



EUROPEAN COMMISSION

*Brussels, 11.6.2018
C(2018) 3544 final*

*Mr Reinhard TODT
President of the Bundesrat
Dr. Karl Renner-Ring 3
A – 1017 WIEN*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the amended 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 {COM(2017) 637 final}.

On 9 December 2015 the Commission adopted a proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods, together with the proposal for a Directive on certain aspects concerning contracts for the supply of digital content. These proposals are important elements of the Commission's Digital Single Market Strategy which is among President Juncker's priorities.

During the discussion on the proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods in the European Parliament and in the Council, the need to avoid legal fragmentation by applying different rules for both distance and face-to-face sales was stressed. A number of national Parliaments, including the Bundesrat¹, raised similar concerns against an undesirable fragmentation of the law. By presenting this amended proposal, which extends the scope of the original proposal to face-to-face sales, the Commission responds to the concerns expressed in the legislative process.

The Commission takes seriously the concerns expressed by the Bundesrat on the actual need to further harmonise the sales of goods and the potential implications on the national legal institutions of general civil law.

¹ Communication from the European Affairs Committee of the Bundesrat of 30 March 2016 (37/MT-BR/2016).

In respect of these issues, the Commission would like to provide the following general remarks:

The minimum harmonisation approach of the Consumer Sales and Guarantees Directive² does not encourage consumers to buy from other Union countries or businesses to sell to other Union countries.³ This prevents consumers and businesses from benefiting to the full from the opportunities of the internal market. The objective of the original proposal was therefore to eliminate the key contract law-related barriers hindering cross-border trade in order to remove the problems faced by businesses and consumers due to the complexity of the legal framework and the costs incurred by businesses resulting from differences in contract law. The amended proposal is geared towards this same objective. It contributes even more to it since traders selling or considering selling face-to-face cross-border are likewise affected by the uncertainties and costs stemming from different national contract laws. In addition, the amended proposal avoids negative impacts on traders selling nationally both at a distance as well as face-to-face which would result from different national contract law regimes applying to the different distribution channels. Therefore, the proposal caters for the trend of increased omni-channel sales and responds to market developments, for consumers and businesses.

The Commission takes note of the concerns expressed in the Bundesrats Opinion regarding the implications of the proposal on national legal institutions of general civil law. The proposal, however, does not include provisions on damages for non-conformity or on other general civil law institutions, and the Member States would remain competent to regulate areas which are not covered by the proposal.⁴ During the negotiations in the Council Working Group, the possibility of Member States to apply national provisions on damages has not been questioned so far.

The Bundesrat expresses doubts about the analysis of potential cost savings by traders who want to expand their business to other Member States, which amount to EUR 9,000 per additional Member State. It is questioned that these costs refer to aspects which are covered by the proposal and not to other mandatory consumer protection regulations. The costs of EUR 9,000 per Member State refer solely to contract law related adaptations and have been assessed on the basis of responses gathered in the context of a Small and Medium-Sized Enterprises Panel Survey.⁵ In addition, several legal experts were contacted in each Member State to obtain data on the cost of obtaining legal advice and adapting the terms and conditions of sale to a particular national law. For Austria, for example, a law firm mentioned costs of obtaining legal opinion on the national regime related to legal guarantees in Austria amounting to EUR 5,000 (plus Value

² Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

³ SWD(2017) 209 final, Report of the Fitness Check of consumer and marketing law, p.78.

⁴ Recital 14 of the proposal states: "This Directive should not affect contract laws of Member States in areas not regulated by this Directive."

⁵ SWD2015), 274 (final/2), Impact Assessment accompanying the document Proposals for Directives of the European Parliament and of the Council (1) on certain aspects concerning contracts for the supply of digital content and (2) on certain aspects concerning contracts for the online and other distance sales of goods, Annex 5.

Added Tax) and costs of drafting of conditions of sales (which is the document embedding the legal guarantee) amounting to EUR 10,000 (plus Value Added Tax).⁶

Discussions in the European Parliament and the Council concerning the proposal are underway. The proposal is indicated among the legislative priorities for 2018 in the Joint Declaration of the Presidents of the European Parliament, Council and Commission of 14 December 2017.⁷ Given this commitment, the Commission is confident that an agreement can be reached in the near future.

The Commission acknowledges the importance of subsidiarity and the role of national Parliaments in the legislative process and takes note of the Bundesrat's view that an extension of the eight-week deadline for subsidiarity complaints would be appropriate.

The Commission hopes that these comments address the concerns raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourova
Member of the Commission*

⁶ Study on the costs and benefits of minimum harmonisation under the Consumer Sales and Guarantees Directive 1999/44/EC and of potential full harmonisation and alignment of EU rules for different sales channels, March 2017, p. 42.

⁷ Joint declaration on legislative priorities for 2018-2019, 14 December 2017 (https://ec.europa.eu/commission/publications/joint-declaration-eus-legislative-priorities-2018_en).