



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.01.1999

COM(1999)16 final

96/0161 (COD)

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendment
to the Council's common position regarding the

proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the sale of consumer goods and associated guarantees,

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

EXPLANATORY MEMORANDUM

I - Overview of the procedure

On 18 June 1996 the Commission adopted the proposal for a Directive on the sale of consumer goods and associated guarantees.

The Economic and Social Committee delivered its opinion at its 340th plenary session on 27 and 28 November 1996.

On 10 March 1998 the European Parliament adopted a legislative resolution embodying the opinion of the European Parliament, acting on a proposal from its rapporteur, Mrs Kuhn. The Commission presented an amended proposal on 31 March 1998.

For its part, the Council reached a political agreement on 24 April 1998, on the basis of which the common position was formally adopted on 24 September 1998.

On 25 September 1998 the Commission presented its Communication on the Council's common position to the European Parliament.

On 17 December 1998, acting on a proposal from its rapporteur, Mrs Kuhn, the European Parliament adopted the recommendation for the second reading on the common position.

Pursuant to Article 189b(2)(d) of the Treaty, the Commission must deliver an opinion for the attention of the Council on the amendments adopted by Parliament. In this particular case this opinion amends the Commission's proposal pursuant to Article 189a(2).

II - Comments on the amendments

The European Parliament's amendments may be grouped into several categories. They concern the Directive's legal basis, its scope, the principle of conformity of the goods with the contract, the procedures for invoking the consumer's rights, the possibility of excluding the seller's liability, the producer's obligations, and the final provisions.

1. The legal basis

Amendment 1 is designed to supplement the Directive's legal basis with Article 129a of the Treaty, in particular paragraph 1(a) thereof. Although the Commission has not included this amendment in its amended proposal, it proposes including - by way of compromise in the context of the legislative procedure - a new recital acknowledging that the Community contributes to the protection of consumers' economic interests by the measures it adopts in the context of the internal market, in order to promote consumers' interests and to guarantee a high level of consumer protection. This recital corresponds to the text of the new Article 153 in the version of the Amsterdam Treaty.

2. Scope

Amendment 11, designed to widen the scope of the Directive, has not been accepted because the wording of the article in the common position matches the corresponding provision in the 1980 Vienna Convention on contracts for the international sale of goods. Since many provisions in the proposal for a Directive correspond to the pertinent provisions of the Vienna Convention, it is desirable wherever possible to maintain this parallelism. At any rate Member States may waive this provision by applying the minimum clause when transposing the Directive into their national law.

3. The principle of conformity of the goods with the contract

Amendments 3, 12 and 15 contain certain modifications as regards the principle of conformity of the good with the contract and its implementation.

The first of these amendments has not been accepted because the European Parliament does not propose amending the wording of the corresponding provision in the text itself, and because the current version of the recital better matches the current wording of this article.

Nor has the Commission accepted Amendment 12. Since the wording of the article to be modified is similar to that of the 1980 Vienna Convention concerning an equivalent provision, it is preferable not to accept the modification and to maintain the parallelism. At any rate Member States may waive this provision by applying the minimum clause when transposing the text.

However, Amendment 15, which corresponds to a practical need, will be included in the amended proposal, albeit in a somewhat modified form. The idea here is to resolve the problems raised by the Council at first reading, which had led it to reject this amendment.

4. The procedures for invoking the consumer's rights

The Commission rejects Amendment 33 on grounds of legislative technique. The recitals of a Directive are explanations of the wording designed to facilitate interpretation of its articles. The purpose of recital 14 is to explain that - because of

the specific nature of second-hand goods - it is impossible to replace them. The explanation in the recital is sufficient and so there is no need to include a reference to this recital in Article 3.

Neither does the Commission accept Amendment 18. The Commission had in effect approved the common position in which the Council maintained its ranking scheme. This amendment is not necessary in that Article 3(2) of the common position already provides for bringing the good into conformity free of charge.

Besides, the Commission in its amended proposal has clarified a potential ambiguity in certain language versions (relating to Article 3 (4)), mentioned in the explanatory memorandum of the Council's common position and also raised in the context of the Parliament's second reading. The correction is in line with the explanation of the content of this provision provided by the Council in its explanatory memorandum.

5. The possibility of waiving the seller's liability

Amendment 34 provides that, in the case of contracts for the sale of works of art, collectors' items or antiques, Member States may provide that the parties may contractually waive all liability on the seller's part. The Commission has not accepted this amendment because it considers that in practice this provision would allow professional sellers to exclude liability on a systematic basis in their general terms and conditions.

6. The producer's obligations

The Commission rejects Amendment 5 because it does not correspond to a provision of the Directive.

The Commission accepts Amendment 19. This amendment usefully simplifies the text because it is clear that the final seller, as a professional, may waive his right to seek remedies against the party responsible.

7. Final provisions

Amendments 25, 26, 27 and 28 concern the Directive's final provisions.

Firstly, the Commission accepts Amendment 25. Notably, the Directive's objectives are to guarantee the existence of a common minimal standard in all Member States and to ensure that consumers can make the most of the internal market. In order to safeguard these objectives it is essential that consumers be informed of these new rights and that they be able to rely on a common corpus of rights in all Member States.

Amendment 26 has also been accepted, though the wording has been modified in order to ensure better legislative drafting. In effect this amendment is justified, after the entry into effect of Directive 98/27 on injunctions.

However, Amendments 27 and 28 have not been accepted. Amendment 27 on complaint procedures and remedies is considered to be an overly complex problem and addresses too many questions that lie outside the scope of the Directive. These questions cannot be satisfactorily settled in this context. As regards Amendment 28, the Commission had already approved the Council's common position.

III - Amended proposal

In view of the foregoing, and in accordance with Article 189(a)(2), the Commission's amended proposal incorporates amendments 15, 19, 25 and 26.

**Amended proposal for a European Parliament and Council
Directive on the sale of consumer goods and associated
guarantees**

COMMON POSITION

AMENDED PROPOSAL

Whereas, in order to promote the interests of consumers and to ensure a high level of consumer protection, the Community contributes to the protection of consumers' economic interests through the measures it adopts in the context of the internal market.

Article 2(5)

5. Any lack of conformity resulting from incorrect installation of the goods shall be considered to be equivalent to lack of conformity of the goods with the contract, if the goods were installed by the seller or under his responsibility.

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Article 3(4)

4. If the consumer is entitled to require neither repair nor replacement, or if the seller has not completed the remedy within a reasonable time and without any significant inconvenience to the consumer, the consumer may require an appropriate reduction of the price or have the contract rescinded.

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Article 4
Right of redress

Where the final seller is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain unless he has renounced that

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entitlement. The person or persons liable against whom the final seller may pursue remedies, together with the relevant actions and conditions of exercise, shall be determined by national law.

Article 9
Consumer information

Member States shall provide for measures to inform consumers of the national law adopted to transpose this Directive and shall where appropriate invite professional organizations to inform consumers of their rights.

Article 10
Legislation

The Annex to Directive 98/27/EC⁽¹⁾ of the European Parliament and the Council on injunctions for the protection of consumers' interests shall be supplemented as follows:

"10. Directive 99/.../EC of the European Parliament and Council of ... on certain aspects of the sale of consumer goods and associated guarantees (OJ No L ... of ... 1999, p. ...)".

⁽¹⁾ OJ L 166 of 11.6.1998, p.51.

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