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Delegations will find in Annex an updated text of the draft Directive, building on the discussions in the Working Party during the last few months as well as on written contributions.

Modifications in relation to the text in Annex to document 9862/18 (+ADD 1) are indicated in underlined or ~~striketrough~~.

...

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 (EU) 2017/2394¹ 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

Article 1

Subject matter

1. 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 the seller and the consumer, in particular rules on conformity of goods with the contract², remedies in case of lack of conformity, the modalities for the exercise of those remedies, and commercial guarantees.

[...]

¹ Note: The new CPC Regulation (EU) 2017/2394 repealed (EC) No 2006/2004.

² Amended recital 19 of Commission's proposal: (19) In order to provide clarity as to what a consumer can expect from the goods and what the seller would be liable for in case of failure to deliver what is expected, it is essential to fully harmonise rules for determining the conformity of goods with the contract. ~~Applying a combination of subjective and objective criteria should safeguard legitimate interests of both parties of a sales contract. Conformity with the contract should be assessed by taking~~ Any reference to conformity in this Directive should refer to conformity of the goods with the sales contract (as opposed to conformity of goods with legal provisions for example). In order to safeguard the legitimate interests of both parties to a sales contract, conformity should be assessed based on both subjective and objective conformity criteria. Therefore it should take into account not only requirements which have actually been set in the contract – including in pre-contractual information which forms an integral part of the contract – but also certain objective requirements which constitute the standards normally expected for goods, in particular in terms of fitness for the purpose, packaging, installation instructions and normal qualities and performance capabilities.

Article 2

Definitions

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

- (a) ‘sales contract’ means any contract under which the seller transfers or undertakes to transfer the ownership of goods and the consumer pays or undertakes to pay the price thereof;
- (b) ‘consumer’ means any natural person who, in relation to contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (c) ‘seller’ means any natural person or any legal person, irrespective of whether privately or publicly owned, who, in relation to contracts covered by this Directive, is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;
- (d) ‘producer’ means the manufacturer of goods, the importer of goods into the Union or any person purporting to be a producer by placing their name, trade mark or other distinctive sign on the goods;
- (e) ‘goods’ means
 - (i) 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;
 - (ii) any tangible movable items that incorporate³ ~~digital content~~ or are inter-connected with digital content or a digital service⁴ in such a way that the absence of that digital content or digital service would render the goods inoperable or would prevent the goods from performing their ~~{main}~~-functions (~~‘smart goods’~~ ‘goods with digital elements’);

³ New recital: Digital content can be pre-installed at the moment of the conclusion of the sales contract or according to that contract can be installed subsequently.

⁴ New recital: An example of such an inter-connected digital service is the continuous supply of individually adapted training plans in the case of a smart watch.

- (e1) 'digital content' means data which is produced and supplied in digital form, ~~for example video files, audio files, applications, digital games and other softwares;~~⁵
- (e2) 'digital service' means
- (i) a service that allows the consumer ~~to the creation, processing, storage of or access to~~ data in digital form; or
 - (ii) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer ~~and~~ or other users of that service;
- (e3) 'compatibility' means the ability of the goods⁶ to function with ~~a~~ hardware or software with which goods of the same type are normally used, without the need to convert ~~or adapt~~ them;
- (e4) 'functionality' means the ability of the goods to perform their functions having regard to their purpose;
- (e5) 'interoperability' means the ability of the goods to function with ~~a specific~~ hardware or software different from the ones with which goods of the same type are normally used for which they were supplied by the seller;
- (e6) 'durable medium' means any instrument which enables the consumer or the seller to store information addressed personally to that person ~~him~~ in a way 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;⁷

⁵ New recital: Digital content which is incorporated in or inter-connected with a good may be any data which is produced and supplied in digital form. This includes video files, audio files, applications, digital games and any other software.

⁶ New recital: Pursuant to the definition of “goods” proposed in this Directive, the term “goods” should include “goods with digital elements”, and therefore also refer to any digital content or digital service that is incorporated in or inter-connected with such goods in the way specified in the Directive.

⁷ Note to translators: The definition of “durable medium” corresponds to the definition used in Article 2(10) of Directive 2011/83/EU (Consumer Rights Directive), except for the term “seller” (rather than “trader”).

- (f) 'commercial guarantee' means any undertaking by the seller or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods 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;
- ~~(g) 'repair' means, in the event of lack of conformity, bringing goods into conformity;~~
- (i) '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.

Article 2a

Scope

1. This Directive shall apply to sales contracts ~~for goods~~ between a consumer and a seller.
 - 1a. 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.
2. This Directive shall not apply to contracts for the ~~provision of services, except for services provided under the sales contract as defined in point (a) of Article 2(1).~~ supply of digital content or digital services. It shall however apply to digital content or digital services which are incorporated or inter-connected with goods in the meaning of Article 2(e)(ii) 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 case of doubt whether the supply of an incorporated or inter-connected digital content or digital service forms part of the sales contract, the digital content or digital service shall be presumed to be covered by the sales contract.⁸

⁸ New recital: This Directive should also apply to contracts for the sale of goods with digital elements, where the absence of the incorporated or inter-connected digital content or digital service would render the goods inoperable or would prevent them from performing their functions and where that digital content or service is provided with the goods under the sales contract. 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 stipulated by the contract. It should also include those sales contracts where the common intention of the contractual parties can be understood as

3. This Directive shall not apply
 - (a) to any tangible medium which incorporates digital content in such a way that the tangible medium serves exclusively as a carrier for the supply of the digital content;
 - (b) to any goods sold by way of execution or otherwise by authority of law.
4. Member States may exclude from the scope of this Directive contracts for the sale of
 - (a) second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person;
 - (b) living animals.
5. This Directive shall not affect the possibility of Member States to regulate general contract law aspects, such as rules on formation, the validity, the 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.⁹

covering also the supply of specific digital content or digital services because they are normal in goods of the same type and the consumer may 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 earlier links of the chain of transactions, including the producer. This should also apply if the incorporated or inter-connected digital content or digital service is not provided by the seller himself but by any other person who is acting in the name of the seller or on his behalf. If it is unclear whether the seller or an independent third party is liable for the supply of the digital content or the digital service, this uncertainty should be to the detriment of the seller. That means that in case of doubt the seller should also be liable for the supply of the digital content or digital service unless he proves that the supply of the digital content or digital service is not part of the sales contract. 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.

In contrast, if the consumer concludes a contract for the supply of digital content or a digital service which does not form part of the sales contract, for instance by downloading a game app onto a smart phone, this contract would be separate from the contract on the sale of the goods, in this example the smart phone itself, even if the seller himself acts as an intermediary of this second contract with the third party supplier. In this case this Directive should only apply to the sales contract concerning the goods, including any incorporated or inter-connected digital content or digital service that forms part of it, while the separate contract on the supply of the digital content or the digital service may fall within the scope of the Digital Content Directive.

⁹ New recital: This Directive should not affect national law to the extent that the matters concerned are not regulated by this Directive, in particular the legality of the goods, damages and general contract law aspects such as the formation, validity, nullity or effects of contracts. The same applies to the consequences of the termination of the contract and to certain aspects regarding repair and replacement

6. This Directive shall not affect the possibility of Member States to allow consumers to choose a specific remedy if the lack of conformity of the goods becomes apparent within a short period after delivery which should not exceed 30 days.¹⁰

Article 3

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 3a

Conformity of goods

1. The seller shall deliver goods to the consumer which shall, as applicable, meet the requirements of Articles 4, 5 and 6.

which are not regulated in this Directive. Member States should remain free to regulate the rights of the parties to withhold the performance of their obligations or part thereof until the other party performs its obligations, in particular whether the consumer is entitled to withhold the payment of the price because of a lack of conformity. Member States should also remain free to regulate whether the consumer is entitled to demand compensation for damages suffered as a consequence of an infringement by the seller of the provisions of this Directive, in particular compensation for a damage suffered as a consequence of a lack of conformity or compensation if the repair or replacement caused significant inconvenience or was delayed. This Directive should also not affect national rules not specific to consumer contracts providing for remedies for certain types of defects that were not apparent at the time of conclusion of the contract of sale, referring to 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 of the consumer in case of lack of conformity of goods against persons in earlier links of the chain of transactions, for example manufacturers, or other persons fulfilling their obligations.

- ¹⁰ The following text could be introduced in recital 14 or added as a new recital: This Directive should equally not affect the possibility of Member States to allow consumers to choose a specific remedy if the lack of conformity of the goods becomes apparent shortly after delivery referring to national provisions which may provide for a right of the consumer to reject the good with a defect and 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.

Article 4

Subjective requirements for conformity

1. In order to conform with the contract, the goods shall, where applicable:
 - (a) be of the quantity, quality, type and description and possess the functionality, compatibility, ~~and interoperability~~ and other features as required by the 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 contract and which the seller has accepted;
 - (ba) be delivered along with all the ~~necessary~~-accessories and any instructions, including on installation, as stipulated by the contract; and
 - (c) *(deleted)*
 - (d) be serviced or updated as stipulated by the contract.¹¹

Article 5

Objective requirements for conformity

1. In addition to complying with any conformity requirements stipulated in the contract, the goods shall:

¹¹ New recital: 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, may 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. Therefore, the conformity of goods with digital content or digital services which are incorporated in or inter-connected with the goods should also be assessed in relation to whether the digital content or digital service element of such goods is updated in the manner that has been stipulated in the sales contract. An omission of updates which had been agreed in the sales contract should be considered a lack of conformity of the goods. Moreover, defective or incomplete updates should also be considered a lack of conformity of the goods, as this would mean that they are not performed in the manner stipulated in the contract.

- (a) be fit for the purposes for which goods of the same ~~description~~ type would ~~ordinarily~~ normally be used taking into account, where applicable, any existing national and Union laws, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;
- (b) where applicable, possess the quality of and correspond to the description of a sample or model, which the seller made available to the consumer before the conclusion of the contract;
- (b1) where applicable, be delivered along with such accessories including packaging, installation instructions or other instructions which ~~as~~ the consumer may reasonably expect to receive; ~~and~~
- (b2) where applicable, be updated as necessary to maintain conformity;¹² and

¹² New recital 19b: Beside 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 the level of conformity required at the relevant time for assessing conformity. 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 nor improve or extend the functionalities of goods beyond the conformity requirements. This Directive should not affect non-contractual obligations to provide security updates laid down in Union law or national law.

(c) be of the quantity and possess the qualities, and other features, including in relation to durability,¹³ functionality, compatibility and ~~other features, such as security,~~ which are normal in 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 earlier links of the chain of transactions, including the producer, ~~or his representative,~~ particularly in advertising or on labelling.

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

- (a) the seller was not, and could not reasonably have been, aware of the statement in question;
- (b) by the time of conclusion of the contract the statement had been corrected in the same or a comparable way as it has been made; or
- (c) the decision to buy the goods could not have been influenced by the statement.

¹³ Amended recital 23 of Commission's proposal and new recital 23a: (23) Ensuring longer durability of consumer 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 to increase trust in the functioning of the internal market. For these purposes, product specific Union legislation is the most appropriate approach to introduce durability and other product related requirements in relation to specific types or groups of products, using for this purpose adapted criteria. This Directive should be complementary to the objectives followed in such Union product specific legislation, and should include durability as an objective criterion for the assessment of conformity of goods. Durability as an objective conformity criterion in this Directive should refer to the ability of the goods to maintain their 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 may reasonably expect given the nature of the specific goods and any public statements made by or on behalf of any person 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 so far 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 criteria for conformity.

(23a) Under this Directive the seller should be obliged to deliver to the consumer goods which are in conformity at the time of delivery. Sellers may 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 introduce an obligation on sellers to ensure the availability of spare parts throughout a period of time as an objective conformity requirement, it should not affect other provisions in national laws obliging the seller, the producer or other persons in the chain of transactions to ensure the availability of spare parts or to inform consumers about such availability.

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

~~(New) Article 5a~~

~~**[Additional requirements for smart goods] [Updates]**~~

- ~~1. In the case of smart goods [that are connected to the Internet], the seller shall ensure that the consumer is informed of and supplied with **[Option A:** updates, including security updates, that are necessary to keep the digital content or digital service of smart goods in conformity]]**[Option B:** security updates]~~

- ~~(a) **[Option 1** (aligned with the time for establishing conformity in Article 8(2a) and the guarantee period in Article 8a(1a)): during two years as from the relevant time for establishing conformity pursuant to Article 8(1) and (2), as applicable, where the contract provides for the supply of the digital content or digital service over a period of time;]~~

~~**[Option 2** (aligned with the rule contained in the DCD): throughout the period of time during which the digital content or digital service of the smart good is to be supplied under the sales contract, where the contract provides for the supply of the digital content or digital service over a period of time;] or~~

- ~~(b) **[Option 1** (aligned with the guarantee period): during two years as from the relevant time for establishing conformity pursuant to Article 8(1) and (2), as applicable, where the sales contract provides for a single act of supply of the digital content or digital service of the smart good.]~~

~~[**Option 2** (aligned with the rule of the DCD): during the period of time which the consumer may reasonably expect, given the type and purpose of the smart good 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 of the smart good.]~~

~~2. Where the consumer fails to install updates supplied to him in accordance with paragraph 1 within a reasonable time, the seller shall not be liable for any lack of conformity of the smart goods resulting solely from the lack of the relevant update, provided that~~

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

~~(b) the failure to install or the incorrect installation of the update by the consumer was not due to shortcomings in the installation instructions provided by the seller or the supplier of the digital content or digital service of the smart good.~~

Article 6

Incorrect installation

Any lack of conformity resulting from the incorrect installation of the goods¹⁴, shall be regarded as lack of conformity of the goods, if

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

¹⁴ New recital: The provision on the incorrect installation of the goods should include, where applicable, also any incorrect installation of the digital content or digital service of goods with digital elements.

- (b) the installation, intended to be carried out by the consumer,¹⁵ was done by the consumer and the incorrect installation was due to ~~a~~ shortcomings in the installation instructions provided by the seller or ~~the supplier~~, in the case of goods with digital elements, by the seller or by the supplier of the digital content or digital service of the smart goods.

Article 7

Third party rights

Where a restriction resulting from ~~as a consequence of~~ 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 4 and 5 ~~is prevented or restricted~~, Member States shall ensure that the consumer is entitled to the remedies for the lack of conformity provided for by Article 9, unless national law provides for the nullity or rescission of the sales contract as a result of such violation.

¹⁵ New recital: A large number of consumer goods are intended to be installed before they can be usefully used by the consumer. In addition, in the case of goods with digital elements, the installation of the digital content or digital service is necessary for the consumer to be able to use such goods according to their intended purpose. Therefore, any lack of conformity resulting from an incorrect installation of the goods or of the digital content or digital service incorporated in or inter-connected with 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 of the installation instructions which the average consumer would find difficult to use.

Article 8

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.^{16 17}
 - (a) ~~the consumer or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods; or~~
 - (b) ~~the goods are handed over to the carrier chosen by the consumer, where that carrier was not proposed by the seller or where the seller proposes no means of carriage.~~
2. ~~In cases where the goods were installed by the seller or under the seller's responsibility, **the relevant moment for establishing conformity shall be** the time when the installation is complete (...). Where the **installation was** intended to be **carried out** by the consumer, **the relevant moment for establishing conformity shall be the time when the consumer can reasonably be expected to have completed the installation, (...)** but in any event not later than 30 days after the time indicated in paragraph 1 (...).~~

¹⁶ New recital: This Directive does not regulate what 'delivery' means which should be left to national law. In particular, this applies to the question what the seller has to do in order to fulfill his obligation to deliver the goods taking into account the different cases that may occur in practice.

When the goods require installation by the seller, the consumer cannot use the goods or notice a defect before the installation has been completed. Therefore, where 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.

¹⁷ New recital: Goods with digital elements should be deemed 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. 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. In this way it is safeguarded that there is a uniform starting point of the liability or limitation period for the physical component on the one hand and for the digital element on the other hand. Moreover, in many cases the consumer will not be able to notice a defect of the physical component before the digital content or digital service is supplied.

2. ~~Where the digital content or digital service of smart goods are to be supplied~~ In the case of goods with digital elements where the sales contract provides for 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 from the time indicated in paragraph 1 ~~or, where applicable, paragraph 2.~~ Where the contract provides for 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 becomes apparent or occurs within the period of time during which the digital content or digital service is to be supplied under the contract.

Article 8a

Time limits

1. The consumer shall be entitled to remedies ~~a remedy~~ provided for by Article 9 for a lack of conformity of the goods where the lack of conformity becomes apparent within two years as from the relevant time for establishing conformity pursuant to Article 8(1) ~~and (2)~~ (liability period).

~~Where the digital content or digital service of smart goods is to be supplied~~ In the case of goods with digital elements where the sales contract provides for continuous supply of the digital content or digital service over a period of time, the consumer shall also be entitled to remedies ~~a remedy~~ provided for by Article 9 for any lack of conformity of ~~the~~ ~~that~~ digital content or digital service that occurs or becomes apparent within the period of time indicated in Article 8(2) (liability period).

If, under national legislation, the remedies provided for by Article 9 are subject to a limitation period, that period shall not be less ~~shorter~~ than two years as from the relevant time for establishing conformity pursuant to Article 8(1) ~~and (2)~~ or shall not be less than the period indicated in Article 8(2).¹⁸

¹⁸ New recital: This Directive does not regulate the question under which conditions the liability period as provided for in the Directive, may be suspended or interrupted. Therefore, Member States should be able to provide for the suspension or interruption of the liability period or of an alternatively maintained 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.

- 1a. Member States may maintain or introduce longer time limits than those referred to that laid down in paragraph 1 and 1a.
- 1b. Notwithstanding paragraph 1, if, under national legislation, the remedies provided for by Article 9 are only subject to a limitation period, Member States may maintain such limitation period, which shall not be shorter than the time limits for the liability of the seller pursuant to paragraph 1.¹⁹
2. Member States may provide that, in the case of second-hand goods, the seller and the consumer may agree to contractual terms or agreements with ~~which have~~ a shorter liability or limitation time period than those referred to the one set out in paragraph 1, which shall however not be less than one year.
3. [...]

Article 8b

Burden of proof

~~Unless proved otherwise,~~ Any lack of conformity which becomes apparent within one year from the time indicated in Article 8(1), or within the period indicated in Article 8(2), shall be presumed to have existed at the time indicated in Article 8, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or with the nature of the lack of conformity.²⁰

¹⁹ New recital: For reasons of coherence with the existing national legal systems, Member States should have the possibility to provide either that the seller is liable for a lack of conformity that becomes apparent within a specific period of time, possibly coupled with a limitation period, or that the consumer's 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 a shorter limitation period for the consumer's remedies. In the latter case, Member States should be able to maintain only a limitation period for the consumer's remedies without introducing a specific period within which the lack of conformity must become apparent in order for the seller to be liable. In order to ensure that consumers are equally protected also in these cases, Member States should ensure that when only a limitation period applies, it should not be shorter than the liability period as provided for in this Directive.

²⁰ New text of recital 26: In order to allow businesses to rely on a single set of rules across the Union, it is necessary to fully harmonise the period of time during which the burden of proof for the lack of conformity is reversed in favour of the consumer. ~~Within the first two years, in order to benefit from the presumption of lack of conformity~~During a period of one year the consumer should only need to prove

Article 8c

Obligation to notify

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

Article 9

Consumer's remedies for the lack of conformity

1. In the case 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.
- 1a. For having the goods brought into conformity, the consumer may choose between repair and replacement, unless the remedy chosen would be impossible²¹ 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 ~~with the contract~~;
 - (c) whether the alternative remedy could be completed without significant inconvenience to the consumer.

~~demonstrate~~ that the good is not conforming, without also needing to prove ~~demonstrate~~ 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 may be incompatible with the nature of the goods or the nature of the lack of conformity. The former could be the case with goods which deteriorate by their nature such as perishable food products or goods which are only intended for a single use. An example for the latter may 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.

²¹ New recital: The notion of "impossible" includes not only factual impossibility but also situations of legal impossibility.

2. The seller may refuse to bring the goods into conformity if repair and replacement are impossible or would impose costs on him that would be disproportionate, taking into account all circumstances including those which are mentioned in paragraph 1a(a) and (b).²²
3. The consumer shall be entitled to either a proportionate reduction of the price in accordance with Article 12 or the termination of the contract in accordance with Article 13 in any of the following cases:
- ~~(a) — repair and replacement are impossible or (...) would impose costs on the seller that would be disproportionate, taking into account the circumstances of the case including;~~
- ~~(i) — the value the goods would have if there were no lack of conformity; and~~
- ~~(ii) — the significance of the lack of conformity;~~
- (a) the seller has not completed repair or replacement or and, where applicable, has not completed repair or replacement in accordance with Article 10(1a) and (2) or the seller has refused to bring the goods into conformity according to paragraph 2;
- (b) a lack of conformity appears despite the seller having attempted ~~seller's attempt~~ to bring the goods into conformity;²³
- (c) the lack of conformity is of such a serious nature²⁴ as to justify the immediate price reduction or termination; or

²² New recital: The seller should be allowed to refuse to bring the goods into conformity if both repair and replacement are impossible or would impose disproportionate costs on him. The same should apply if either repair or replacement is impossible and the alternative remedy would impose disproportionate costs on the seller.

²³ New recital: Where the seller has taken action to bring the goods into conformity but a lack of conformity becomes apparent subsequently, it should be objectively ascertained whether the consumer should accept further attempts by the seller to bring the goods into conformity, taking into account all 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 may be justified to allow the seller another attempt to remedy the lack of conformity. It should also be taken into account whether the consumer cannot be expected to maintain confidence in the ability of the seller to bring the goods into conformity, for instance due to the fact that the same problem appears twice.

²⁴ New recital: In certain situations the lack of conformity may be of such a serious nature that the consumer cannot maintain confidence in the ability of the trader to bring the goods into conformity. This could be the case when 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.

- (d) the seller has declared, or it is ~~equally~~ 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.
- 3a. The consumer shall not be entitled to terminate the contract if the lack of conformity is ~~not~~ only minor. The burden of proof that the lack of conformity is minor shall be on the seller.
4. Member States may regulate whether and to which extent a contribution of the consumer to the lack of conformity does affect his right to remedies.²⁵

Article 10

Repair or replacement of the goods

1. A repair or replacement shall be completed
- (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.
- ~~1a. Where the lack of conformity is remedied by repair, the consumer shall make the goods available to the seller for that purpose at the seller's expense.~~
- 1a. Where the lack of conformity is remedied by repair or replacement of the goods, the consumer shall make the goods available to the seller ~~for that purpose at the seller's expense.~~ The seller shall take back the replaced goods at his expense.²⁶

²⁵ New recital: Member States should retain the possibility to regulate whether the consumer is entitled to withhold the price because of the lack of conformity as well as if he can demand for a compensation that he or she suffered as a consequence of the lack for conformity.

²⁶ New recital: This Directive should not affect national laws to the extent that the matters concerned are not regulated by this Directive. Member States should therefore 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.

2. 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 thereof.
- 2a. In cases of repair or replacement, the seller's expense in relation to the costs of postage and carriage shall be limited to the costs of postage and carriage to and from the place where the goods were originally delivered.^{27 28}
3. The consumer shall not be liable to pay for the normal²⁹ ~~regular~~ use of the goods during the period prior to their replacement.

Article 11

[...]

Article 12

Price reduction

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

²⁷ New recital: This Directive does not regulate where the obligations of a debtor have to be performed. Therefore, this Directive should neither define where the place of delivery is nor prescribe where the repair or replacement should take place. Therefore, these questions should be left to national law.

²⁸ New recital: In cases of repair and replacement the seller should bear the costs of postage and carriage to and from the place where the goods were originally delivered. The limitation of the seller's expense in relation to the costs of postage and carriage to the amount necessary for postage and carriage only to and from the place where the goods were originally delivered, should be without prejudice to the obligation of the seller to remove the non-conforming installed goods and install replacement goods or repaired goods, or bear the costs thereof in cases where the goods have been installed in a manner consistent with their nature and purpose.

²⁹ New recital: 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 when it is in accordance with the nature and purpose of the goods.

Termination of the contract

1. The consumer shall exercise the right to terminate the contract by means of a statement to the seller expressing the decision to terminate the contract.
2. Where the lack of conformity relates to only some of the goods delivered under the contract and there is a ground for termination of the contract pursuant to Article 9, the consumer may terminate the contract only in relation to those goods, and any other goods which the consumer acquired together with the non-conforming goods if the consumer cannot reasonably be expected to accept keeping only the conforming goods.
3. Where the consumer terminates a contract as a whole or in relation to some of the goods delivered under the contract in accordance with paragraph 2:
 - (a) the seller shall reimburse to the consumer the price paid for the goods;³⁰
 - (b) the consumer shall return, at the seller's expense, to the seller the goods ~~without undue delay and in any event not later than 14 days from sending the statement expressing the decision to terminate the contract.~~

³⁰ New recital 30: Where the consumer terminates the contract due to the lack of conformity, this Directive should prescribe only the main effects and modalities of 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.

Amended recital 31: This Directive should not affect the possibility for Member States to regulate the consequences of termination other than those provided for in this Directive, such as In order to ensure the effectiveness of the right to terminate for consumers while avoiding the consumer's unjustified enrichment, the consumer's obligation to pay for the consequences of the decrease of the value of the goods or should be limited to those situation where the decrease exceeds normal use. In any case, the consumer should not be obliged to pay more than the prince agreed for the goods. In situations where the return of the goods is impossible due to of their destruction or loss, the consumer should pay the monetary value of the goods which were destroyed. However, the consumer should not be obliged to pay the monetary value where the destruction or loss is caused by the lack of conformity of the goods with the contract. Member States should also be allowed to regulate the modalities of reimbursement of the price to the consumer, for example those related to the means used for such reimbursement or possible costs and fees incurred as a result of the reimbursement. Member States should, for instance, also have the possibility to provide for certain time limits for the reimbursement of the price or for the return of the goods.

(c) [...]

(d) [...]

Article 13a

Deadlines and means of reimbursement by the seller

- ~~1. Any reimbursement to be done by the seller to the consumer pursuant to Articles 12 or 13 due to price reduction or termination of the contract shall be done without undue delay and in any event within 14 days from the day on which the seller is informed of the consumer's decision to invoke the right for a price reduction or the right to terminate the contract.~~
- ~~2. The seller shall carry out the reimbursement using the same means of payment as the consumer used to pay for the goods, unless the consumer expressly agrees otherwise and provided that the consumer does not incur any fees as a result of such reimbursement.~~
- ~~3. The seller shall not impose any fee on the consumer in respect of the reimbursement.~~

Article 14

[...]

Article 15

Commercial guarantees

1. Any commercial guarantee shall be binding on the guarantor under the conditions laid down in the commercial guarantee statement and the associated advertising available at the time of or before the conclusion of the contract.

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 has been corrected in the same or a comparable way as it has been made.

2. The ~~seller shall provide the~~ commercial guarantee statement shall be provided to the consumer on a durable medium ~~within a reasonable period of time after the conclusion of the contract and~~ 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 ~~of the legal rights of that~~ the consumer is entitled by law ~~stemming from the seller's liability for the lack of conformity of the goods as provided for in this Directive~~ to remedies by the seller free of charge in case of a lack of conformity of the goods and ~~a clear statement that those~~ remedies ~~rights~~ are not affected by the commercial guarantee;
 - (b) the name and address of the guarantor ~~if different from the guarantor, the person against whom any claim is to be made;~~
 - (c) the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee;
 - (d) ~~information specifying~~ the designation of the goods to which the commercial guarantee applies, ~~including, if applicable, the model, the type and serial number; and~~

- (e) ~~the terms of the commercial guarantee that go beyond the legal rights of the consumer, including the content of the commercial guarantee.~~
- (f) ~~the obligations of the guarantor in case of a defective product, including time limits for resolving the consumer's complaint;~~
- (g) ~~the duration of the commercial guarantee, its transferability and territorial scope; and~~
- (h) ~~the existence of a price or charges, if any, which the consumer might incur in order to benefit from the commercial guarantee.~~

~~[2a. A guarantor designating a third party for the performance of the commercial guarantee shall remain liable to the consumer for his obligations stemming from the commercial guarantee.]~~

4. Non-compliance with paragraph 2 shall not affect the binding nature of the commercial guarantee for the guarantor.
5. 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 shall be made available to the consumer.^{31 32}

³¹ New recital: The provisions on commercial guarantees should apply independently of whether Member States provide that the commercial guarantee has to be free of charge.

³² Addition to recital 34: ... Member States should be free to lay down rules on other aspects of commercial guarantees not covered by this Directive, for example the possibility to associate debtors other than the guarantor to 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.

Article 16

Right of redress

Where the seller is liable to the consumer because of a lack of conformity resulting from an act or omission by a person in earlier links of the chain of transactions, the seller³³ 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.³⁴

Article 17

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.

³³ New recital: The question whether also the consumer may raise a claim directly against a person in earlier links of the chain of transactions, is not regulated by this Directive.

³⁴ New recital: In the areas regulated by this Directive Member States should be free to lay down rules in relation to those aspects, which are not regulated in this Directive. This could concern, for example, the right of redress of the seller, Member States should therefore be free to provide more detailed conditions on the exercise of such right.

Article 18

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 unless the parties to the contract exclude, derogate from or vary the effects of the requirements of Article 5(1) ~~and 6~~ in accordance with Article 5(3).
2. This Directive shall not prevent the seller from offering to the consumer contractual arrangements which go beyond the protection provided for in this Directive.

Article 19

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:

"22. Directive (EU) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the sales 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) N/XXX of the European Parliament and of the Council of XX/XX/201X on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC and repealing Directive 1999/44/EC (OJ...)"

Article 20

Transitional provisions

1. This Directive shall not apply to contracts concluded before [*the date of two years and six months after the entry into force of this Directive*].
2. [...]

Article 21

Repeal of Directive 1999/44/EC of the European Parliament and of the Council

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 is repealed as of [*the date (first of the months) of two years after the entry into force*]. 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 1.

Article 22

Transposition

1. Member States shall adopt and publish ~~bring into force~~ the laws, regulations and administrative provisions necessary to comply with this Directive by [*the date (first of the month) of two years after the entry into force of this Directive*] at the latest.
- 1a. Member States shall apply those measures from [*the date (first of the month) of two years and six months after the entry into force of this Directive*] to all contracts concluded from that date onwards.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 23

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 19 shall apply from [*the date (first of the month) of two years after the entry into force of this Directive*].

Article 24

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President