

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 18-3383

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EEA EFTA Comment¹

on the Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 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.

1. EXECUTIVE SUMMARY

- Rules applicable to sales of goods should not differentiate between different sale channels, unless there are justified reasons for special regulation of certain sale channels. The EEA EFTA States therefore welcome the Commission's approach in the amended proposal, covering all sales channels without any such differentiation.
- The EEA EFTA States favour rules with a minimum harmonization approach covering the sales of goods to consumers.
- The EEA EFTA States also recall our long-held view that for goods intended to last for a considerably longer time than two years, the consumer's access to remedies for lack of conformity should not be shorter than five years. Therefore, it should also under the new rules be possible to regulate at national level access to remedies after the legal guarantee period in EU/EEA legislation has expired.
- To ensure a fair balance the EEA EFTA States recommend that the new legislation should include on the one hand an incentive for the consumer to notify the seller of any lack of conformity within a reasonable time. On the other hand, the seller should be given an opportunity to claim a fair compensation for substantial use of goods enjoyed by the consumer prior to termination of a sales contract. A fair balance may prevent a shift from sale to lease of goods, the latter not enjoying the same level of consumer protection under EU/EEA law.

2. INTRODUCTION

1. The EEA EFTA States have followed the ongoing discussions on the amended proposal for a directive on the sales of goods with great interest. In some of the EEA

¹ This EEA EFTA Comment is given without prejudice to further comments from the EEA EFTA States on the proposed directive.

EFTA States, the amended proposals have been the subject of meetings between the respective governments and interested parties, as well as a national public consultation involving various stakeholders.

2. The EEA EFTA States recall our Comment of 21 December 2016² on the proposal for a directive on contracts for the supply of digital content and on the proposal for a directive on contracts for online and other distance sales of goods, where the EEA EFTA States presented their views on those proposals. While the views presented in the Comment in December 2016 continue to reflect the overall view of the EEA EFTA States, we would like to take this opportunity to comment on certain aspects of the amended proposal on the sales of goods.

3. THE CONSUMERS' ACCESS TO REMEDIES

3. The EEA EFTA States firmly believe, as also stated in the EEA EFTA Comment in December 2016, that rules giving different contractual rights for consumers depending on the sales channel are not reasonable in a context where sales increasingly take place in an omni-channel environment. The EEA EFTA States therefore welcome the Commission's approach in the amended proposal, covering all sales channels.
4. The EEA EFTA States reiterate our preference for minimum harmonization of consumer protection rules. Although full harmonization could be argued in a Single Market perspective, it is more important to ensure that the proposal does not lower the level of consumer protection afforded by existing national standards or legislation. The EEA EFTA States therefore recommend a minimum harmonization approach for the amended proposal, not excluding the possibility that certain aspects could be subject to another degree of harmonization.
5. The EEA EFTA States are concerned that the amended proposal falls short of securing consumers' access to remedies for lack of conformity on the same conditions, and within the same period, currently enjoyed by consumers at national level. In some EEA EFTA States, consumers can claim a remedy for a faulty item up to a limit of five years, provided that the item is meant to last considerably longer than two years, and that the lack of conformity existed at the relevant time for establishing conformity with the contract. The EEA EFTA States believe that a two-year time limit is too short to provide consumers with adequate protection, thus new legislation at EEA level should not prevent access to remedies for goods intended to last for a considerably longer time than two years. Therefore, under the new rules it should be possible to regulate at national level access to remedies after the legal guarantee period in EEA legislation has expired.

² See EEA EFTA Comment of 21 December 2016 on contract rules:
<http://www.efta.int/sites/default/files/documents/eea/eea-efta-comments/2016/EEA-EFTA-Comment-on-contract-rules.pdf>

4. NOTIFICATION TO SELLER, COMPENSATION FOR USE OF GOODS

6. The EEA EFTA States would recommend a more careful consideration of the amended proposal regarding incentives for consumers to notify the seller within a reasonable time after lack of conformity becomes apparent. There are concerns that the proposal is not reflecting the possibility of repair becoming more costly, or difficult, without such incentives.
7. Furthermore, as the amended proposal does not have a threshold for when the consumer could terminate a contract, e.g. that the lack of conformity is “not minor”, the question is whether the proposal strikes the right balance between the parties.
8. In this respect, the EEA EFTA States note that the proposal seems to prevent the seller from claiming compensation for use or benefit enjoyed by the consumer prior to terminating the contract. One stakeholder gave the following example: A consumer purchases a car, and a minor lack of conformity, e.g. to the interior of the car, becomes apparent shortly after delivery. Nevertheless, the consumer continues to use the car daily until only few days remains of the legal guarantee period. The seller may not be willing to repair or replace the car, considering that it would have been easier for the seller to mitigate the lack of conformity if the consumer had notified the seller earlier. If consumers under those circumstances were entitled to terminate the contract, only days before the end of the legal guarantee, without the seller having a right to claim compensation for use enjoyed for almost two years, would anyone be willing to sell the car in the first place? If so, at what cost?
9. According to the stakeholder, consumer rights that do not strike the right balance between the consumer and the seller, e.g. because they are too onerous on the part of the seller, may as an unintended effect distort the market for sale of certain goods to consumers. This distortion could lead to an increase of a more business friendly leasing market, as consumer protection under current EU/EEA legislation on lease contracts is minor compared to what follows from the legislation covering the sale of goods.
10. The EEA EFTA States recommend careful consideration to ensure that the new legislation strikes a fair balance between the consumer and the seller.
11. Therefore, the consumer should be given an incentive to notify the seller when a lack of conformity becomes apparent, and the seller should be able to claim compensation for substantial use enjoyed by the consumer prior to terminating the sales contract.
12. A fair balance may also prevent a shift from sale to leasing of goods and therefore contribute to upholding the present level of consumer protection across the Single Market.
13. Finally, the EEA EFTA States believe that any new rules covering sales of consumer goods should be clear and easily understandable for the consumer and seller alike, and

in practice easy to use in relation to cross-border sales contracts where knowledge of language and trade conduct may be a challenge to both consumers and sellers.