

SELDIA POSITION PAPER ON THE DIRECTIVE ON ONLINE CONTRACTS FOR THE SALES OF GOODS

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SELDIA POSITION ON THE DRAFT DIRECTIVE ON ONLINE SALES FOR GOODS

INTRODUCTION

Seldia welcomes the Commission's commitment to remove barriers to cross-border trade resulting from legal fragmentation in the area of consumer protection (guarantee regimes, conformity requirements, unfair contract terms, etc.) by harmonizing rules for online sales of goods ([Directive on certain aspects concerning contracts for the online and other distance sales of goods](#)) and digital content ([Directive on certain aspects concerning contracts for the supply of digital content](#)). Furthermore, Seldia also supports the Commission's initiative to integrate the digital dimension into the European civil law's agenda.

GENERAL VIEWS

1) Equal rules for online and offline sales

Seldia supports the idea of the harmonization of EU consumer protection rules (Article 3 of the Proposal). Members of Seldia are aware of the benefits that such harmonization could bring: legal certainty for consumers and retailers engaging in cross-border transactions. However, such an exercise has to increase legal certainty instead of legal burden, i.e. it has to be balanced, proportionate, aligned with the existing legal framework and applicable to both online and offline transactions.

The proposal, as it stands now, would, if adopted, apply only to online (distance) sales (Article 1 (1) of the Proposal). The idea is that for offline (face-to-face) sales the Directive 1999/44 on Sales and Guarantees ("Sales Directive") would still apply, resulting in two different sets of consumer rights which will be used depending on how consumers buy goods: offline or online. This would result in increased uncertainty for consumers and a legislative burden for multi-channel businesses, which would outweigh the potential benefits of full harmonization of the rules of liability and remedies for defected goods if it is applicable to ONLY online sales.

Seldia believes that the purpose of the present initiative as well as others happening in parallel (i.e. the consumer acquis REFIT exercise) should be to ensure legally solid and comprehensive EU consumer rights while simultaneously aim to reduce bureaucratic burden for businesses operating in the EU single market.

Seldia supports a harmonized consumer rights regime applicable to both online and offline transactions which we believe would be more beneficial not only for consumers, but also for businesses. Dealing with all aspects of the EU consumer acquis together (including online and offline sales' regimes, REFIT and Digital Single Market proposals) should therefore be the preferred option going forward (either with maximum, minimum or targeted maximum harmonization).

If dealt with separately (as it is the case now), a distinction between online-offline regimes is unavoidable due to their different timelines. The desirable outcome of these exercises is clear - ideally, after current proposals are adopted, rules for the online and offline sales will be the same across the EU.

Seldia recommends:

- to deal with all the aspects of consumer acquis together (including online and offline sales' regimes);
- to harmonize the EU consumer acquis for all distribution channels i.e. retail, distance selling and direct selling. In the world of omni-channel this is the preferable option both from a consumer and a retail perspective; OR
- to consider extending the scope of the Directive on online sales of goods (which is largely based on 1999/44 Sales Directive) to offline sales.

SPECIFIC VIEWS

2) Conformity requirements & reversal of burden of proof

Seldia is pleased to see that conformity requirements, Articles 4 and 5 of the Proposal, are largely based on the Directive 1999/44 on Sales and Guarantees (hereinafter - "Sales Directive"). The proposal maintains the current approach – combination of objective and subjective criteria.

However, according to the Commission's proposal, Article 8 (3), the period for the burden of proof is to be reversed from the retailer to the consumer. It is proposed to increase it from six months to two years. At this initial stage of policy deliberations Seldia members believe that such an approach may be too excessive; especially considering that consumers will not have a duty to notify the defect (Article 8 (2)) and since there are currently no provisions differentiating between durable goods with long lifespans (cars, washing machines, fridges etc.) and fast-moving consumer goods.

The reversal of burden of proof of 6 months now exists in 25 EU Member States and Seldia members would like to better understand the European Commission's factual reasoning for changing what has to date been viewed as a well-functioning approach in the majority of EU member states. While recognizing that the European Commission in the context of the EU Circular Economy package is actively pursuing sustainable and durable product and material management across the full life-cycle Seldia believes that if further pursuing extending the time period related to the burden of proof, provisions should be put in place recognizing the difference in life spans between different types of products.

Recommendation:

- Seldia recommends to take into account the nature and durability of goods before introducing a fixed period of burden of proof for all products. The European Commission is therefore encouraged to make an exception for perishable, short-lasting or non re-usable due to hygienic reasons goods (such as food supplements or cosmetics). After 2 years of reversal of burden of proof period such goods might not be appropriate to be used anymore due to the hygienic reasons or simply the fact that they are expired.

3) Termination of the contract by the consumer (Article 13 (3) (a))

“the seller shall reimburse to the consumer the price paid without undue delay and in any event not later than 14 days from receipt of the notice and shall bear the cost of the reimbursement”.

It seems that the Article 13 (3) (a) is already assuming that the good is already in the position of the trader. Members of Seldia think that it should be expressly stated to ensure better legal clarity. It would otherwise create a situation where the trader will have to reimburse the consumer without any certainty that the goods will ever be returned. This can result in an increase of abuse.

4) Notification obligation for consumers

The proposal is seen by some business stakeholders as non-sufficiently balancing consumer protection and burdens for businesses. For example, there is no obligation for consumers to notify about the defect and Member States cannot impose such an obligation (Recital 25, Article 8 (2)).

Although it is difficult to enforce in practice, this obligation is important for many retailers as it puts some obligations on the consumers, in particular it disciplines the consumers to prevent them from using the defected good, which could lead to further damage to the good or consumer health.
