

**EUROPEAN ECONOMIC AREA**  
**STANDING COMMITTEE**  
**OF THE EFTA STATES**

4/CR/W/003  
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**WORKING GROUP ON CONSUMER PROTECTION**

**Comments by the EFTA Working Group<sup>1</sup> on European Parliament and Council  
Directive on the sale of consumer goods and associated guarantees**

**I INTRODUCTION**

1. The EFTA EEA States have followed closely with great interest the preparation of the above mentioned proposal. The EFTA side would like to present certain views on some aspects of the proposal. These are aspects which the EFTA EEA States consider especially important, taking account of the main purpose of such a directive - consumer protection.

**II RIGHTS OF THE CONSUMER IN THE EVENT OF NON-CONFORMITY  
OF THE GOOD WITH THE CONTRACT**

2. There seems to be some discussion as to whether there should be established a hierarchy of consumer's rights with regard to any event of non-conformity (in sequence: repair, replacement, reduction of the price, termination of the sale). The alternative would be a simple offer of the four rights without any hierarchical order and to leave the choice to the consumer.

3. The EFTA side would oppose the latter solution, although seeing the point that the consumer as a result of such event, may have lost confidence in the product and therefore should not be obliged to accept the product even if the defects have been repaired. In the view of the EFTA EEA States, in case of any event of non-conformity of the good with the contract which does not represent a fundamental breach, the seller should in the first instance be given the option to repair or replace the product.

4. If the customer is given the right to select any of the four options without any hierarchical order, he/she may, inter alia, demand replacement even in the case of a minor defect in an expensive product, which could easily be corrected by the seller. There will obviously be cases where this will be unreasonable towards the seller, and a

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<sup>1</sup> Comprising the delegations of the three EFTA EEA States Iceland, Liechtenstein and Norway

likely consequence is an increase in the seller's business costs. These costs will in the end be carried by the customer through increased prices. Frequent use of a right to demand replacement or termination of the sale, may also lead to the establishment of a "second choice market" for restored products.

5. Finally, the EFTA EEA States would like to point to the risk that the deprivation of the seller's right to repair or replace the product in case of any defect, may encourage the seller to find ways of escaping this burden, e.g. by disclaiming his responsibility through an increased use of reservation clauses. The EFTA side strongly doubts whether this will place the consumer in a more advantageous situation.

6. Against this background and with regard to the purpose of this directive - consumer protection - the EFTA side believes that the interest of the consumer is best served by giving the seller the option to meet any event of non-conformity of the product with the contract which does not represent a fundamental breach, with an offer to repair or replace the product.

## **II SIX MONTH PRESUMPTION PERIOD**

7. Article 3, paragraph 3, of the Commission proposal states that there shall be a presumption that any lack of conformity which becomes apparent within six months as from delivery, existed at the time of delivery.

8. The EFTA EEA States fear that such a provision may be interpreted to the effect that after the expiry of the six month period there will be a presumption that the lack of conformity did not exist at the time of delivery. Inter alia as the purpose of this directive is to ensure a minimum level of consumer protection, it does not seem likely that this paragraph is intended to state an opposite presumption after the six-month period has expired. The EFTA side would, therefore, emphasise a need for a clarification on this point, possibly through a statement in the preamble.

## **III RIGHT FOR THE CUSTOMER TO PURSUE REMEDIES AGAINST THE PRODUCER OR PREVIOUS SELLER IN THE SAME CHAIN OF CONTRACTS**

8. Article 3, paragraph 5, of the Commission's proposal states a right of recourse for the seller, which the EFTA side supports. However, the EFTA EEA States believe that a corresponding right for the customer to pursue remedies against the producer, a previous seller in the same chain of contracts or any other intermediary in case of any event of non-conformity of the good with the contract should be included in the proposal. While in most cases it is sufficient for the customer to hold the seller responsible for any such event, there are situations where the producer, a previous seller in the same chain of contracts or any other intermediary, are easier to locate and hold responsible. Therefore, in the view of the EFTA EEA States, the directive should open for a consumer right of recourse in certain situations.

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