BUSINESSEUROPE

COMMENTS

20 April 2016

Online sale of goods and Digital content proposals

KEY MESSAGES

BUSINESSEUROPE has long advocated for more harmonisation of contract rules in business-to-consumer transactions which is why it **welcomes the fact that both Commission's proposals on digital contracts (with some exceptions) follow a full targeted harmonisation approach**.

This being said, harmonisation should not come at any cost. In BUSINESSEUROPE's view, a number of conditions need to be met by these proposals in order for them to contribute to the proper functioning of the internal market, also in its digital dimension. They need to:

- Provide for a realistic level of protection ensuring a **balance between consumers and business interest**.
- Be **evidence-based**.
- Be **clear, future proof and coherent with other European legislation**.
- **Leave out rules related to business-to-business transactions (B2B)**.
- **Help advancing the better regulation agenda**, especially by lowering administrative burdens and compliance costs on traders, simplify the legislative framework and ensure coherence of the regulatory environment

In BUSINESSEUROPE's view, some of these criteria still need to be fulfilled. Therefore, and without prejudice to a more detailed assessment at a later stage, BUSINESSEUROPE would like to make a number of technical comments and propose solutions which we urge co-legislators to take into account in the legislative procedure.

THE PROPOSALS

On 9 December 2016, the Commission proposed two legislative initiatives on contract law:

1. A **directive harmonising business-to-consumer sale of digital content** (e.g. apps, music, videos, streaming services, computer programs), namely rules on conformity of digital content, consumer rights in the event of non-conformity as well as trader's and consumers rights in case of termination of the contract.

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2. A **directive harmonising certain rules on distance sale of tangible goods**, specifically those business-to-consumer contract rules covering conformity of products, exercise of remedies and guarantees.

These proposals are the first legislative deliverable of the Digital Single Market Strategy of May 2015.

They aim at neutralising the existing fragmented legal framework covering business-to-consumer transactions within the EU.

SPECIFIC COMMENTS

Part I - DIGITAL CONTENT PROPOSAL

Article 2, point 1 – Definition of digital content

In a proposal of this nature, it is essential to ensure that the definitions are clear and coherent with the existing EU Consumer Acquis.

The definition of digital content in this proposal differs from the definition under the Consumer Rights Directive

The new proposed definition covers not only "*data produced and supplied in digital form*" (Article 2, point 11 of that directive) but also - very broadly defined - services related i.e. to the creation, storage, processing and sharing of data.

This definition opens up the scope of the directive to an undetermined number of situations. The range of services covered here is extremely broad: from live-streamed sport events; to news apps; or to photo cloud storage services. It seems unlikely that there is an expectation for consumers to have the same set of remedies available. Getting a repair within a reasonable delay of a live-streamed sports event is unlikely to be satisfying the consumer. On the other hand, the same remedy might be suitable for another digital service.

Another consequence would be to apply the same rules on conformity and remedies to contracts with very different nature and characteristics (be it sale of digital content or contracts for the provision of digital services) which would be unwise and unjustified.

We believe that this overly broad definition would lead to legal uncertainty for industry, which European companies cannot afford in a competitive global digital market.

<u>Proposed solution:</u>

This definition needs to be reworked, clarified and streamlined with the definition of the Consumer Rights Directive. The references to services should be deleted.

Article 3 (1) – Scope I - digital content provided against data

BUSINESSEUROPE acknowledges the importance of data in business-to-consumer digital markets and it is open to the debate about the use of data within those markets and how to ensure a level playing-field when offering digital content to consumers against money or when the counter-performance is data.

However, BUSINESSEUROPE believes that the available knowledge and studies about data in consumer markets is not sufficiently established to advance with legislation covering contract law rules specifically envisaging data as a 'payment'. Widening the rules to cover these situations deserves a wider debate and prior in-depth legal and economic analysis because it would mean a significant change in principle and could have far-reaching social and economic implications.

We believe that an extended scope, as currently envisaged, would produce an overlap and inconsistency with the General Data Protection Regulation (GDPR), soon to be in force. This regulation provides for a high level of individuals' protection (data subjects) and includes new rights such as right to data portability, "right to be forgotten" and the explicit right to oppose processing of data for direct marketing purposes. The implementation of these rights will be a significant challenge for business, both from a technical and a legal point of view. It should be stressed that the proposal's provisions, especially related to contracts offered "in exchange for data" will cover similar aspects of relations between the consumer (data subject) and the trader (the controller of personal data). The overlapping provisions and parallel (yet different) obligations would risk blurring the legal framework and may result in additional costs. Before regulating contracts where the counter-performance is data, it is wise to assess how the GDPR obligations will function in practice and whether it will solve the problems that this proposal aims to address.

Many services like email, social networks, platforms, applications, digital news, services subscriptions and others alike would possibly be covered but the ability to establish exactly which ones is seriously hampered by the fact that digital markets and products are in constant evolution.

Also, the reference in article 3(1) to '*any other data*' leads to considerable uncertainty despite an attempted explanation in recital 14.

The distribution of free digital content is not regulated in any Member State. Even the UK, one of the only national legal systems that regulates sale of digital content, has chosen to leave digital content against data out of its new Consumer Rights Bill, in force since October 2015. A revision clause was used instead given the lack of proof of consumer detriment regarding these contracts.

For BUSINESSEUROPE, contracts for the supply of digital content against a counter-performance other than money (in the form of personal data or any other data) should not be included in the scope of this proposal.

We believe that this extended scope will have a negative impact on growth and job creation in Europe. It could lead, for example, to stifling innovation and curtailing

Europe's competitiveness in the field of digital content, including in Europe's fast-growing app sector.

Proposed solution:

This is not the right moment to create rules on digital content supplied against counter-performance other than money. This should be assessed in more detail. A revision clause could be envisaged.

- **Scope II – Business-to-consumer contracts**

BUSINESSEUROPE welcomes the fact that only business-to-consumer transactions are covered. This should be maintained.

- **Scope III – Article 3(3) – Inclusion of digital content provided on a durable medium**

This proposal applies to digital content provided on a durable medium being applicable, for example, to CDs and DVDs incorporating digital content. This contradicts the Consumer Rights Directive, particularly in its recital 19 stating that if digital content is supplied on a tangible medium, such as a CD or a DVD, it should be considered as goods within the meaning of that directive.

We fail to see a justification to change this legal framework which has been in force for less than two years. In addition, digital evolution makes it increasingly difficult to assess which durable medium can be considered just a carrier of digital content. Smartphones could fall within this category.

Proposed solution:

This paragraph and corresponding recital should be deleted.

- **Article 6(4) – Obligation to supply the most recent version**

It is unclear what the "*most recent version*" means: in which device (digital content carrier)? in which markets? Also, what happens in the case where digital content is provided in a tangible medium not containing the latest version but still functional? Does the trader risk termination of the contract?

The consumer is already protected by the rules on conformity in paragraphs 2 and 3 of this article as well as by the trader's information obligations in Article 6(1)(a),(r),and (s) of the Consumer Rights Directive. Therefore, BUSINESSEUROPE does not see an added value for this specific provision.

Proposed solution:

This provision should be deleted.

Article 8 – Third Party Rights

When read literally, this article is incompatible with the nature of the intellectual property rights framework. Despite of some explanation provided in recital 21, we see little added value to keeping this article.

This proposal should not impose a legal obligation for the trader to supply digital content free of any rights which he would not be in a position to deliver given pre-existing licensing agreements. By concluding a contract, the entitled party does not waive its personal or financial rights to its intellectual property. It only allows others to use it, based on the licensing agreement with third parties. Any other reading would mean a contradiction with the way content is being licensed in the markets.

Proposed solution:

This article should be deleted since it offers little added value.

Lack of a consumer's duty to notify the lack of conformity

It is in the interest of both trader and consumer to ensure that the lack of conformity is solved as quickly and effectively as possible. The duty to notify the lack of conformity is therefore a necessity to fulfil this objective. It is also important when it comes to prevent that the consumer suffers an unnecessary damage or an impairment occurred to his digital environment. A duty to notify would also be a way to prevent situations of unfair enrichment.

Proposed solution:

A consumer's duty to notify the lack of conformity within a reasonable period after the consumer became aware of it, should be introduced.

Lack of a guarantee period

The proposal does not foresee a guarantee period as with the online sale of goods proposal. Although BUSINESSEUROPE is aware that digital content is not submitted to the same wear and tear effect of physical goods, it is still particularly dependent on the consumer digital environment as well as on the rapid evolving nature of digital products and hardware. This makes it essential not to submit the trader/supplier to an endless guarantee of conformity.

Proposed solution:

A guarantee period should be included.

- **Article 9(1)(2) – Burden of proof of lack of lack of conformity fully on the trader**

The absence of a guarantee period linked to an endless and apparently wide reversal of burden of proof for the trader on conformity with the contract make the proposed rules unreasonably burdensome.

This provision would go far-beyond Article 5(3) the Sales Directive, which only relieves the consumer of establishing that the lack of conformity existed at the time of delivery of the goods. The consumer still needs to furnish evidence that the goods sold are not in conformity with the contract and that the lack of conformity in question became apparent within six months of delivery of the goods. The Court of Justice[1] of the EU recently confirmed this interpretation.

The conformity of digital content contracts is closely and inevitably dependent on the consumers' digital environment. For example, an incorrect installation of a modem, router, cable or the incorrect setup of an anti-virus firewall could have a determinant role in the performance of the digital content. Reversing the burden of proof in such a wide and timeless way on the trader would therefore be inappropriate.

Furthermore, it should be emphasized that the Consumer Rights Directive already requires the trader to inform the consumer, in a clear and comprehensible manner, about any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of. The trader, however, is not in a position to demonstrate or prove that the digital environment of the consumer is not compatible with interoperability and other technical requirements of the digital content.

This provision carries the risk of deterring EU companies from a continuous search for innovative digital products.

Proposed solution:

A limitation of the period of reversal burden of proof should be included. It should be clarified that during that period, the consumer is only relieved of proving that the lack of conformity existed at the time when the digital content was provided but not relieved from proving that there is in fact a lack of conformity.

Paragraph 2 should be deleted.

- **Article 11 – Right to terminate in case of failure of immediate supply**

This provision does not take into account those situations where failure to immediately supply or delayed supply is not under the control of the trader. For example, the strength of the reception signal of the consumer hardware at the time of downloading might lead to a phased or delayed download.

[1] Judgment of the Court of Justice (First Chamber) of 4 June 2015 - Case C-497/13 at Curia.eu.

Also, a small delay in contracts for the supply of digital contract developed according to the consumer specifications should not automatically give rise to termination.

Cancellation of the contract in these cases is not a proportionate remedy.

Proposed solution:

This provision needs to be adapted.

- **Article 12(5) – Limitations to right to terminate the contract**

In accordance with this article the consumer benefits from a wide right to terminate the contract. Only if the lack of conformity with the contract impairs functionality, interoperability and other main performance features of the digital content such right is not given. However, what would happen if there is a minor non-conformity such as a downloaded movie with a couple of seconds of intermittent image? Would this be enough for the consumer to terminate the contract?

Proposed solution:

Minor non-conformity should not give rise to termination of the contract.

The consumer should still provide evidence that there is a lack of conformity, even if minor.

In case of termination, the trader should be entitled to some compensation or reduction in the reimbursement for the use of the digital content by the consumer which would imply deletion of Article 13(4).

- **Article 13 - Remedies in case of termination**

BUSINESSEUROPE has particular concerns regarding the remedies foreseen in point c) paragraph 2 of this article according to which: the (1) supplier shall provide the consumer with technical means to retrieve all content provided and any other data produced or generated by the consumer; (2) the consumer shall also be entitled to retrieve the content free of charge, without significant inconvenience, in reasonable time and in a commonly used data format.

This provision presents technical challenges and potentially significant costs to companies and overlaps with the data portability provisions in the recently agreed General Data Protection Regulation.

This regulation creates new rights such as right to data portability, the right to be forgotten and the explicit right to oppose processing of data for direct marketing purposes. It should be underlined that the provisions in Article 13 of the present proposal, especially related to contracts offered “in exchange for data” will cover similar aspects of relations between consumer (data subject) and business (the controller of personal data). This overlap of parallel - yet different - provisions will lead to confusion and legal uncertainty.

It is understandable that the consumer has an interest in recovering digital content such as pictures, music or videos. However, this proposal goes much further. It obliges to return to the consumer any type of data (personal or not). As a consequence, companies will invest heavily in developing technical systems that will allow for such an operation. Also, few or no concrete gains would be expected for the consumers given that there is no assurance that this data is usable in another competing (or not) digital content.

Another concern, relates to the risk that certain type/structuring/classification of the data returned to the consumer would reveal aspects of the company's strategy or business secrets making it easily accessible to competitors.

Proposed solution:

This provision needs to be redrafted to encompass these concerns. The elements regarding consumer-generated and other data should be left to sectoral legislation, namely to the soon to be adopted Data Protection Regulation.

- **Article 13(2)(a) - Deadline to reimburse the consumer in case of termination counted from the receipt of notice from the consumer**

This proposal seems to lead to a situation where the trader can be obliged to reimburse the consumer before it had a chance of establishing – and potentially contesting - whether the consumer is entitled to terminate the contract. This is normally settled either when the trader had the chance to verify the consumer's claim and accepted the consumer's right to terminate, or, where the trader does not agree with the consumer's claim, after the question is resolved through a court or out-of-court dispute resolution body.

Proposed solution:

An obligation for the trader to reimburse the consumer must remain dependent on whether the consumer is entitled to terminate the contract. Since it depends on the particular case whether the right to termination has been established, point a) of paragraph 2 should be deleted.

- **Article 14 – Minimum harmonised rules on damages**

With regard to damages, we are sceptical about harmonising rules on damages since this is an area deeply linked to the different traditions of national civil/procedural law systems. Also, establishing new minimum harmonised rules on damages, even if on punctual elements, will risk creating further fragmentation.

Proposed solution:

Rules on damages should be deleted.

- **Article 16 – Termination of short term contracts renewed beyond 12 months**

This provision is applicable to long term contracts (more than 12 months) and also to shorter contracts if their entire duration exceeds 12 months. It gives consumers the right to terminate the contract by notice to the supplier given by any means which shall become effective 14 days after the receipt of the notice.

It is questionable whether this 14-days period is proportional in the case of renewable contracts which have a short duration (e.g. 3-month Video On Demand package or 1-month online news subscription) and which have been renewed several times prolonging them beyond 12 months. In practice, some difficulties might arise in terms of assessing when the 14-days period starts running (since the consumer can inform the trader by any means) and of calculating the proportional amount to be paid for an ealier termination. The most suitable solution would be to leave out these contracts from the scope of this article.

Proposed solution:

The reference to short term contracts (under 12 months) but which the combination of renewal periods exceeds 12 months should be deleted from this article.

Part II - ONLINE SALE OF GOODS PROPOSAL

- **Article 1 – Scope**

The scope of the proposal only covers ecommerce and other distance sales which in practice means, once adopted, there will be two parallel sets of rules for online and offline sales. This division makes little sense in a context where sales take place more and more in an omni-channel environment.

Businesses need legal certainty in order to be confident to conduct their cross border transactions. Therefore, it must be avoided that we end up with a more fragmented legislative framework and internal market with a dual system of rules for online and offline transactions, even if on a temporary basis. This would not be in line with better regulation principles.

BUSINESSEUROPE takes note that the Commission is conducting a REFIT exercise of consumer legislation whose results could lead to extending this harmonisation exercise to ‘offline’ sales. However, BUSINESSEUROPE stresses the peculiarity of this process and warns against an automatic extension of these provisions to offline contracts which would go against better regulation principles. BUSINESSEUROPE is in favor of a (full) harmonisation exercise but this does not mean that the now proposed rules would all be suitable for both online and offline contracts.

Furthermore, BUSINESSEUROPE believes that many of the currently proposed rules do not cater for a proper balance between the interests of businesses and consumers

and would go against well-established practices in the Member States. An overall assessment will be necessary at the end to make sure an effective and balanced framework emerges.

We believe that the Council has taken a reasonable approach on this issue by deciding to concentrate the work first on the examination of the digital content proposal keeping in mind the need for overall coherence between the rules on online and offline sales, and between sales of goods and supply of digital content.

Rules on business-to-business (B2B) transactions should be left out of this proposal.

Proposed solution:

Businesses expect that the EU delivers a single, harmonised and balanced set of rules applicable to business-to-consumer transactions regardless of the sales channel where they are conducted.

- **Article 3 – Level of harmonisation**

We welcome the fact that the proposal is based on a full targeted harmonisation approach. This is the only approach able to help tackling legal fragmentation in the internal market.

Proposed solution:

Exemptions and Member State options should be avoided. These would be in contradiction with the overarching objective of this initiative which is to fight legal fragmentation.

- **Article 5(b) – Objective conformity criteria – concept of "packaging"**

It would be important to clarify the meaning of the wording 'packaging'. Does it relate to the package of a product which has some significance to the use or normal storage of the good (e.g. the Lego box) or is it related to the post package?

Proposed solution:

This needs to be clarified to dissipate doubts that post package appears included.

- **Article 7 – Third party rights**

This article foresees that at the time relevant for establishing the conformity with the contract, the goods must be free from any right of a third party, including based on intellectual property. If interpreted literally, this provision might mean that any previous intellectual property rights might be erased by the subsequent contractual agreement between the trader and the consumer which would be contradictory to basic principles intellectual property law.

This could result, for example, in the consumer buying a book and subsequently, as a result of the contract, being able to carry out some form of commercial exploitation.

Proposed solution:

This provision should be deleted.

- **Article 8 - Lack of a consumer's duty to notify the lack of conformity**

It is in the interest of both trader and consumer to ensure that the lack of conformity is solved as quickly and effectively as possible. The duty to notify the lack of conformity is a necessity to fulfil this objective. It is also important when it comes to prevent further or irreparable damage to the good as well as to prevent that the consumer gets hurt in the event of improper handling of damaged goods.

This duty to notify should be accompanied by a duty by the consumer to ensure that whilst the good remains in his possession it is properly handled (in accordance with the traders instructions). This is to avoid that further use aggravates the damage.

Also, given that the draft directive foresees the possibility to cancel the contract in the event of a minor non-conformity, one could imagine a situation in which the consumer uses the good for two years even if with a minor defect and at the end of this period would notify the trader of the cancellation without any consequences. A duty to notify would also be a way to prevent situations of unfair enrichment.

Proposed solution:

A consumer's duty to notify the lack of conformity within a reasonable period after the consumer became aware or should have become aware of a non-conformity and a duty of proper handling of goods in his possession should be introduced. By not fulfilling these duties, the consumer would lose the right to invoke a non conformity.

- **Art 8(2) second sentence – Establishing conformity when goods are installed by the consumer**

This paragraph stipulates that in cases where the goods are to be installed by the consumer, then the moment to establish conformity is when the consumer had reasonable time to install the good which should not be less than 30 days.

The proposed rule will clearly lead to an unfair and unbalanced change in the existing rules on the passing of risk, namely Article 20 of the Consumer Rights' Directive. For instance, it will make the seller responsible for the risk of wear and tear, theft, flood etc. after having made the physical delivery to the consumer. The trader will have no guarantees of proper handling by the consumer which could have a clear impact on the conformity.

Proposed solution:

This provision should be deleted.

Article 8(3) – Reversal of burden of proof extended to 2 years

This provision extends the reversal of burden of proof of compliance to the seller to 2 years when the vast majority of member states legislation foresees 6-month. This seems highly unbalanced. Also, the problematic nature of the proposed provision is worsened by the absence of any duty of the consumer to notify the lack of conformity.

Proposed solution:

BUSINESSEUROPE believes the proposal must keep the 6-month reversal of burden of proof as foreseen in the Sales directive.

Articles 9 to 13 – Hierarchy of consumer's remedies

BUSINESSEUROPE welcomes the fact that the proposal foresees a hierarchy of remedies in case of non-conformity of the good.

A hierarchy of remedies is the best adapted solution to the reality of the markets because the trader is, in practice, in the best position to offer the most efficient solution to a lack of conformity.

Proposed solution:

This hierarchy of remedies is a fundamental rule which should be maintained.

It should be made clearer that the trader should be able to opt for a remedy other than repair and replacement when the costs of either of these would be significantly disproportionate to the value of the good.

Article 13 – Exception to the right to terminate for a minor non-conformity

The proposal gives the consumer the right to terminate a contract even if the lack of conformity is minor. This goes against the current framework of many Member States which have transposed the rule in the Sales Directive which precludes such right in minor non-conformity situations.

This is an important exception. Termination is an unbalanced consequence in cases where the lack of conformity can be easily repaired or where it does not affect the main functionality, aesthetics or other main characteristics of the product. Other remedies like repair, replacement or reduction of price can be mutually beneficial for both parties of a contract. This is particularly important, for example, for products of high-value, personalised products or those that would lose substantial value if returned or resold.

Article 12(5) of the digital content proposal foresees that the consumer can terminate the contract only if the lack of conformity impairs functionality, interoperability and other main performance features of the digital content (accessibility, continuity, security). This means the consumer cannot terminate the contract in any circumstances of non-conformity. BUSINESSEUROPE sees no justified reason for a different treatment of tangible goods.

Proposed solution:

Exception to the right to terminate the contract in case of minor non-conformity must be introduced.

- **Article 13(3)(a) – Deadline to reimburse the consumer in case of termination**

According to this paragraph, the trader should reimburse the consumer 14 days after the receipt of the notice of termination by the consumer.

This proposal seems to lead to a situation where the trader can be obliged to reimburse the consumer before it had a chance of establishing – and potentially contesting - whether the consumer is entitled to terminate the contract. This is normally settled either when the trader has received the good back and after reviewing the consumer's claim accepted his right to terminate, or, where the trader does not agree with the consumer's claim, after the question is resolved through a court or out-of-court dispute resolution body.

The proposed rule seems to be inspired by the rules on withdrawal in the Consumer Rights Directive which serve a different purpose. Unlike with the right of withdrawal, the right to terminate is not an unconditional right. The consumer only has a right to reimbursement if there is an established lack of conformity which allows for the termination of the contract. The fact that the consumer notifies the trader of his wish to terminate the contract is not the same as having a right to terminate. Therefore, these different situations should not lead to the same solution.

Proposed solution:

An obligation for the trader to reimburse the consumer must remain dependent on whether the consumer is entitled to terminate the contract. Since it depends on the particular case whether the right to termination has been established, point a) of paragraph 3 should preferably be deleted.

- **Article 13(3)(b) – Return of goods at the seller's expense**

It is proposed that the consumer shall return the goods to the seller "at the seller's expense". The trader should be free to determine the best way to collect the good otherwise he will be subject to non-proportionate costs (e.g. consumer returns the good using a costly and unnecessary express delivery service).

Proposed solution:

The provision should reflect the freedom of the trader to choose the best way of collecting back the good.

Article 13(3)(c) – Cannot return goods because of destruction or loss

It is proposed that where the goods cannot be returned because of destruction or loss, the consumer shall pay to the seller the monetary value which the non-conforming goods would have had at the date when the return was to be made, if they had been kept by the consumer without destruction or loss until that date, unless the destruction or loss has been caused by a lack of conformity of the goods with the contract. This point needs to be clarified on some elements: regarding the rules on burden of proof given that the trader will no longer have a possibility to establish the non-conformity; regarding the rights of the consumer in case destruction or loss is caused by the consumer.

Proposed solution:

It should be clarified that: (1) the rule on reversal of burden of proof on the trader of Article 8 is not applicable in cases of destruction or loss; (2) in case the destruction or loss is caused by the consumer, the latter loses the right to a remedy.

Article 14 – Guarantee period of 2 years

BUSINESSEUROPE welcomes the setting of a 2-year guarantee period for new products within the internal market.

In some Member States there are different guarantee periods foreseen for second hand goods, normally limited to one year instead of the 2-year foreseen for new products.

In addition, it might be necessary to ensure that the different linguistic versions have the same meaning when it comes to translating the wording '*limitation period*'. One example is the Danish version.

Proposed solution:

The two year guarantee period for new products should be kept.

Given the particular nature of second-hand goods which in many cases the retailer cannot ship back to the producer, the possibility to introduce a harmonised guarantee period for these goods could be considered. This period should in any case be clearly inferior to two years.

It should be checked whether the different linguistics versions have the same meaning when translating the word '*limitation period*'.

Article 15 – Information rules on commercial guarantees

Information standards on commercial guarantees are here established on a minimum harmonisation basis against the general approach of the proposal which is full harmonisation. The latter approach is the only effective mean to fight legal fragmentation.

This article also establishes that the guarantee statement shall include a clear statement of the legal rights of the consumer as provided for in this proposal. This obligation overlaps with the provisions of Article 6 of the Consumer Rights Directive.

The requirements foreseen in both the Sales Directive and in the Consumer Rights Directive should be enough, namely a clarification that the commercial guarantee does not affect legal guarantee rights.

Proposed solution:

If rules on information on guarantees are to be included in this proposal, these should be coherent with a full harmonisation approach.

The requirement for the guarantee statement to repeat every right in this proposal should be deleted.

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