the sales contract, the goods are to be installed by the seller or under the seller's responsibility, the goods should be considered to be delivered to the consumer when the installation is complete.

▌

(41) In order to ensure that there is legal certainty for sellers and overall consumer confidence in cross-border purchases, it is necessary to provide for a period during which the consumer is entitled to remedies for any lack of conformity that exists at the relevant time for establishing conformity. Given that when implementing Directive 1999/44/EC, a large majority of Member States have provided for a period of two years, and in practice that period is considered reasonable by market participants, that period should be maintained. The same period should apply in the case of goods with digital elements. However, where the contract provides for continuous supply for more than two years, the consumer should be entitled to remedies for any lack of conformity of the digital content or the digital service that occurs or becomes apparent within the period during which the digital content or digital service is to be supplied under the contract. In order to ensure that there is flexibility for Member States to increase the level of consumer protection in their national law, Member States should be free to provide for longer time limits for the liability of the seller than those laid down in this Directive.

(42) For reasons of coherence with the existing national legal systems, Member States should be free to provide either that sellers are liable for a lack of conformity that becomes apparent within a specific period of time, possibly coupled with a limitation period, or that consumers' remedies are only subject to a limitation period. In the former case, Member States should ensure that the period for the seller's liability is not circumvented by the limitation period for the consumer's remedies. While this Directive should, therefore, not harmonise the starting point of national limitation periods, it should ensure that such limitation periods do not curtail the consumers' right to exercise their remedies for any lack of conformity which becomes apparent in the period during which the seller is liable for a lack of conformity. In the latter case, Member States should be able to maintain or introduce only a limitation period for the consumer's remedies, without introducing a specific period within which the lack of conformity has to become apparent in order for the seller to be liable. In order to ensure that consumers are equally protected also in such cases, Member States should ensure that where only a limitation period applies, it should still allow consumers to exercise the remedies for any lack of conformity that becomes apparent at least during the period of time provided for in this Directive as a liability period.

(43) As regards certain aspects, different treatment of second-hand goods could be justifiable. Although a liability or limitation period of two years or more usually reconciles the interests of both the seller and the consumer, this might not be the case with regard to second-hand goods. Member States should therefore be allowed to enable the parties to agree on a shortened liability or limitation period for such goods. Leaving this question to a contractual agreement between the parties increases contractual freedom and ensures that the consumer has to be informed both about the nature of the good as a second-hand good, and the shortened liability or limitation period. However, such a contractually agreed period should not be shorter than one year.

(44) This Directive should not regulate the conditions under which the liability period, as provided for in this Directive, or a limitation period can be suspended or interrupted. Member States should, therefore, be able to provide for the suspension or interruption of the liability period or limitation period, for example in the event of repair, replacement or negotiations between the seller and the consumer with a view to an amicable settlement.

(45) ***For a period of one year, or for a period of two years if Member States choose to apply a two-year period, the consumer should only need to prove*** that the good is not in conformity, without ***also*** needing to ***prove*** that the lack of conformity actually existed at the relevant time for establishing conformity. ***In order to rebut the consumer's claim, the seller would need to prove that the lack of conformity did not exist at that time. In addition, in some cases the presumption that the lack of conformity existed at the relevant time for establishing conformity could be incompatible with the nature of the goods or the nature of the lack of conformity. The former could be the case with goods that by nature deteriorate, such as perishable products, for example flowers, or goods which are only intended for a single use. An example of the latter would be a lack of conformity, which can only be a result of an action by the consumer or of an evident external cause which occurred after the goods were delivered to the consumer. In the case of goods with digital elements where the contract provides for continuous supply of the digital content or digital service, the consumer should not have to prove that the digital content or digital service was not in conformity during the respective period of time for establishing conformity. In order to rebut the consumer's claim, the seller would need to prove that the digital content or digital service was in conformity during that period.***

(46) ***Member States should be allowed to maintain or introduce provisions stipulating that, in order to benefit from the consumer's rights, the consumer has to inform the seller of a lack of conformity within a period not shorter than two months from the date on which the consumer detected such lack of conformity. Member States should be allowed to ensure that consumers have a higher level of protection, by not introducing such an obligation.***

(47) ***In order to increase legal certainty and*** to eliminate one of the major obstacles inhibiting the ***internal market, this Directive should fully harmonise the remedies available to consumers for lack of conformity of goods, and the conditions under which such*** remedies can be exercised ▌. In particular, ***in the event of lack of conformity, consumers should be entitled to have the goods brought into conformity, or to receive a proportionate reduction in the price, or to terminate the contract.***

(48) ***As regards bringing goods into conformity,*** consumers should enjoy a choice between repair or replacement ▌. Enabling consumers to require repair should encourage sustainable consumption and could contribute to greater durability of products. ▌ The consumer's choice between repair and replacement should only be limited where the option chosen would be ***legally or factually impossible or would impose costs on the seller that would be disproportionate,*** compared to the other option available. For instance, it might be disproportionate to request the replacement of goods because of a minor scratch, where such replacement would create significant costs and the scratch could easily be repaired.

(49) ***The seller should be allowed to refuse to bring the goods into conformity if both repair and replacement are impossible, or they would impose disproportionate costs on the seller. The same should apply if either repair or replacement is impossible and the alternative remedy would impose disproportionate costs on the seller. For instance, if goods are located in a place different from where they were originally delivered, the costs of postage and carriage could become disproportionate for the seller.***

(50) ***When a lack of conformity becomes apparent, the consumer should inform the seller about it in order to give the seller the opportunity to bring the good into conformity. The seller should do that within a reasonable period of time. Accordingly, the consumer should not, in principle, be immediately entitled to a price reduction or termination of the contract but should give the seller reasonable time to repair or replace the non-conforming good. If the seller has not repaired or replaced the good within that time, the consumer should be entitled to claim and obtain a price reduction or termination of the contract without waiting any longer.***

(51) ***If*** repair or replacement ***have not provided the consumer with a proper remedy for the lack of conformity***, the consumer should be entitled to a price reduction or to terminate the contract. ***That should be the case, in particular, where the seller has not completed repair or replacement, or where it is clear from the circumstances that the seller will not complete repair or replacement, or the seller has refused to bring the goods into conformity because repair and replacement are impossible or would impose disproportionate costs on the seller.***

(52) ***In certain situations, it could be justified that the consumer should be entitled to have the price reduced or the contract terminated immediately. Where the seller has taken action to bring the goods into conformity but a lack of conformity becomes apparent subsequently, it should be objectively determined whether the consumer should accept further attempts by the seller to bring the goods into conformity, taking into account all the circumstances of the case, such as the type and the value of the goods, and the nature and the significance of the lack of conformity. In particular, for expensive or complex goods it could be justified to allow the seller another attempt to remedy the lack of conformity. It should also be taken into account whether the consumer can be expected to maintain confidence in the ability of the seller to bring the goods into conformity or not, for instance, due to the same problem appearing twice. Similarly, in certain situations, the lack of conformity could be of such a serious nature that the consumer cannot maintain confidence in the ability of the seller to bring the goods into conformity such as where the lack of conformity severely affects the ability of the consumer to make normal use of the goods and the consumer cannot be expected to trust that repair or replacement by the seller would remedy the problem.***

(53) In order to maintain a balance between the rights and obligations of the contracting parties, the consumer should enjoy the right to terminate the contract only in cases where the lack of conformity is not minor.

(54) Member States should be able to regulate the conditions under which the performance of the debtor can be fulfilled by another person, for example the conditions under which the seller's obligation to repair a good can be performed by the consumer or a third party at the seller's expense.

(55) In order to protect consumers against the risk of extended delays, any repair or replacement should be successfully completed within a reasonable period of time. What is considered to be a reasonable time for completing a repair or replacement should correspond to the shortest possible time necessary for completing the repair or replacement. That time should be objectively determined by considering the nature and complexity of the goods, the nature and severity of the lack of conformity, and the effort needed to complete repair or replacement. When implementing this Directive, Member States should be able to interpret the notion of reasonable time for completing repair or replacement, by providing for fixed periods that could generally be considered reasonable for repair or replacement, in particular with regard to specific categories of products.

(56) ***This Directive should not lay down provisions on where the obligations of a debtor have to be performed. This Directive should, therefore, neither specify the place of delivery, nor prescribe where the repair or replacement should take place; such questions should be left to national law.***

(57) ***Where the seller brings the good into conformity by replacement, the consumer should not be obliged to pay for the normal use of the goods before they were replaced. The use of the goods should be considered normal if it is in accordance with the nature and purpose of the goods.***

(58) ▌ In order to make the right to terminate effective for consumers, in situations where the consumer acquires multiple goods ▌ and the lack of conformity only affects ***some of the goods delivered under the contract***, the consumer should have the right to terminate the contract also in relation to the ***other goods acquired together with the non-conforming goods***, even if those other goods are in conformity***, if the consumer cannot reasonably be expected to accept to keep only the conforming goods***.

(59) Where the consumer terminates the contract due to the lack of conformity, this Directive ***should prescribe*** rules only on the main effects of and modalities for the right of termination, in particular the obligation for the parties to return what they have received. Thus, the seller ***should*** be obliged to refund the price received from the consumer and the consumer ***should*** return the goods.

(60) ***This Directive should not affect the freedom of Member States to regulate the consequences of termination other than those provided for in this Directive, such as the consequences of the decrease of the value of the goods or of their destruction or loss. Member States should also be allowed to regulate the modalities for reimbursement of the price to the consumer, for example the modalities concerning the means to be used for such reimbursement or concerning possible costs and fees incurred as a result of the reimbursement. Member States should, for instance, also have the freedom to provide for certain time limits for the reimbursement of the price or for the return of the goods.***

(61) The principle of the seller's liability for damages is an essential element of sales contracts. Consumers should, therefore, be entitled to claim compensation for any detriment caused by an infringement by the seller of this Directive, including for damage suffered as a consequence of a lack of conformity. Such compensation should put the consumer as much as possible into the position in which the consumer would have been had the goods been in conformity. As the existence of such a right to damages is already ensured in all Member States, this Directive should be without prejudice to national rules on the compensation of consumers for harm resulting from infringement of those rules. Member States should also remain free to regulate consumers' entitlement to compensation for situations in which the repair or replacement caused significant inconvenience or was delayed.

▌

(62) In order to ensure that there is transparency, certain requirements as regards commercial guarantees should be provided***, alongside the pre-contractual information requirements on the existence and conditions of commercial guarantees set out in Directive 2011/83/EU***. Moreover***,*** in order to improve legal certainty and to avoid consumers being misled, this Directive ***should provide*** that, where commercial guarantee conditions contained in ***associated*** advertisements ▌ are more favourable to the consumer than those included in the guarantee statement, the more advantageous conditions should prevail. ***Finally, this Directive should provide rules on the content of the guarantee statement and on the way it should be made available to consumers. For instance, the guarantee statement should include the terms of the commercial guarantee and state that the legal guarantee of conformity is unaffected by the commercial guarantee, making it clear that the commercial guarantee terms constitute an undertaking that is additional to the legal guarantee of conformity. Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, for example on associating debtors other than the guarantor with the commercial guarantee, provided that those rules do not deprive consumers of the protection afforded to them by the fully harmonised provisions of this Directive on commercial guarantees. While Member States should remain free to require that commercial guarantees be provided free of charge, they should ensure that any undertaking by the seller or the producer which falls under the definition of commercial guarantees as set out in this Directive complies with the harmonised rules of this Directive.***

(63) Considering that the seller is liable towards the consumer for any lack of conformity of the goods resulting from an act or omission of the seller or a third party**,** the seller should be able to pursue remedies against the person responsible ▌ in ***previous links of*** the chain of transactions. ***Such remedies should include those for a lack of conformity which results from the omission of an update, including a security update, which would have been necessary to keep the good with digital elements in conformity.*** However, this Directive should not affect the principle of freedom of contract between the seller and other parties in the chain of transactions. The details for exercising that right, in particular against whom and how such remedies are to be pursued ***and whether the remedies are of a mandatory nature, should be provided by the Member States. The question as to whether the consumer can also raise a claim directly against a person in previous links of the chain of transactions should not be regulated by this Directive, except in cases where a producer offers the consumer a commercial guarantee for the goods***.

(64) Persons or organisations regarded under national law as having a legitimate interest in protecting consumer contractual rights should be afforded the right to initiate proceedings, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

(65) Nothing in this Directive should prejudice the application of rules of private international law, in particular Regulation (EC) No 593/2008 and Regulation (EU) No 1215/2012 of the European Parliament and of the Council[11].

(66) Directive 1999/44/EC should be ***repealed. The date of repeal should be aligned with the transposition date of this Directive. In order to ensure that the laws, regulations and administrative provisions necessary for Member States to comply with this Directive are applied in a uniform manner to contracts concluded from the transposition date onwards, this Directive should not apply to contracts concluded before its transposition date.***

(67) The Annex to Regulation ***(EU) 2017/2394*** of the European Parliament and of the Council[12] should be amended to include a reference to this Directive so as to facilitate cross-border cooperation on enforcement of this Directive.

(68) Annex I to Directive 2009/22/EC of the European Parliament and of the Council[13] should be amended to include a reference to this Directive so as to ensure that the collective interests of consumers laid down in this Directive are protected.

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11 **Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).**

12 **Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).**

13 **Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).**

(69) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[14], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(70) Since the objective of this Directive, namely to contribute to the functioning of the internal market by tackling in a consistent manner contract law-related obstacles for the ***cross-border*** sales of goods ***in the Union,*** cannot be sufficiently achieved by the Member States***, due to the fact that each Member State individually is not in a position to tackle the existing fragmented legal framework by ensuring the coherence of its law with the laws of other Member States, but*** can rather, by ***removing the principal contract law-related obstacles through full harmonisation,*** be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

14 OJ C 369, 17.12.2011, p. 14.

(71) It is appropriate for the Commission to review the application of this Directive five years after its entry into force, including in particular the provisions regarding remedies, the burden of proof – also with respect to second-hand goods as well as goods sold at public auctions – and the producer's commercial guarantee of durability. The Commission should also assess whether the application of this Directive and of Directive (EU) 2019/ ... [+] ensures a consistent and coherent legal framework with regard to the supply of digital content or digital services and goods with digital elements.

(72) This Directive respects the fundamental rights and ***freedoms and*** observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union***, including those enshrined in Articles*** 16, 38 and 47 thereof,

HAVE ADOPTED THIS DIRECTIVE:

[+] OJ: Please insert in the text the serial number of the Directive contained in document PE-CONS 26/19 (2015/0287(COD)).

Article 1

Subject matter and ***purpose***

The purpose of this Directive ***is to contribute to the proper functioning of the internal market while providing for a high level of consumer protection, by laying down common rules on*** certain requirements concerning ▌ sales contracts concluded between sellers and consumers, in particular rules on the conformity of goods ***with the contract***, remedies in the event of a ***lack of such*** conformity***,*** the modalities for the exercise of ***those*** remedies***, and on commercial guarantees***.

▌

Article 2

Definitions

For the ***purposes*** of this Directive, the following definitions apply:

(1) ‘sales contract’ means any contract under which the seller transfers or undertakes to transfer ownership of goods to a consumer, ▌ and the consumer pays or undertakes to pay the price thereof;

(2) ‘consumer’ means any natural person who, in ***relation to*** contracts covered by this Directive, is acting for purposes which are outside that person´s trade, business, craft or profession;

(3) ‘seller’ means any natural person or any legal person, irrespective of whether privately or publicly owned, that is acting, including through any other person acting in that natural or legal person´s name or on that person´s behalf, for purposes relating to that person´s trade, business, craft or profession***, in relation to contracts covered by this Directive*** ▌;

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

(5) ‘goods’ means***:***

(a) any tangible movable items ▌; ▌ water, gas and electricity ***are to be considered as goods within the meaning of this Directive where*** they are put up for sale in a limited volume or a set quantity***;***

(b) any tangible movable items that incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions (‘goods with digital elements’);

(6) 'digital content' means data which are produced and supplied in digital form;

(7) 'digital service' means:

(a) a service that allows the consumer to create, process, store or access data in digital form; or

(b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service;

(8) 'compatibility' means the ability of the goods to function with hardware or software with which goods of the same type are normally used, without the need to convert the goods, hardware or software;

(9) 'functionality' means the ability of the goods to perform their functions having regard to their purpose;

(10) 'interoperability' means the ability of the goods to function with hardware or software different from those with which goods of the same type are normally used;

▌

(11) ‘durable medium’ means any instrument which enables the consumer or the seller to store information addressed personally to ***that person*** in a way that is accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;

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

▌

(13) ‘durability’ means the ability of the goods to maintain their required functions and performance through normal use;

▌

(14) ‘free of charge’ means free of the ***necessary*** costs ▌ incurred in order to bring the goods into conformity, particularly the cost of postage, ***carriage,*** labour ***or*** materials***;***

(15) 'public auction' means a method of sale where goods or services are offered by the seller to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services.

Article 3

Scope

1. This Directive shall apply to sales contracts between a consumer and a seller.

2. Contracts between a consumer and a seller for the supply of goods to be manufactured or produced shall also be deemed sales contracts for the purpose of this Directive.

3. This Directive shall not apply to contracts for the supply of digital content or digital services. It shall, however, apply to digital content or digital services which are incorporated in or inter-connected with goods in the meaning of point (5)(b) of Article 2, and are provided with the goods under the sales contract, irrespective of whether such digital content or digital service is supplied by the seller or by a third party. In the event of doubt as to whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of the sales contract, the digital content or digital service shall be presumed to be covered by the sales contract.

4. This Directive shall not apply to:

(a) any tangible medium which serves exclusively as a carrier for digital content; or

(b) any goods sold by way of execution or otherwise by authority of law.

5. Member States may exclude from the scope of this Directive contracts for the sale of:

(a) second-hand goods sold at public auction; and

(b) living animals.

In the case referred to in point (a), clear and comprehensive information that the rights deriving from this Directive do not apply shall be made easily available to consumers.

6. This Directive shall not affect the freedom of Member States to regulate aspects of general contract law, such as rules on the formation, validity, nullity or effects of contracts, including the consequences of the termination of a contract, in so far as they are not regulated in this Directive, or the right to damages.

7. This Directive shall not affect the freedom of Member States to allow consumers to choose a specific remedy, if the lack of conformity of the goods becomes apparent within a period after delivery, not exceeding 30 days. In addition, this Directive shall not affect national rules not specific to consumer contracts providing for specific remedies for certain types of defects that were not apparent at the time of conclusion of the sales contract.

Article 4

Level of harmonisation

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

Article 5

Conformity of goods

The seller shall deliver goods to the consumer that meet the requirements set out in Articles 6, 7 and 8, where applicable, without prejudice to Article 9.

Article 6

***Subjective requirements for* c**onformity

In order to conform with the sales contract, the goods shall, ***in particular***, where ***applicable***:

(a) be of the ***description, type,*** quantity ***and*** quality, and ***possess the functionality, compatibility, interoperability and other features, as*** required by the sales contract ;

(b) be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller ***at the latest*** at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;

(c) be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and

(d) be supplied with updates as stipulated by the sales contract.

Article 7

Objective requirements for conformity ▌

1. In addition to complying with any subjective requirement for conformity, the goods shall ▌:

(a) be fit for ▌ the purposes for which goods of the same ***type would normally be used, taking into account, where applicable, any existing Union and national law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct***;

(b) where applicable, be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract;

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

(d) ***be of the quantity and*** possess ***the*** qualities and ***other features, including in relation to durability, functionality, compatibility and security*** normal for goods of the same type and which the consumer may ***reasonably*** expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, ***particularly in advertising or on labelling.***

2. The seller shall not be bound by public statements, as referred to in paragraph 1(d) if the seller shows that:

(a) the seller was not, and could not reasonably have been, aware of the public statement in question;

(b) by the time of conclusion of the contract, the public statement had been corrected ***in the same way as, or in a way comparable to how, it had been made***; or

(c) the decision to buy the goods could not have been influenced by the public statement.

3. In the case of goods with digital elements, the seller shall ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep those goods in conformity, for the period of time:

(a) that the consumer may reasonably expect given the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the contract, where the sales contract provides for a single act of supply of the digital content or digital service; or

(b) indicated in Article 10(2) or (5), as applicable, where the sales contract provides for a continuous supply of the digital content or digital service over a period of time.

4. Where the consumer fails to install within a reasonable time updates supplied in accordance with paragraph 3, the seller shall not be liable for any lack of conformity resulting solely from the lack of the relevant update, provided that:

(a) the seller informed the consumer about the availability of the update and the consequences of the failure of the consumer to install it; and

(b) the failure of the consumer to install or the incorrect installation by the consumer of the update was not due to shortcomings in the installation instructions provided to the consumer.

5. There shall be no lack of conformity within the meaning of paragraph 1 or 3 if, at the time of the conclusion of the sales contract, the consumer was specifically informed that a particular characteristic of the goods was deviating from the objective requirements for conformity laid down in paragraph 1 or 3 and the consumer expressly and separately accepted that deviation when concluding the sales contract.

Article 8

Incorrect installation of the goods

▌ Any lack of conformity resulting from the incorrect installation ***of the goods, shall be*** regarded as lack of conformity ▌ of the goods***,*** if:

(a) ***the installation forms part of the sales contract and was carried out*** by the seller or under the seller's responsibility; or

(b) the ***installation***, intended to be ***carried out*** by the consumer, ***was done*** by the consumer and the incorrect installation was due to ***shortcomings*** in the installation instructions ***provided by the seller or, in the case of goods with digital elements, provided by the seller or by the supplier of the digital content or digital service***.

Article 9

Third-party rights

Where a restriction resulting from a violation of any right of a third party, ***in particular*** intellectual property ***rights, prevents or limits the use of*** the goods ▌ in accordance with ***Articles 6 and 7, Member States shall ensure that the consumer is entitled to the remedies for lack of conformity provided for in Article 13, unless national law provides for the nullity or rescission of the sales contract in such cases***.

Article 10

Liability of the seller

1. The seller shall be liable ***to the consumer*** for any lack of conformity ▌ which exists at the time when ***the goods were delivered and which becomes apparent within two years of that time. Without prejudice to Article 7(3), this paragraph shall also apply to goods with digital elements***.

2. In the case ***of goods with digital elements, where the sales contract provides for a continuous supply of the digital content or digital service over a period of time, the seller shall also be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within two years of the time when the goods with digital elements were delivered. Where the contract provides for a continuous supply for more than two years, the seller shall be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within the period of time during which the digital content or digital service is to be supplied under the sales contract***.

3. ***Member States may maintain or introduce longer time limits than those referred to*** in paragraphs 1 and 2 ▌.

4. If, under national law, the remedies provided for in Article 13 are also subject to a limitation period, Member States shall ensure that such limitation period allows the consumer to exercise the remedies laid down in Article 13 for any lack of conformity for which the seller is liable pursuant to paragraphs 1 and 2 of this Article, and which becomes apparent within the period of time referred to in those paragraphs.

5. Notwithstanding paragraphs 1 and 2 of this Article, Member States may maintain or introduce only a limitation period for the remedies provided for in Article 13. Member States shall ensure that such limitation period allows the consumer to exercise the remedies laid down in Article 13 for any lack of conformity for which the seller is liable pursuant to paragraphs 1 and 2 of this Article, and which becomes apparent during the period of time referred to in those paragraphs.

6. Member States may provide that, in the case of second-hand goods, the seller and the consumer can agree to contractual terms or agreements with a shorter liability or limitation period than those referred to in paragraphs 1, 2 and 5, provided that such shorter periods shall not be less than one year.

Article 11

Burden of proof

1. Any lack of conformity which becomes apparent within one year of the time when the goods were delivered shall be presumed to have existed at the time when the goods were delivered, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or with the nature of the lack of conformity. This paragraph shall also apply to goods with digital elements.

2. Instead of the one-year period laid down in paragraph 1, Member States may maintain or introduce a period of two years from the time when the goods were delivered.

3. In the case of goods with digital elements where the sales contract provides for the continuous supply of the digital content or digital service over a period of time, the burden of proof with regard to whether the digital content or digital service was in conformity within the period of time referred to in Article 10(2) shall be on the seller for a lack of conformity which becomes apparent within the period of time referred to in that Article.

Article 12

Obligation to notify

Member States may maintain or introduce provisions stipulating that, in order to benefit from the consumer's rights, the consumer has to inform the seller of a lack of conformity within a period of at least 2 months of the date on which the consumer detected such lack of conformity.

Article 13

Remedies for lack of conformity ▌

1. In the event of a lack of conformity ▌, the consumer shall be entitled to have the goods brought into conformity ***or to receive*** a proportionate reduction ***in*** the price***,*** or to terminate the contract, ***under the conditions set out in this*** Article ▌.

▌

2. ***In order to have the goods brought into conformity,*** the consumer may choose between repair and replacement, unless the ***remedy*** chosen would be impossible ▌ or, compared to the other ***remedy***, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

(a) the value the goods would have if there were no lack of conformity ▌;

(b) the significance of the lack of conformity ▌; and

(c) whether the alternative remedy could be provided without significant inconvenience to the consumer.

3. The seller may refuse to bring the goods into conformity if repair and replacement are impossible or would impose costs on the seller that would be disproportionate, taking into account all circumstances including those mentioned in points (a) and (b) of paragraph 2.

4. The consumer shall be entitled to either a proportionate reduction of the price in accordance with Article 15 or the termination of the sales contract in accordance with Article 16 in any of the following cases:

(a) the seller has not completed repair or replacement or, where applicable, has not completed repair or replacement in accordance with Article 14 (2) and (3), or the seller has refused to bring the goods into conformity in accordance with paragraph 3 of this Article;

(b) a lack of conformity appears despite the seller having attempted to bring the goods into conformity;

(c) the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the sales contract; or

(d) the seller has declared, or it is clear from the circumstances, that the seller will not bring the goods into conformity within a reasonable time, or without significant inconvenience for the consumer.

5. The consumer shall not be entitled to terminate the contract if the lack of conformity is only minor. The burden of proof with regard to whether the lack of conformity is minor shall be on the seller.

6. The consumer shall have the right to withhold payment of any outstanding part of the price or a part thereof until the seller has fulfilled the seller's obligations under this Directive. Member States may determine the conditions and modalities for the consumer to exercise the right to withhold the payment.

7. Member States may regulate whether and to what extent a contribution of the consumer to the lack of conformity affects the consumer's right to remedies.

Article 14

Repair or replacement of the goods

1. Repairs or replacements shall be carried out:

(a) free of charge;

(b) within a reasonable period of time from the moment the seller has been informed by the consumer about the lack of conformity; and

(c) without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods.

2. Where the lack of conformity is to be remedied by repair or replacement of the goods, the consumer shall make the goods available to the seller. The seller shall take back the replaced goods at the seller's expense.

3. Where a repair requires the removal of goods that had been installed in a manner consistent with their nature and purpose before the lack of conformity became apparent, or where such goods are to be replaced, the obligation to repair or replace the goods shall include the removal of the non-conforming goods, and the installation of replacement goods or repaired goods, or bearing the costs of that removal and installation.

4. The consumer shall not be liable to pay for normal use made of the replaced goods during the period prior to their replacement.

Article 15

Price reduction

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

Article 16

Termination of the sales contract

1. The consumer shall exercise the right to terminate the sales contract by ***means of a statement*** to the seller ***expressing the decision to terminate the sales contract***.

2. Where the lack of conformity ▌ relates to only some of the goods delivered under the sales contract and there is a ground for termination of ***the sales*** contract pursuant to Article 13, the consumer may terminate the sales contract only in relation to those goods***,*** and in relation to any other goods ▌ which the consumer acquired ***together with*** the non-conforming goods ***if the consumer cannot reasonably be expected to accept to keep only the conforming goods***.

3. Where the consumer terminates a sales contract as a whole or, in accordance with paragraph 2, in relation to some of the goods delivered under the sales contract:

   (a) ▌ the consumer shall return to the seller, at the seller's expense, the goods***, and***

   (b) the seller shall reimburse to the consumer the price paid for the goods upon receipt of the goods or of evidence provided by the consumer of having sent back the goods.

   For the purposes of this paragraph, Member States may determine the modalities for return and reimbursement.

Article 17

Commercial guarantees

1. Any commercial guarantee shall be binding on the guarantor under the conditions laid down in ***the commercial guarantee*** statement ***and associated*** advertising available at the time, or before the conclusion, of the contract***.*** ***Under*** the conditions laid down in ***this Article and without prejudice to any other applicable provisions of Union or national law, where a producer offers to the consumer a commercial guarantee of durability for certain goods for a certain period of time, the producer shall be liable directly to the consumer, during the entire period of the commercial guarantee of durability for repair or replacement of the goods in accordance with Article 14. The producer may offer to the consumer more favourable conditions in the commercial guarantee of durability statement.***

If the conditions laid out in the commercial guarantee statement are less advantageous to the consumer than those laid down in the associated advertising, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee***, unless, before the conclusion of the contract, the associated advertising was corrected in the same way or in a comparable way to that in which it was made***.

2. The ***commercial*** guarantee statement shall be ***provided to the consumer*** on a durable medium ***at the latest at the time of the delivery of the goods. The commercial guarantee statement shall be expressed*** in plain, intelligible language. It shall include the following:

(a) a clear statement ***that*** the consumer ***is entitled by law to remedies from the seller free of charge in the event of a lack of conformity of the goods and that those remedies*** are not affected by the commercial guarantee; ▌

(b) ***the name and address of the guarantor***;

(c) the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee;

(d) the designation of the goods to which the commercial guarantee applies; and

(e) the terms of the commercial guarantee.

3. Non-compliance with paragraph 2 shall not affect the binding nature of the commercial guarantee for the guarantor.

4. Member States may lay down ▌ rules on ***other aspects concerning*** commercial guarantees ***which are not regulated*** in this Article, ***including rules on the language or languages in which the commercial guarantee statement is to be made available to the consumer***.

Article 18

Right of redress

Where the seller is liable to the consumer because of a lack of conformity ▌ resulting from an act or omission***, including omitting to provide updates to goods with digital elements in accordance with Article 7(3),*** by a person in ***previous*** links of the chain of transactions, the seller shall be entitled to pursue remedies against the person or persons liable in the chain of transactions. The person against whom the seller may pursue remedies and the relevant actions and conditions of exercise, shall be determined by national law.

Article 19

Enforcement

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

2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions transposing this Directive are applied:

   (a) public bodies or their representatives;

   (b) consumer organisations having a legitimate interest in protecting consumers;

   (c) professional organisations having a legitimate interest in acting.

Article 20

Consumer information

Member States shall take appropriate measures to ensure that information on the rights of consumers under this Directive, and on the means to enforce those rights, are available to consumers.

Article 21

Mandatory nature

1. ***Unless otherwise provided for in this Directive,*** any contractual agreement which, to the detriment of the consumer, excludes the application of national measures transposing this Directive, derogates from them, or varies their effect, before the lack of conformity ▌ of the goods is brought to the seller's attention by the consumer**,** shall not be binding on the consumer ▌ .

2. ***This Directive shall not prevent the seller from offering to the consumer contractual arrangements that go beyond the protection provided for in this Directive.***

Article 22

Amendments to ▌Regulation ***(EU) 2017/2394*** and Directive 2009/22/EC

(1) ***In the Annex to Regulation (EU) 2017/2394, point 3*** is replaced by the following:

▌

"***3.*** Directive (EU) ***2019/...*** of the European Parliament and of the Council of ... on certain aspects concerning contracts for the ▌sale of goods, ***amending Regulation (EU) 2017/2394 and Directive 2009/22/EC and repealing Directive 1999/44/EC*** (OJ …)."[+]***;***

(2) in Annex I to Directive 2009/22/EC, ***point 7 is replaced by*** the following ▌:

"***7.*** Directive (EU) 2019/ ... of the European Parliament and of the Council of ... on certain aspects concerning contracts for the ▌sale of goods***, amending Regulation (EC) No 2017/2394 and Directive 2009/22/EC and repealing Directive 1999/44/EC*** (OJ …)."[+].

[+] OJ: Please insert in the text the serial number, the date and OJ reference of this Directive.

Article 23

Repeal of Directive 1999/44/EC

Directive 1999/44/EC is repealed with effect from ... [first day of the month corresponding to the month following the period of two years and six months after the entry into force of this Directive].

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex.

Article 24

Transposition

1. By ... [first day of the month corresponding to the month following the period of two years after the entry into force of this Directive] Member States shall ***adopt and publish*** the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from ... [first day of the month corresponding to the month following the period of ***two years and six months after the entry into force of this Directive].***

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

2. The provisions of this Directive shall not apply to contracts concluded before ... [first day of the month corresponding to the month following the period of ***two years and six months after the entry into force of this Directive].***

Article 25a

Review

The Commission shall, not later than on ... [five years after the entry into force of this Directive], review the application of this Directive, including its provisions on remedies and burden of proof - also with respect to second-hand goods as well as goods sold at public auctions - and the producer's commercial guarantee of durability, and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee. The report shall assess in particular whether the application of this Directive and Directive (EU) 2019/ ...[+] ensures a consistent and coherent framework for the proper functioning of the internal market with regard to the supply of digital content, digital services and goods with digital elements in line with principles governing Union policies. The report shall be accompanied, where appropriate, by legislative proposals.

[+] OJ: Please insert in the text the serial number of the Directive contained in document PE-CONS 26/19 (2015/0287(COD)).

Article 26

Entry into force

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

However, Article 22 shall apply from ... [first day of the month corresponding to the month following the period of ***two years and six months after the entry into force of this Directive].***

Article 27

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

CORRELATION TABLE

Directive 1999/44/EC	This Directive
Article 1(1)	Article 1
Article 1(2) (a)	Article 2(2)
Article 1(2) (b) – first indent	Article 3(4)(b)
Article 1(2) (b) – second and third indents	Article 2(5)(a)
Article 1(2) (c)	Article 2(3)
Article 1(2) (d)	Article 2(4)
Article 1(2) (e)	Article 2(12)

Article 1(3)	Article 2(15) and Article 3(5)(a)
Article 1(4)	Article 3(2)
Article 2(1))	Article 5
Article 2(2) (a)	Article 6(a) and Article 7(1) (b)
Article 2(2) (b)	Article 6(b)
Article 2(2) (c)	Article 7(1)(a)
Article 2(2) (d)	Article 7(1)(d)
Article 2(3)	Article 7(5)
Article 2(4)	Article 7(2)
Article 2(5)	Article 8
Article 3(1)	Article 10(1)
Article 3(2)	Article 13(1)
Article 3(3) first subparagraph	Article 13(2) and Article 14(1)(a)
Article 3(3) second subparagraph	Article 13(2)
Article 3(3) third subparagraph	Article 14(1)(b) and (c)
Article 3(4)	Article 2(14)
Article 3(5)	Article 13(4)
Article 3(6)	Article 13(5)
Article 4	Article 18
Article 5(1)	Article 10(1), (2), (3), (4) and (5)
Article 5(2)	Article 12
Article 5(3)	Article 11

Article 6(1)	Article 17(1)
Article 6(2)	Article 17(2)
Article 6(3)	Article 17(2)
Article 6(4)	Article 17(4)
Article 6(5)	Article 17(3)
Article 7(1) first subparagraph	Article 21(1)
Article 7(1) second subparagraph	Article 10(6)
Article 7(2)	---
Article 8(1)	Article 3(6) and (7)
Article 8(2)	Article 4
Article 9	Articles 19 and 20
Article 10	Article 22
Article 11(1) first subparagraph	Article 24(1) first subparagraph
Article 11(1) second subparagraph	Article 24(1) third subparagraph
Article 11(2)	Article 24(1) fourth subparagraph
Article 12	Article 25
Article 13	Article 26
Article 14	Article 27