



EUROPEAN COMMISSION

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

Dear President,

The Commission would like to thank the Senát for its Opinion on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules {COM(2018)185 final}.

In line with the objectives of the 'New Deal for Consumers' announced by President Juncker in the State of the Union Address 2017¹ and included in the Commission Work Programme 2018², these initiatives are aimed at improving compliance with European Union consumer protection legislation, modernising consumer legislation in light of market developments and alleviating burdens on businesses where appropriate.

The Commission welcomes the Senát's support for its efforts to eliminate dual quality consumer products from the European Union single market and the legislative changes proposed in this respect. Furthermore, the Commission is pleased that the Senát endorses the proposed transparency measures applicable to contracts concluded on online marketplaces.

The Commission takes note of the Senát's view that the proposed amendments relating to the right of withdrawal are not necessary since the rules currently in place are a sufficient guarantee of the rights of the trader. While the Commission will consider these concerns, it would like to reiterate that its proposal does not only aim to reduce burdens for businesses but to make the rules on the right of withdrawal simpler and more predictable for both parties.

The Commission wishes to reassure the Senát that it stands fully behind this right as one of the fundamental consumer rights in eCommerce. The proposal only amends two

¹ https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2017_en

² https://ec.europa.eu/info/sites/info/files/cwp_2018_en.pdf

specific aspects of the right of withdrawal that, according to the Commission's assessment, put excessive burden on European Union businesses, in particular small and medium-sized enterprises, or do not strike the right balance between a high level of consumer protection and the competitiveness of enterprises.

First, the Commission proposes to exempt from the right of withdrawal those goods that consumers have used more than necessary to merely test them ('used' goods). The objective of the right of withdrawal in distance sales is to ensure that consumers have the same possibility to see and check the product as they can in a physical shop. The right of withdrawal was not meant to enable the actual use of the good during 14 days. The proposed changes will simplify the rules for both parties. Sellers will no longer have to deal with the returned 'used' goods, such as organising their resale as second hand goods, and with the establishment of their diminished value. Consumers will no longer face the risk of paying up to the full value of the returned 'used' good when it cannot be resold at all. Rather than increasing the number of disputes between traders and consumers, the proposed changes will actually eliminate the possibility for disputes over the determination of the specific amount of the diminished value.

Second, the Commission has proposed to remove the obligation on sellers to reimburse consumers only on the basis of the proof of having sent back the goods before actually receiving them ('early reimbursement' obligation). The Commission would like to underline that the removal of this obligation has no impact on the allocation of the risk for goods during their sending back to the trader. The current 'early reimbursement' obligation can lead to situations where the seller has reimbursed the consumer on the basis of the proof of dispatch but the good, the transport of which may be legally at the consumer's risk, is damaged during the transport or does not arrive at all. The proposed change therefore offers a more balanced solution whereby the trader reimburses the consumer only after actual receipt of the goods.

The Sénat's Opinion has been made available to the Commission's representatives in the ongoing negotiation with the European Parliament and the Council, and will inform these discussions. The Commission remains hopeful that an agreement will be reached before the next European Parliament elections in 2019.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Sénat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourová
Member of the Commission*