

**SENATE OF THE REPUBLIC
17TH PARLIAMENTARY TERM**

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RESOLUTION OF STANDING COMMITTEE 10

(Industry, trade, tourism)

(Rapporteur SCALIA)

approved at the session of 17 February 2016

ON THE

**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
(COM(2015) 635 FINAL)**

under Article 144 (1) and (6) of the Rules of Procedure

Sent to the President's Office on 19 February 2016

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The Committee,

Having examined – under Article 144(1) and (6) of the Rules of Procedure – the 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,

whereas the proposal in question is based on Article 114 of the Treaty on the Functioning of the European Union and its main goal is to improve the establishment and functioning of the internal market, by removing legal barriers to commercial transactions, conferring specific rights on consumers and creating legal certainty for companies that wish to sell their products in other Member States;

whereas the proposal appears to comply with the principle of subsidiarity, since differences between mandatory consumer rights provisions in the Member States constitute an obstacle to cross-border trade, while full harmonisation at EU level and the removal of such differences in national laws allows the objective to be achieved;

whereas the proposal appears to comply with the principle of proportionality, since it does not go beyond what is necessary to achieve the objectives or harmonise all aspects of online sales contracts and other distance sales of goods, but provides a common framework only for those aspects of consumer contract law that are essential for facilitating cross-border trade;

hereby issues a favourable opinion, with the following remarks:

– in order to improve legal certainty for both consumers and businesses, the European Commission is asked to set a uniform time-limit for all Member States by which the lack of conformity of goods must be reported;

– in order to strengthen legal certainty for consumers and the efficiency and effectiveness of the rights conferred on them, the Commission is asked to consider a time-limit for the repair or replacement of the goods by the seller, after which the consumer may exercise the right of termination of the contract;

– the proposal under consideration seems to distinguish clearly between the rules applicable to contracts falling within its scope and those relating to contracts falling outside. Such a distinction could undermine consumers' certainty about their rights, for example in respect of the time-limits for notification of defective goods, and promote distance transactions over traditional forms of sale. It could also complicate matters for companies using both direct and distance sales methods, which would have to apply two distinct types of legislation. In order to prevent this, the Commission is asked to assess the appropriateness of adopting EU measures to harmonise consumer

rights for direct sales also;

- Article 1 refers to distance sales contracts concluded between sellers and consumers, while the title of the Directive refers to online sales contracts and other types of distance sales of goods. For the sake of clarity, the two terms should be standardised;

- the Directive should also provide for a time-limit for reimbursement of part of the consideration in the event of a price reduction under Article 12;

- explicit reference should be made in Article 8 – which lays down the relevant time for establishing conformity with the contract – to the two-year limitation period referred to in Article 14;

- as regards the impact assessment done by the Commission, which is reflected in the choice of option 1 on targeted fully harmonised rules on digital content and goods, it is noted that option 5 – a voluntary European standard contract combined with an EU trust-mark – would achieve the objectives more effectively. This is because companies could offer digital content and distance sales of goods throughout the EU under a standard contract, whose consumer protection provisions would be laid down in the legislative process and would take precedence over any different clauses in the Member States' domestic law. There would therefore be no additional cost linked to the diversity of such contractual rights. This standard contract would be combined with the EU trust-mark. In this regard, consumers' acceptance of such a contract, linked to the EU trust-mark, would be largely dependent on the degree of legal protection provided.

OPINION OF STANDING COMMITTEE 14
(EUROPEAN UNION POLICIES)

(Rapporteur: ORELLANA)

17 February 2016

The Committee, having examined the act,

whereas the proposal in question relates to certain aspects concerning contracts for the online and other distance sales of goods and complements a proposal on certain aspects concerning contracts for the supply of digital content (COM(2015) 634 final), which was already examined by the sub-committee on 27 January. These two proposals are based on experience acquired during negotiations on the Regulation on a common European sales law (COM(2011) 635). In particular, they no longer take the approach of a voluntary scheme and a comprehensive set of rules, but contain a targeted set of fully harmonised rules. The objective of the two proposals is to create a business-friendly environment which allows companies, in particular small and medium-sized enterprises, to sell more easily across borders, by eliminating differences between national laws;

the objective of the proposal for a Directive in question is to introduce certain provisions for distance sales contracts concluded between sellers and consumers, in particular on the conformity of goods, the remedies available to consumers in case of lack of conformity and the arrangements for exercising these remedies (Article 1). In particular, under Article 9, the consumer is entitled to repair or replacement of non-compliant goods within a reasonable period of time or, if that is not possible, to a price reduction or termination of the contract;

since the proposal has no impact on the budget of the European Union and should have no impact on Member State budgets;

having regard to the government report obtained under Article 6(4) and (5) of Law No 234 of 24 December 2012;

hereby, within its remit, comments favourably on the proposal, highlighting the following points:

- the proposal is appropriately based on Article 114 of the

Treaty on the Functioning of the European Union, which aims mainly to improve the establishment and functioning of the internal market. The principle of subsidiarity is relevant given the difficulties operators, in particular small and medium-sized enterprises, have in complying with the mandatory rules of consumer contract law in force in the Member States. Very often these rules go beyond what is already provided for in the existing minimum harmonisation directives (Council Directive 93/13/EEC of 5 April 1993 and Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999), leading to legal fragmentation, which is a serious obstacle to improving trade. Action at EU level under this proposal, and in particular under Article 3, will prevent Member States from maintaining or adopting provisions diverging from those laid down by it, and the Directive will therefore introduce full harmonisation.

In this sense, the proposal cannot be replaced by initiatives of individual Member States and is therefore ‘necessary’. In addition, it has a high ‘European added value’, thus complying with the two parameters underlying the principle of subsidiarity;

- the proposal also complies with the principle of proportionality, since, on the one hand, it does not seek to harmonise all aspects of online sales contracts or other types of distance sales of goods, and, on the other, it takes the form of a directive rather than a regulation, which would require a much more detailed and comprehensive scheme. This also differentiates it from the previous proposal of 2011, which laid down a comprehensive set of rules on the sale of goods by means of a regulation;

- Article 1 refers to distance sales contracts concluded between sellers and consumers, while the title of the Directive refers to online sales contracts and other types of distance sales of goods. For the sake of clarity, the two terms should be standardised;

- the Directive should set a time-limit by which the lack of conformity of goods must be reported by the consumer, starting from discovery of the defect;

- the Directive should set a time-limit for the repair or replacement of the goods by the seller, after which the consumer may exercise the full right to a price reduction or termination of the contract;

- the Directive should also set a time-limit for reimbursement of part of the consideration in the event of a price reduction under Article 12;

- explicit reference should be made in Article 8 – which lays down the relevant time for establishing conformity with the contract – to the two-year limitation period referred to in Article 14;

- as already pointed out with regard to proposal COM(2015) 634, as regards the impact assessment done by the European Commission, which is reflected in the choice of option 1 on targeted fully harmonised rules on digital content and goods, it is noted that option 5 – a voluntary European standard contract combined with an EU trust-mark – would achieve the objectives more effectively. This is because companies could offer digital content and distance sales of goods throughout the EU under a standard contract, whose consumer protection provisions would be laid down in the legislative process and would take precedence over any

different clauses in the Member States' domestic law. There would therefore be no additional cost linked to the diversity of such contractual rights. This standard contract would be combined with the EU trust-mark. In this regard, consumers' acceptance of such a contract, linked to the EU trust-mark, would be largely dependent on the degree of legal protection provided.