

MBB Policy Briefing

The Malta Business Bureau is the EU-Business advisory office of the Malta Chamber of Commerce, Enterprise and Industry, and the Malta Hotels and Restaurants Association.

Harmonisation of Contract Rules for distance sales of tangible goods (2015/0288 (COD))

The European Commission has submitted proposals targeting a fully harmonized set of rules for business to consumer contracts concerning the online or other distance sale of tangible goods.

The directly explicitly excludes B2B contracts as business organisations did not see the need for their inclusion in the impact assessment. It is believed that binding provisions are not appropriate for BTB transactions where the principle of contractual freedom is favoured. The proposal covers only the sale of tangible goods and does not apply to 'durable mediums' (medium meant to carry digital content such as CDs and DVDs), nor does it apply to the provision of services.

The conformity criteria (Articles 4-5) are pretty standard, in so far that the goods have to conform to what was promised in the contract, which includes presentation of samples and pre-contractual information. This includes to the good being fit for 'any particular purpose' for which the consumer requires them so far as this was made known to the seller and which the seller has accepted. The goods must be delivered, along with accessories, and possess qualities and performance capabilities which are normal in goods of the same type. The consumer must also be made aware of the specific condition of the goods and has accepted this specific condition. If goods are incorrectly installed (Article 6), any lack of conformity in the good resulting from the incorrect installation is regarded as a lack of conformity with the contract, irrespective whether the goods were installed by the seller, or whether the goods were installed by the consumer and incorrect installation was due to a shortcoming in installation instructions.

Article 8 stipulates the relevant time for establishing conformity with the contract. The seller shall be liable from the time when the consumer has acquired physical possession of the goods, or the goods are handed over to the carrier (delivery) chosen by the consumer, where that carrier was not proposed by the seller. In cases where installation is required and carried out by the seller, the time when installation is complete shall be considered as the time when the consumer has acquired the physical possession of the goods. If the goods is intended to be installed by the consumer, the consumer is given a 30-day limit for installation. The time when installation is complete shall be considered as the time when the consumer has acquired the physical possession of the goods. Any lack of conformity with the contract which becomes apparent within two years is presumed to have existed at the time that the consumer has acquired the physical possession of the goods.

Article 9 sets out the consumers options for remedies for the lack of conformity. The consumer shall be entitled to have the goods brought into conformity by the seller, free of charge, by repair or replacement. Repair or replacement must be completed within a reasonable time and without significant inconvenience to the consumer. Consumer will be entitled to a proportionate reduction of the price or to terminate the

contract in cases where repair or replacement are impossible, has not been completed within a reasonable time, or would cause significant inconvenience to the consumer. The consumer shall be entitled to withhold payment until the goods is brought back into conformity. The consumer is not entitled to a remedy if the consumer contributed to the lack of conformity.

Article 11 states that the consumer may choose between repair and replacement, unless this would impose costs on the seller that would be disproportionate. Article 12 stipulates that the reduction of price shall be proportionate to the decrease in the value of the goods which were received by the consumer, compared to the value the goods would have if in conformity with the contract.

Article 13 lays down the consumer's right to terminate the contract. Where the lack of conformity relates only to some of the goods delivered under the contract, the consumer may only terminate the contract in relation to those goods. If the consumer terminates a contract, the seller shall reimburse the price paid within a maximum 14 days from receipt of the notice of termination, and shall bear the cost of reimbursement (no administrative fees). The consumer must return, at the seller's expense, the goods to the seller within a maximum 14 days. If the consumer cannot return due to destruction or loss, the consumer shall pay the seller the value which the non-conforming good would have had at the date when the return was to be made if it has been kept by the consumer without destruction or loss until that date. This is unless destruction or loss was caused by a lack of conformity.

Article 14 states that the consumer shall be entitled to a remedy for the lack of conformity, where this becomes apparent within two years as from the relevant time for establishing conformity (Article 8).

Commercial guarantees (Article 15) are binding on the seller under the conditions laid down in pre-contractual information provided by the seller, advertising, as well as the guarantee statement itself. If the guarantee statement is less advantageous to the consumer than the conditions laid down in pre-contractual information/advertising, those conditions will take binding precedence. The guarantee statement shall be made available on a 'durable medium' (CD, USB, etc), and drafted in plain, intelligible language. The guarantee shall include a clear statement of the legal rights of the consumer within their legal rights and the terms of the commercial guarantee that go beyond the legal rights.

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