



## EUROPEAN COMMISSION

Brussels, 7.6.2016  
C(2016) 3555 final

*Dear Presidents,*

*The Commission would like to thank the Houses of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation for its Opinion on the Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods {COM(2015) 635 final}.*

*This proposal – together with the Proposal for a Directive on certain aspects concerning contracts for the supply of digital content {COM(2015) 634 final} – is a part of the European Commission's Digital Single Market Strategy which is one of the President Juncker's key priorities.*

*Modernising and simplifying the regulatory framework for online and digital cross-border purchases will encourage more traders to sell online, especially across borders, and will increase consumers' trust in the Digital Single Market (DSM). The proposal will contribute to the faster growth of the DSM by eliminating contract law related barriers that hinder online cross-border trade providing a set of clear uniform rules for businesses and consumers alike.*

*The Commission is pleased that the Houses of the Oireachtas share the view that there is a significant potential offered by the DSM which both consumers and businesses can benefit from. It also welcomes the positive view that the Directive enhances consumer protection rights in Ireland and in other Member States.*

*In respect of the concerns and recommendations, expressed in the Opinion of the Houses of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation, the Commission would like to provide the following general remarks:*

*The Commission is convinced that a targeted full harmonisation of the key consumer contractual rights in the areas covered by the Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods {COM(2015) 635 final}*

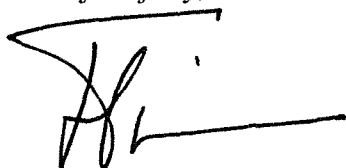
*Mr Seán Ó FEARGHAÍL T.D.  
President of Dáil Éireann  
Houses of the Oireachtas  
Leinster House  
Kildare Street  
IRL – DUBLIN 2*

*Senator Paddy BURKE  
President of the Seanad Éireann  
Houses of the Oireachtas  
Leinster House  
Kildare Street  
IRL – DUBLIN 2*

*is the appropriate solution for achieving the objective of the DSM Strategy. Only full harmonisation can ensure that businesses can sell throughout the EU on the basis of one single set of rules and thereby create lower costs for business and a larger choice at more competitive prices for consumers. Minimum harmonisation and allowing Member States to maintain their divergent national laws would lead to legal fragmentation. While the Commission recognises that in few Member States this approach may lower consumer protection in some specific aspects related to the sales of goods, it is convinced that any such rises will be offset by the general increase of protection as put forward by the Proposal.*

*The Commission is pleased to provide more detailed replies to the concerns and views expressed by the Opinion of the Houses of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation in the attached Annex. It hopes that these clarifications address the issues raised by the Houses of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*



*Frans Timmermans  
First Vice-President*



*Věra Jourová  
Member of the Commission*

## ANNEX

*The Commission has carefully considered the issues regarding the Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods {COM(2015) 635 final} raised by the Houses of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation and is pleased to provide the following clarifications.*

*- On the concerns for fragmentation of the domestic markets and for creating a dual legal regime:*

*The Commission is convinced that only by regulating both cross-border and domestic trade the objectives of the DSM can be fully achieved. Part of the Digital Single Market Strategy key actions are "key mandatory EU contractual rights for domestic and cross-border online sales of goods". Both these dimensions are fundamental and need to be addressed together as they are intrinsically linked. Therefore, when assessing all possible options for achieving the objectives of the DSM the Commission always considered all possible impacts for both cross-border and domestic markets<sup>1</sup>. The Digital Single Market will be unable to reveal its full potential if the domestic transactions are left aside. Such a scenario would create a different set of rules which would be a burden for those companies selling both abroad and domestically. Gains achieved for cross-border transactions would be outbalanced by the costs created through those different regimes. Removing contract law-related barriers will facilitate cross border trade which, in turn, will increase competition in domestic market as well as new businesses will be able to enter the domestic markets offering their goods at competitive prices. Consumers, even if not willing to shop abroad, will benefit from a wider choice and lower prices, thus contributing to an increased household consumption and a higher GDP<sup>2</sup>. Furthermore, such a uniform approach is even more important given the increasing importance of the omni-channel distribution model (i.e. selling at the same time via multiple channels such as directly in a shop, online or otherwise at a distance). The Commission is convinced that it would be by far more beneficial for the businesses to be able to operate under the same rules, independently of the business model they are using, instead of having to spent time, efforts and resources to adapt to diverging rules for cross border and for domestic sales.*

*- On the concern for breach of the principle of proportionality and on the recommendation to allow Member States to provide enhanced consumer protection:*

*The Commission is convinced that the approach it suggested in order to achieve the above-mentioned objective fully complies with the principle of proportionality. Full harmonisation is necessary in order to remove the barriers for both consumers and traders as regards their engagement in e-commerce. Allowing the Member States to go beyond the EU standards in consumer protection would not achieve those objectives. In such a scenario the differences in national laws resulting from national mandatory rules going beyond EU minimum harmonisation will continue to constitute an obstacle to cross-border e-commerce and thus to hinder many businesses from exporting to other Member States. Differences in national*

<sup>1</sup> 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, point 5, pp. 26-39

<sup>2</sup> See for details Impact Assessment (Fn. 1) Annex 4, p.5

consumer protection rules and differences in national contract law were reported as important obstacles to developing online sales to other EU countries by respectively 41% and 39% of retailers who currently sell online.<sup>3</sup> Those businesses will continue to face unnecessary costs<sup>4</sup> because, as it is at the present, they will have to adapt to the diverging national mandatory rules if they are willing to offer their products abroad. The persistence of contract law-related barriers to market entry will continue to limit competition, resulting in less consumer choice and higher prices. Therefore, the Commission is of the opinion that allowing the Member States to provide for an enhanced level of consumer protection beyond the EU acquis would actually be counterproductive as both businesses and consumers would feel uncertain about their rights and obligations when selling or buying across the borders.

The Commission would like to note also that, in full compliance with the principle of proportionality as set out in Article 5 of the TFEU<sup>5</sup>, the proposed Directive would only interfere in the national laws of the Member States to the minimum extent needed to ensure what is necessary for achieving the objectives, while leaving a substantial part of the national contract laws untouched. Such parts would include, for example, rules on conclusion of the contracts, on the validity of contracts, on the prescription periods, on the right to damages, etc.

- On the concern that the Proposal takes retrograde steps thus depriving consumers from remedies and protection under their national laws:

While the Commission acknowledges that the proposal will affect national law and may partially lead to certain decreases of the national level of consumer protection, those possible decreases will be compensated to a certain extent by other rules in the proposal foreseeing a higher level of consumer protection. An example for that is the extension of the reversal of the burden of proof from six months to two years, according to the Commission's proposal, which is a major improvement in the EU consumer protection.

Once the proposal is adopted, consumers will enjoy a uniform set of rules offering them a level of protection which is considerably higher than the currently existing EU acquis. In such a way the Commission will ensure a uniform enhancement of the level of consumer protection throughout the whole EU.

- On the suggestion to create information obligations for the traders to clarify in which Member State they are based and to allow them to apply less onerous set of rules for their contracts

Allowing consumers to know in which Member States retailers are based could indeed be beneficial to them. In that respect the Commission would like to recall that such rules already exist. Detailed pre-contractual information requirements for the traders are provided in the Directive 2011/83 EU on consumer rights allowing the consumers to be aware of the details on the contracts they are entering in. In particular, according to article 6, paragraph 1, points c) and d), consumers are informed before the conclusion of the contract about the geographical address of the trader.

<sup>3</sup> Impact Assessment (Fn. 1), p.10

<sup>4</sup> Impact Assessment (Fn. 1), p.10: Overall additional costs for EU retailers are around €4 billion.

<sup>5</sup> See Explanatory Memorandum to the Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods {COM(2015) 635 final}, p.7