

Brussels, 21 January 2019

Joint industry statement on the proposed Sales of Goods Directive

The co-signing associations represent manufacturers, software providers and sellers that are engaged in cross-border sales and committed to providing high-level quality of services and products to EU consumers. We are concerned that discussions on the proposed Sales of Goods Directive (SGD) do not take sufficiently into account business realities. It is important that the future EU contractual rules on B2C sales benefit both consumers and industry.

Scope

The proposed SGD should apply to goods and their digital elements that are essential for performing the good's main functions and not to all digital content and services incorporated in or interconnected with goods. The latter option would be overly burdensome for sellers, making them responsible for the conformity of all content pre-installed in goods, and could lead manufacturers to include fewer apps and trialware in smart goods. Such a broad delineation of the SGD's scope would also render the proposed Digital Content Directive (DCD) irrelevant to any digital elements incorporated in or interconnected with goods.

Digital content and services updates

We believe that the SGD should not regulate the provision of updates. First, a contractual law Directive is not the appropriate legislative tool to regulate this issue. The concept of providing updates to maintain conformity is not compatible with the legal guarantee regime detailed in the SGD, which provides that the seller is liable only for any lack of conformity present at the moment of sale (passing of risk). Such an obligation is actually in breach of the principles underpinning EU contractual law. Secondly, the cybersecurity certification schemes that will be created under the soon to be adopted Cybersecurity Act will address the handling of security updates for a variety of different types of ICT and CE devices. Adding security updates rules to the SGD seems therefore unreasonable and could create conflicts between the two pieces of legislation. And finally, obliging sellers to provide updates for the duration of the legal guarantee period – which varies across Europe – could be technically impossible to comply with: goods stored in warehouses and sold to consumers long after they were produced cannot be kept up-to-date over an unlimited period of time.

That said, if the EU legislators do decide to include in the SGD an obligation to provide updates, it should be shaped as follows:

- a. The Directive has to clarify that sellers are liable only for making updates available but not for effectively updating the digital content. The latter would be beyond the seller's control, especially where the consumer refused or failed to install a conformity update. Equally, the seller cannot be held liable for providing updates for goods whose hardware is, over time, unable to support updated versions of software.
- b. The length of the obligation to make updates available has to be set to a 'reasonable period of time', which would ensure the alignment between SGD and DCD. Factors

determining what a ‘reasonable period of time’ is should include when the good was produced and the technical specifications of the hardware elements of the good (e.g. memory capacity). We would like to underline that an obligation to provide updates for the duration of the legal guarantee period could be technically impossible to comply with in Member States where legal guarantee periods are lengthy, or, as noted above, in situations where goods are sold to consumers long after they are produced.

Remedies

We caution against introducing rules in the Directive that would mandate the renewal of the legal guarantee period when a good is replaced. The SGD’s rules on remedies for goods not in conformity with the contract should encourage sustainable consumption. A rule envisaging the renewal of the legal guarantee period could entail risks of abuse with endless chains of legal guarantee periods for a series of replaced goods. Additionally, such a rule would effectively extend the liability period for goods, thus substantially increasing costs for sellers and manufacturers, and ultimately for consumers.

We also recommend referring to a ‘reasonable period of time’ instead of a fixed and overly prescriptive one-month deadline for the period during which the repair of a good should be completed. The time required to repair a particular good is determined by various factors: the length of time required to transfer the good from the seller to the manufacturer; the nature of the good or the defect; and how easy it is to obtain any required spare parts. It should be noted that spare parts are sometimes stored in another Member State, or may need to be produced upon request – sometimes by a third party.

About APPLiA

APPLiA - Home Appliance Europe represents home appliance manufacturers from across Europe. By promoting innovative, sustainable policies and solutions for EU homes, APPLiA has helped build the sector into an economic powerhouse, with an annual turnover of EUR 44 billion, investing over EUR 1.4 billion in R&D activities and creating nearly 1 million jobs.

About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.