



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senát for its opinion on the Proposal for a Directive on certain aspects concerning contracts for the supply of digital content {COM(2015) 634 final} and the Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods {COM(2015) 635 final}.

The main objective of these two proposals is to eliminate contract law related barriers that hinder online cross-border trade. In doing so, they will contribute to the Commission's Digital Single Market Strategy which is designed to unlock the potential of a truly integrated European digital single market (DSM) which will benefit businesses and consumers alike.

The Commission is pleased that the Senát shares the view that the national contract law differences, and when it comes to digital content, the absence of specific legal provisions, hinder cross-border e-commerce.

The Commission welcomes the Senát's general support for the two proposals, for their objective to lower traders' costs and to increase consumer confidence and also for the full harmonisation approach.

At the same time, the Commission notes the Senát's concerns relating, firstly, to the consistency of definitions in different EU law instruments and in particular the differences between the definition of digital content in the digital content proposal and the Consumer Rights Directive 2011/83/EU and, secondly, its concern about the possibility to have different remedies depending on whether the goods are sold at distance/online or face-to-face.

The Commission has substantiated in the Impact Assessment supporting the two proposals the need to act fast both in the areas of digital content and of online and other distance sales of goods. At the time of adopting these proposals the Commission also recognised that harmonising only the rules on online and other distance sales of goods could result in having different rules depending on the way the goods are sold (at distance or face-to-face). Given

*Mr Milan ŠTĚCH
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

the increasing importance of the omni-channel distribution model¹, the Commission therefore committed to take steps to avoid such a result and to ensure that consumers and traders can rely on a coherent legal framework.

As regards the broader definition of digital content in the proposal, the Commission is convinced that only technologically neutral and future proof rules could achieve the main objective of the DSM strategy to create a business-friendly environment while increasing consumers' trust in the DSM. Therefore, it believes that a wider definition of digital content including also digital services is in line with current market trends, creates a level playing field and is the right approach for achieving a genuine DSM.

The Commission is pleased to provide more detailed replies to the concerns and views expressed by the Senát in the attached Annex. It hopes that these clarifications address the issues raised by the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Věra Jourová

Member of the Commission

¹ Businesses which use the omni-channel distribution model offer their products, in parallel, via more than one distribution channel such as physical shops, online presence or otherwise at a distance.

ANNEX

The Commission has carefully considered the issues raised by the Sénat in its Opinion and is pleased to provide the following clarifications.

- On the concerns for creating different legal regimes depending on whether the goods are sold distance/online or face-to-face:

As the Commission has stressed in the Communication accompanying the proposals, it is clearly the Commission's objective to ensure a coherent legal framework throughout the EU for both online/distance and face-to-face sales. The Commission has started a "Fitness Check" of EU consumer and marketing law which covers six directives. In order to swiftly assist the ongoing legislative process on the new proposal for the online and other distance sales of goods {COM(2015) 635 final}, the Commission has made specific arrangements to make sure that the analysis on the alignment of the rules for distance and face-to-face contracts is performed as a matter of high priority. The results of this data gathering will be submitted to the co-legislators to feed into their ongoing negotiations on the proposal.

- On the broader definition of digital content compared to Directive 2011/83/EU:

The Commission has intentionally proposed a broader definition of digital content in comparison to Directive 2011/83/EU, in order to cover also service-like digital content, for example cloud storage, and social media. Such a comprehensive scope of digital content is needed to create a level playing field and avoid discrimination. In fact, the borderlines between different categories are becoming more and more blurred. The Commission wants to avoid a distortion of competition caused by different statutory requirements on providers depending on the design of the product. Furthermore, the technological and commercial pace is so fast that the definition of digital content needs to be general because only then it can be sufficiently future-proof.

Whilst recognising the difference between the digital content definition in the proposal and the Consumer Rights Directive, the Commission wishes to stress that these two instruments address different issues and complement each other. However, the application of the Consumer Rights Directive is currently being evaluated and the report is due in the first half of 2017. In this evaluation, the Commission will in particular assess its rules on digital content, including in the light of the digital content proposal.