WIRTSCHAFTSKAMMER ÖSTERREICH

Position Paper

of the

Austrian Federal Economic Chamber

Amended Proposal for a Directive on certain aspects concerning contracts for the sales of goods

COM (2017) 637 final

(January 2018)

The Austrian Federal Economic Chamber is the legal representative of the entire Austrian business community and represents all Austrian companies – some 480,000 businesses drawn from the areas of Crafts and Trade, Industry, Commerce, Banking and Insurance, Information and Consultancy, Tourism and Leisure, Transportation and Communication. 92,3 % of our members are SME with less than ten employees.

The Austrian Federal Economic Chamber is entered in the register of interest representatives. Registration Number: 10405322962-08.

The Austrian Federal Economic Chamber is strictly opposing **the proposal** for a Directive on certain aspects concerning contracts for the sales of goods **because of the following fundamental reasons.**

- The results of the **Fitness Check** of various consumer Directives, including the Sale-of-Consumer-Goods Directive, show that the **substantive rules of the evaluated directives are capable of addressing the existing consumer problems, including new infringements in the online environment** even if they were adopted before the age of e-commerce kicked in.[1]

Against the background that the Fitness Check considers the **Directives to be still fit for purpose,** even in the context of digitalisation and expansion of online retail trade **there is no justification for creating new, burdensome provisions in the area of legal guarantees.** Cross-border online-sales have more than tripled between 2006 and 2016 (from 6% to 19%). Consumer Trust in cross-border online-sales has tremendously risen as well (from 10% to 58% between 2003 and 2016). In fact, it would have been therefore appropriate to withdraw the initial proposal on online sales instead of extending its scope.

- **A sense of proportion is urgently needed** with regard to legislation in the EU in general and consumer law specifically as the currently published **survey on "Business perception of regulation" reveals exceptionally worrying results.**

According to a recently published survey on behalf of the Commission the perspective of businesses on legislation in the EU is more than alarming. A relative majority of **47% of businesses disagree !** that in the EU legislation **helps companies to be competitive**, **44 % of businesses disagree !** that legislation encourages companies to invest. Furthermore **36% of businesses** consider legislation applying to businesses as **an obstacle to innovation**, and **34% think legislation hampers their business growth.** [2]

- Instead of creating new regulatory requirements, in accordance with the principle of subsidiarity **non-legislative measures would be sufficient**.

The Commission should make reliable information about the concrete implementation of the guarantee scheme in the various Member States easily accessible for entrepreneurs all over Europe. This information should be provided on the website of the Commission in all official EU languages.

- **Basic arguments in favour of the proposa**l that "*traders can sell to consumers in all Member States based on the same contractual terms"* and that the proposal would "*significantly reduce traders' compliance costs"* [3] **do not hold out against objective examinations**.

We cannot but express our deep concerns about the rather misleading way arguments are used in favour of the proposal as they do not correspond to real circumstances.

While **it is true** that **traders have to adapt their contracts** or terms and conditions to **the law of the consumers' home country** (because of Art 6 ROM I) **which really means effort and costs for them**, the **conclusion** that the **proposal would change this situation cannot be followed**. Even if the aspects of legal guarantees were fully harmonised (we doubt that this will be the case, see below), **traders nevertheless** would have to **seek legal advice to adapt to contract and consumer protection laws** of each Member State they wish to sell because of other differences in contract/consumer protection laws (e.g. laws on unfair contract terms). The proposal will not change this situation at all.

[1] SWD (2017) 208 final, 2.

[2] Flash Eurobarometer 451, Business perceptions of regulation, Oct. 2017, 19, 27.

[3] Com (2017)637final, 7; The Factsheets accompanying the initial proposal on online sales argued with the following: „*Businesses will be able to supply digital content and **sell goods** online to consumers throughout the EU **based on the same set of contract law rules**. This will increase legal certainty and create a business friendly environment…..When selling goods, **businesses will save the cost of adapting to the contract law rules of every Member State** they wish to sell in.* http://ec.europa.eu/justice/contract/files/digital_contracts/digital_contracts_factsheet_en.pdf **(15.01.2018)**

Furthermore the need to get professional advice is not even limited to aspects of contractual law, but exists also with respect to pre-contractual information requirements.[4] In addition the fully harmonised provisions on legal guarantees will not save costs for traders in the reviewing process of their contracts/terms and conditions before starting to sell cross-border because trying to deviate from the already existing compulsory provisions on legal guarantees by contracts/terms and conditions is not possible in a legally valid manner.[5]

- **Estimated cost savings up to 10.8 bn. Euro for businesses** currently selling online resulting from fully harmonised rules for the sales of goods[6] are therefore **very far from being convincing.**

As pointed out above businesses will have to check the compatibility of their terms and conditions with the law in other member states also in future. Thus none of them will save the estimated 9000 Euro/per member state. Furthermore the estimated increased cross-border activity which served as the fundament for the estimated cost savings up to 10.8 bn. Euro in total are based on a survey for the CESL-Regulation. The positive answers of businesses now used for calculating cost savings with regard to the current proposal were at that time given to the question if they would increase the number of Member States they sell to, if *"common contract law rules were applied in the EU"*. The pending proposal on the sales of goods will not create such common contracts rules. Therefore, all the calculations on potential cost savings for businesses prove to be unreasonable.

Furthermore, it is extremely disconcerting that the Commission did not at all evaluate the increase of current costs businesses and especially SME would have to bear because of the proposed more severe provisions.

- **Especially SME** that do not engage in cross border e-commerce (e.g. local shops and crafts) will be **negatively affected by new, tremendously burdensome provisions.**

The Impact Assessment of the EP reveals this very clearly: *"All businesses (regardless of whether they sell online and/or offline) would need to adapt to the new rules. Adaptation costs, in this case, would be high (estimated to be around €12 billion).* ***Moreover, businesses selling only offline and only domestically (87% of retailers selling only offline or 1.6 million businesses) would not benefit from the harmonisation of rules across sales channels and the EU. Therefore, their costs would not be counterbalanced by any savings"***.[7]

SME will absolutely have no understanding for more severe legal guarantee provisions (e.g. **extension of the period of the burden of proof from 6 to 24 months; 2-year legal guarantee period also for second hand goods; termination of the contract also in case of minor defects; free use of goods up to 2 years in case of termination of the contract,** see the annex for details) to be paid as a price for the envisaged full harmonisation that will not be reached anyhow.

- **Full harmonisation will not be reached** - in fact, this concept bears the **tremendous risk of completely losing sight of the aim for well-balanced solutions** to the detriment especially of SME.

Unfortunately the concept of full harmonisation bears the tremendous risk of completely losing sight of the aim for well-balanced solutions (e.g. the extension of the burden of proof from 6 months to 2 years), although theoretically full harmonisation would be the preferred regulatory option from the point of view of businesses. Recalling the discussion at EU level concerning the Consumer Rights Directive, we have to remember that the chapters on legal guarantees and unfair terms were dropped. A Europe-wide consensus could not be achieved. Given the pressure of full harmonisation, the

[4] **Contrary to frequent statements** – e.g. also in the Explanatory Memorandum of the proposal – that the CRD had fully harmonised **pre-contractual information requirements**, **full harmonisation was not reache**d in this respect. According to Art 6/8 CRD the information requirements of CRD are **in addition** to information requirements of the E-Commerce Directive and the Service Directive. But not enough with that in addition **Member States are not prevented from imposing additional information requirements** in accordance with those Directives.

[5] May be it is possible in some Member States to reduce the length of the guarantee period for second hand goods.

[6] Impact Assessment on the revised proposal, Commission Staff Working Document, SWD (2017) 354 final, 14.

[7] Impact Assessment of proposed substantial EP amendments extending the scope of the Commission proposal on online sales of goods to offline sales, Study by Milieu Ltd and Europe Economics, 2017, 12. Emphasis added by WKÖ.

institutions involved in the decisions making process were eager to maintain the highest level of consumer protection of each Member State.

Even in the specific area of the proposal on digital content contracts full harmonisation will not be reached.[8] Under the pressure to find a compromise signals from the EP with regard to the sales proposal also point at a solution that is far away from a really harmonised regime initially envisaged with the proposal. Many Member States are opposing the concept as well. Furthermore, the proposal itself contains provisions that are left to the discretion of Member States (e.g. the limitation period – Art 14; additional rules for commercial guarantees – Art 15/5)

Therefore, there is legitimate cause of concern that competition among different national levels of consumer protection to higher and higher levels - leaving the interests of businesses and especially SME unconsidered – has started again and at the end businesses will be faced with new and particularly burdensome provisions posing high costs on them while the fragmentation across Member States will remain in general the same.

- An overwhelming majority of **businesses consider the high costs of guarantees** and returns **as an obstacle to e-commerce**. **Trying to boost e-commerce** with new provisions that tighten up the legal guarantee regime to the detriment of traders and thus make **legal guarantees even more cost-intensive for them seems absurd.**

Even now 55% of those retailers that already sell cross-border **and 61% of retailers that consider** to sell cross-border and **60 % of retailers** that do not sell online at all consider the high **costs ! of** guarantees and returns as an obstacle for e-commerce.[9]

- To our great sorrow, we find **the way the Commission proceeded with regard to this proposal as not compatible** with her own **commitments on better regulation.**

We would like to recall very clearly that **the existing Sale-of-Consumer-Goods-Directive** (1999/44, based on minimum harmonisation) **does not differentiate between online and offline sales**. By hastily presenting a proposal for online-sales in December 2015 instead of evaluating the Sale-of-Consumer-Goods-Directive and other legislative acts first the **Commission has in fact provoked a call by others to extend the scope and thus create a new, extremely burdensome legal guarantee regime for all traders.** With such a - so to say – rather intransparent approach the Commission circumvented her own commitments for better regulation, her clear statements to better listen to those affected by new initiatives.[10] The view that it is not useful to start a legislative procedure for a new legal act with regard to the online sale of goods was shared by EUROCHAMBRES (represents over 20 million businesses) and UEAPME (represents over 12 million enterprises). Both organisations stated in their replies to the consultation of the Commission that especially an evaluation of existing legislation should be carried out before any new regulatory measures were taken.[11]

The Commission stressed her commitment that consultations should be of "*a high quality and transparent, reach all relevant stakeholders and target the evidence needed to make sound decisions*".[12] As the initial proposal was prepared under the guise of boosting the digital single market and cross border e-commerce the many SME not engaged in e-commerce did not even guess to be affected and thus did not even have a chance to "have their say". Furthermore - as pointed out above - the arguments cited by the Commission in favour of the proposal cannot be seen as sound evidence for the decision making process at all.

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[8] For example, according to the Council's General Approach the duration of the liability and the limitation period is left to the discretion of the Member States.

[9] Eurobarometer 413, 34, 40, 48.

[10] Communication „Better regulation for better results - An EU agenda", COM(2015) 215 final, 4: "*The Commission intends to listen more closely to citizens and stakeholders, and be open to their feedback, at every stage of the process – from the first idea, to when the Commission makes a proposal, through to the adoption of legislation and its evaluation.*"

[11] http://www.ueapme.com/IMG/pdf/UEAPME_position_on_Contract_Rules_for_online_purchases_of_digital_content_and_tangible_goods.pdf (15.3.2017); Position Paper – EUROCHAMBRES, 3.9.2015, 7, http://www.eurochambres.eu/custom/ECH_PP_on_contract_rules_for_digital_content_and_tangible_goods_9.2015-2015-00327-01.pdf (15.3.2017); WKO- reply to the consultation, 3.9.2015, 14f, https://news.wko.at/news/oesterreich/WKOe-STN-RL-Vorschlag-Bereitstl.-digitaler-Inhalte.pdf (16.1.2018).

[12] [12] Communication „Better regulation for better results - An EU agenda", COM(2015) 215 final, 4

We, and especially our members, **are deeply concerned about the current proposal**. We recall our position that from the business perspective there is absolutely **no need for new and particularly burdensome provisions** of the proposed directive.

Irrespective of our general, well justified refusal we would like to address some highly important aspects of the proposal in the enclosed annex.

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ANNEX

Some specifically burdensome aspects of the proposal that need to be changed from the business perspective:

Key messages:

- **Extension of the existing presumption period with regard to the lack of conformity from 6 months to 2 years is not justified at all and would encourage abusive consumer behaviour**
- **Termination of the contract in cases of minor defects would mean an unjustified solution to the detriment of traders (Art 9)**
- **Quasi-expropriation of the seller and enrichment of the consumer in the event of termination of the contract is totally unacceptable (Art 13/3 lit d)**
- **Awareness of the defect by the consumer at the time of the conclusion of the contract must not lead to the liability of the trader.**
- **In cases of second hand goods a shorter legal guarantee period of 1 year is urgently needed.**
- **Duty to remove non-conforming goods and to install replacement goods or to bear the costs of it and the restriction of the proportionality-criterion to the relation between repair and replacement completely neglect the interests of traders (Art 10, 11).**
- **Comprehensive information about rights in the event of non-conformity in guarantee statements would lead to further information overload (Art 15).**
- **Administrative penalties and collective actions in "individual" interest in addition to the legal remedies for individual consumers in case of non-conformity are inappropriate (Art 17/2).**

- **Extension of the existing presumption period with regard to the lack of conformity from 6 months to 2 years is not justified at all and would encourage abusive consumer behaviour**

According to Art 5/3 of the Sales-of-Consumer-Goods-Directive (1999/44/EC) a lack of conformity which becomes apparent within six months after delivery of the goods shall be presumed to have existed at the time of delivery. Art 8/3 of the proposal quadruples (!) the existing presumption period to two years. This means that the reversal of the burden of proof applies to the entire warranty period. Provisions in the field of consumer law should be balanced, considering the legitimate interests of both consumers and business alike. Such an extension of the presumption period does not meet these demands in the slightest and is definitely unacceptable from the business perspective.

The solution reached in the Sale-of-Consumer-Goods-Directive is based on a period for which one could convincingly accept the reversal of the burden of proof. The decisive consideration for the drafters of that Directive was that the likelihood that the merchandise had been delivered free of defects increases the longer the merchandise is with the consumer. The longer an item is used, the more likely it is that a defect will result from a handling error, malpractice or wear out. Upon these reasonable grounds the overwhelming majority of 25 Member States apply this six-month period.

Our view, both then and now, is that **half a year is the longest plausible time period for the legal presumption that the defect had already existed at the moment of the delivery of the good.**

The Commission justifies this change as particularly important innovation in the interests of consumers, without significant changes for entrepreneurs, as there would be no differences in practice between the time before and after the (existing) 6-month presumption period. It is not taken into consideration that currently it is the voluntary decision of the seller to be more consumer-friendly, than the law requires. The proposed extension takes away the freedom of action of the company and further restricts commercial freedom. The aspect that traders often do not ask consumers to prove the existence of the lack of conformity at the time of delivery after the 6 months is in fact the best argument against the extension of the presumption period.

Any extension of the presumption period would definitely have negative impacts especially on SME, because costs and the financial risks are the higher the less they can be neutralised by the "law of large numbers". This is clearly shown by surveys.[13]

Consumer expectations that there must **always be someone liable for any problem increase** significantly. Therefore, any **extension of the presumption period** would undoubtedly lead to an **increased use of** this disproportionate preferential treatment **also in completely unfounded cases**. This is a real concern! It should be noted that according to a survey on behalf of the Commission **100% (!) of Alternative-Dispute-Resolution-bodies**, have the view that even the currently **existing rights of legal and commercial guarantees are abused by consumers**.[14]

When speaking about the **risk of "abuse"** of rights the following should also be noted: In the aforementioned study interviewed consumers which had bought a product in the last 2 years prior to the survey and faced a problem in which they personally took the view that there was a real reason for a complaint, were also asked which type of defect the products had. For **9 % of cases the respondents** indicated **that they themselves caused the damage!**[15] This means that the respondents even admitted to a considerable extent, to **have caused the defect themselves**, but anyway **thought there was a real reason for complaint**. Any extension **of the presumption period** would certainly **support such a questionable behaviour** to the detriment especially of SME and in the end to the detriment of all those consumers who behave correctly.

- **Termination of the contract in cases of minor defects would mean an unjustified solution to the detriment of traders (Art 9)**

According to Art 3/5 of the current Sales-of-Consumer-Goods-Directive the consumer is not entitled to terminate the contract if the lack of conformity is minor. Such an exclusion of the right to terminate is missing in the proposal which means an unbalanced, unjustified solution to the detriment of traders. We would like to point out that the proposal on digital content contracts restricts the right to terminate the contract to cases of essential non-conformity (Art 12/5 digital content proposal).

- **Quasi-expropriation of the seller and enrichment of the consumer in the event of termination of the contract is totally unacceptable (Art 13/3 lit d)**

It is totally inappropriate to "punish" the seller who has delivered defect goods and usually bears no fault for the non-conformity and has not even caused it. If it is necessary to terminate a contract, **provisions on restitution have to ensure that there is no enrichment of neither of the parties.**[16] Art 13/3 lit d) **does not meet this need at all.**

For example, a consumer purchases a new car and after twenty months of use the gearstick starts vibrating at a higher speed. The consumer, who would benefit from the 2-year presumption period as well, could terminate the contract and would get back the entire purchase price, if he used the car under normal circumstances (around 10 000 kilometres per year). He would only need to bear the decrease in value, if he used the car intensively (perhaps 50 000 kilometres per year). Even then he

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[13] See Flash Eurobarometer 413, 48: The smaller the company, the more likely that the high cost for guarantees and returns are considered problems, e.g. 55% of companies with 1-9 employees say guarantees and returns would be a problem compared to 41% with 50-249 employees, in case of companies with more than 500 employees the figure drops to 35%. A similar effect is also shown with respect of the company type: Companies that are part of an international group are the least likely to see the cost of guarantees and returns as a problem (34%), Flash Eurobarometer 413, 35.

[14] Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU – Final report, Dec. 2015, 211. The following question was asked: *"Are you aware of consumers abusing their rights under legal and commercial guarantees?"*

[15] Consumer market study, 162, 165. The following questions were asked: *Q16. Thinking about products you purchased during the last 2 years, have you personally experienced any problems with it? The sort of problems we are referring to are those where you felt you had a genuine cause for complaint because the product was faulty or damaged, or didn't work at all. Q17: You indicated that you experienced a problem with <product>? What kind of problem did you experience?*

[16] The existing Sale-of-Consumer-Goods-Directive does not regulate the question of compensation for use in cases of termination of the contract. Rather, according to recital 15 the Member States are allowed to regulate that a reimbursement to the consumer may be reduced to take the use of the goods since the delivery into account. Under current Austrian law in cases of termination it is in principle possible to charge a usage fee - up to the date of termination. Article 13 No. 3 lit d) would exclude such a compensation for use.

would need to bear the decrease in value only to the extent that the decrease in value exceeds depreciation through regular use. Besides the fact that this approach would be extremely complex in practice, **it leads mainly to the result that free use of good constitutes the rule**.

This is not only completely inappropriate in cases of minor defects - such as in the present example – , but even if it is not a minor defect, but occurs only after a long period of time and until then a normal use of the product was possible.

- **Awareness of the defect by the consumer at the time of the conclusion of the contract must not lead to the liability of the trader**

A rule like the one in Art 2/3 of the Sale-of-Consumer-Goods-Directive is essential to make clear that there is no lack of conformity in cases were the consumer knew about the defect at the time of the conclusion of the contract or could reasonably not have been unaware of the defect.

Equally, the fact that the non-conformity is due to a material, supplied by the consumer needs to be considered, as it is in Art 2/3 of the Sale-of-Consumer-Goods-Directive.

- **In cases of second hand goods a shorter legal guarantee period of 1 year is urgently needed.**

- **Duty to remove non-conforming goods and to install replacement goods or to bear the costs of it and the restriction of the proportionality-criterion to the relation between repair and replacement completely neglect the interests of traders (Art 10, 11).**

Art 10/2 provides that the replacement of goods installed by the consumer himself should also include the removal of the non-conforming goods and the installation of replacement goods by the trader. We are aware of the fact that the proposed provisions are – principally - based on the – highly criticised - judgement in Joint Cases C-65/09 and C-87/09 (Weber&Putz) but it is nevertheless a solution that neglects the interests of traders completely.

Remedies in case of non-conformity have to be **shaped in accordance with the rights and obligations as laid down in the original contract.** To oblige the seller to remove the non-conforming goods and to install the replacement goods in cases where the installation of the goods originally purchased was not an obligation of the trader under the contract **goes far beyond what was originally owed to the consumer.** It also means that the trader's liability would be extended to facts and circumstances which occurred after the time of delivery. The **trader that only sells** the products and therefore **only gets the price for the mere sale** from the consumer could be **burdened with tremendous costs many times higher than the price of the goods originally sold.** This is neither a fair nor well-balanced solution.

It has to be mentioned that even the **Court of Justice became aware** of the fact that such a wide-ranging replacement-remedy encompassing the removal of the non-conforming goods and the instalment of the replacement goods was **too burdensome for the seller**. Therefore, the Court of Justice restricted this far reaching remedy insofar, as the consumer's right to reimbursement of the cost of removing the defective goods and of installing the replacement goods may be limited to the payment by the seller of a **proportionate amount** bearing in mind the value of the goods and the significance of the lack of conformity. The proposal does not provide any limitation in favour of the trader. In addition, a limitation in a manner ruled by the Court of Justice would be too complex for practical use.

Furthermore, the proposal considers the **aspect of disproportionate costs** of a remedy for the seller **only with respect to the relation of repair and replacement** but not with regard to the relation of the remedies of the first level to those of the second level. This means that in cases **where only one remedy of the first level is possible** (either repair or replacement) the **trader cannot refuse** this only remedy possible **even if it imposes disproportionate costs** on him.

The unlimited remedy of replacement (encompassing the removal of non-conforming and the instalment of conforming goods) and not giving the trader the possibility to refuse an only possible remedy on grounds of disproportionate costs are absolutely not fair and can in the worst case result in an insolvency, especially if this "sanction" strikes an SME. **Such obligations** are in general burdensome for businesses, with respect to e-commerce they are **obstacles to cross-border-sales** especially for SME as the costs to comply with such excessive duties are in cross-border cases even higher (necessity to send own employees to the countries of the consumers or to build up a service partner-network in all the Member States they sell to).

Even decisions of the Court of Justice can be wrong and such decisions should not uncritically become laws. The Court "creatively" interpreted the Sale of Consumer Good Directive in a law making manner. Only **enshrining this interpretation in law without thoroughly examining the effects** of its results by those **institutions that are the real legislators** has to be **questioned** from the perspective of democratic legitimacy and **the proper institutional balance** as well. Furthermore, such an approach is not compatible with the commitments of better regulation because the effects of law-making rulings of the Court are not and would never be subject of an impact assessment.

Therefore, it has to be clearly stated that the remedies in case of lack of conformity do not go beyond what was subject of the contract of sale. Especially it has to be clarified that the remedy of replacement does not include an obligation to remove the goods from where they were installed and to install the replacement goods in cases where the seller was not obliged under the contract to install the consumer goods originally purchased.

Furthermore, it has to be clarified that in a case where one of the remedies of the first level is impossible the seller may refuse the only remedy possible if this remedy is disproportionate. In such a case the remedies of the second level (price reduction or cancellation of the contract) should be applicable.

The **need to modify the prosed provisions** has even become **more urgent behind the background of the Geoblocking-Regulation** according to which traders will be forced to conclude cross border sales contracts in future (e.g. when the consumer organises the transport himself) even if they have no intention to do so.

In the interest of all parties involved in the contract, in general it would be the best solution to leave the choice of the remedy, be it either replacement or repair, to the seller.

- **Comprehensive information about rights in the event of non-conformity in guarantee statements would lead to further information overload (Art 15).**

According to Art 15/2 lit a) the guarantee statement should include a clear statement of the legal rights of the consumer under the Directive. This would mean that in future a notice about the existence of the legal guarantee and that it is not limited by the commercial guarantee would not be sufficient, but more than that all legal rights need to be stated.

Such an information requirement is difficult to fulfil and would mean additional burden for companies engaged. **It is in any case certainly not the job of companies to inform consumers** in such an exaggerated way **about the legal situation**. To inform consumers on the legal situation is the task of education policy and consumer associations. A sense of proportion when it comes to information requirements is urgently needed from the business perspective.

It is totally incompatible with the full harmonization approach to give member states the opportunity to impose additional provisions for commercial guarantees (15/5).

- **Administrative penalties and collective actions in "individual" interest in addition to the legal remedies for individual consumers in case of non-conformity are inappropriate (Art 17/2)**

It is for well-considered reasons that the Sales-of-Consumer-Goods-Directive (1999/44/EG) does not include such a provision. In addition to the liability towards the consumer, Art 17/2 would lead to administrative penalties and class actions against suppliers in cases where they deliver digital content not in conformity with the contract.

In any case Art 19/2 contains a supplement to the Injunction Directive (2009/22). This Directive regulates the possibility for injunctions for the protection of "collective" consumer interests. An additional possibility for collective actions in "individual" interests as proposed with Art 17/2 has to be rejected.

- **Further issues, which definitely require changes from the business perspective**

- There is absolutely **no need and no valid justification to modify Art 2/1 and 2 of the Sales-of-Consumer-Goods-Directive** (1999/44/EC) which are clear and easy to understand. Creating a new and rather complex regime for the criteria of conformity only causes legal uncertainty.

- The extension of the guarantee period of 30 days to 25 months in cases of self-assembly is not appropriate (Art 8/2).

- In case of minor defects, the right to withhold the payment to the full extent of the price is not justified (Art 9/4).

- Also in cases of replacement the seller should be able to get an appropriate compensation for use (Art 13/3).

- Art 13/3 c would lead to misuse as consumers could always pretend the destruction or loss of a good when exercising the right of termination.