



## EUROPEAN COMMISSION

Brussels, 07.06.2016  
C(2016) 3501 final

*Dear Chair,*

*The Commission would like to thank the Senato della Repubblica for its Opinions 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}.*

*These proposals constitute a substantial element of the European Commission's Digital Single Market (DSM) Strategy which is among President Juncker's priorities. They form part of a broader package of ambitious measures designed to unleash the full potential of the DSM.*

*In fact, the main objective of these proposals is to contribute to the faster growth of the DSM by eliminating contract law related barriers that hinder online cross-border trade. For digital content, where currently no specific contract law rules exist at EU level, businesses face legal uncertainty and consumers suffer economic detriment in case a product is defective. Moreover, Member States are starting to introduce their own digital content-specific laws. Therefore, unless we agree on common rules for digital content, we will see a fragmented legal framework with a patchwork of mandatory contract rules across the EU. This would be costly for businesses who wish to offer digital content in more than one EU Member State and detrimental for consumers who would not have clarity on their rights and not trust their engagement in e-commerce. For goods, where currently there are many differences between national laws, a uniform set of rules would bring legal certainty and create a favourable environment for exporting businesses and consumers.*

*Modernising and simplifying the regulatory framework for digital content and online and other distance cross-border purchases will have beneficial effects for both businesses and consumers. It will encourage more traders to sell online especially across borders and lower their costs, while at the same time it will lead to more products and better offers for consumers, increasing their trust in the DSM.*

*Mr Massimo MUCCHETTI  
Chairman of the Industry Committee  
of the Senato della Repubblica  
Piazza Madama, 1  
IT – 00186 ROME*

*cc. Mr Pietro GRASSO  
President of the  
Senato della Repubblica  
Piazza Madama, 1  
IT – 00186 ROME*

*The Commission is pleased that the Senato della Repubblica shares the view that the proposals are in compliance with the principles of subsidiarity and proportionality.*

*The Commission takes very seriously the opinion expressed by the Senato della Repubblica that a voluntary European standard contract combined with an EU trust-mark would achieve the objectives more effectively and its concern expressed as regards the possible existence of a dual regime for online and other sales and face-to-face sales of goods.*

*The Commission is convinced that a targeted harmonisation of a number of key issues 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. A voluntary European standard contract combined with an EU trust-mark would not achieve this objective, as companies selling goods cross-border will still be obliged to comply with mandatory national rules of the consumer's country of residence, when the latter provide for a higher level of protection than the model contract, and may thus still face the current contract law-related costs. For businesses supplying digital content to consumers, this option would also not eliminate the risk of further fragmentation and therefore may impose additional costs.*

*Our primary goal is to increase the competitiveness of European companies and to allow consumers to be confident when buying cross-border. In order to achieve this we need to act quickly since the pace of market evolution and technology changes due to digitalisation is very fast. The Commission has thus decided in the DSM Strategy to deal as priority with the digital dimension of cross-border sales. Currently, the majority of intra EU cross-border sales are online and goods still represent the lion share of the market. The desired positive growth effects of the DSM strategy cannot be achieved without rules on the online sale of goods.*

*However, as 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 of goods. The consultation and the impact assessment undertaken for the proposal have already identified many issues that are relevant for both methods of sale. Furthermore, 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, the Commission has made specific arrangements to ensure that first preliminary results of the analysis on the alignment of the rules for distance and face-to-face contracts will be available around July this year, and more detailed ones to follow around September. The results of this data gathering could then feed into the ongoing legislative negotiations on the proposal, thereby ensuring a coherent set of rules for both online/distance and face-to-face sales.*

*The Commission would like to underline that it will take due account of the arguments and recommendations submitted by the national Parliaments during the legislative procedure.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Senato della Repubblica and is pleased to offer additional technical clarifications in the attached annex. The Commission 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 each of the issues raised by the Senato della Repubblica in its Opinion and is pleased to offer the following clarifications.

### On the Proposal for a Directive on certain aspects concerning contracts for the supply of digital content:

- The **definition of digital content** is intentionally broader, in comparison to the Consumer Rights Directive (CRD), in order to also cover service-like digital content, such as 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.

- The idea behind Article 19, and the reason why its wording is slightly different from Article 25 of the Consumer Rights Directive 2011/83/UE, is that the **mandatory nature** of the provisions of the proposal should only prevent an exclusion or restriction of consumer rights in standard terms and conditions. On the other hand, at a time when the consumer is already aware of his rights, an amicable settlement is always possible. This is in conformity with the wording of the Consumer Sale of Goods Directive 1999/44/EC.

- Article 14 and Article 2 point 5 of the proposal provide that **damages**, within the scope of the proposal, only refer to any economic damage to the digital environment of the consumer. That would cover the actual damages (*danno emergente*) to the digital environment of the consumer, but not the lost profits (*lucro cessante*). Damages for lost profits are not regulated in the proposal and, as a consequence, the national law applies.

- The right to terminate **long-term contracts** is an additional right granted to consumers in order to avoid lock-in effects and does not affect the rights stemming from the lack of conformity with the contract.

### On the Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods:

- The present different national approaches as to the **notification duty** lead to legal uncertainty and to consumers easily losing well-substantiated claims for remedies in case of delayed or non-notification. Where a consumer actively seeks to buy from a foreign online seller and the seller's law applies, the consumer is likely not aware of a notification obligation resulting from foreign law and will lose his rights. This does not encourage consumers' trust in the DSM. In any case, data shows that consumers are in general rather active and react in a very short time, usually within one week. That is why the Commission decided not to have such a notification duty.

- Article 9(2) is in line with Article 3(3) of the Consumer Sales of Goods Directive 1999/44/EC. The Commission believes the choice of a **reasonable time** for repair or replacement of the defective good is balanced in the interest of both consumers and businesses. The proposal covers a large variety of goods with different characteristics and different reasons for the lack of conformity with the contract. Therefore different time periods may be required to repair or replace them. This approach provides a reasonable solution for consumers without overburdening businesses or giving them an unnecessary long period. Imposing a determined period of time within which the seller has to **reimburse the price reduction** according to what is provided in Article 12 would not allow the parties to have a satisfactory degree of flexibility.
- Online sales are considered as distance sales. **Article 1** refers to the general category of distance sales while the title specifies online and other distance sales in order to emphasise online sales, which represents the biggest share of the distance sales market.
- Article 14 does not contain a specific reference to Article 8 but contains the expression "where the lack of conformity becomes apparent within two years as from the **relevant time for establishing conformity**" which means that the relevant time has to be established according to Article 8.