



EUROPEAN COMMISSION

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*Ms Maria Elisabetta Alberti Casellati
President of the
Senato della Repubblica
Piazza Madama, 1
IT – 00186 ROMA*

Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the Communication 'A New Deal for Consumers' {COM(2018)183 final} and 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 his State of the Union Address 2017¹ and included in the Commission Work Programme 2018², this proposal aims 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 Senato della Repubblica's favourable opinion on the proposal. The Commission is grateful for the opportunity to provide further clarifications to the observations in the Opinion.

As regards unfair commercial practices and the provision concerning dual quality of products, the Commission takes note of the Senato della Repubblica's suggestion to delete the term 'significantly', which refers to different composition or characteristics of a product marketed in one Member State as identical to the same products marketed in several other Member States. The Commission would, however, like to point out that the use of the word 'significantly' reflects the requirement that a commercial practice is to be considered as unfair only if it 'materially distorts or is likely to materially distort' the

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

economic behaviour of an average consumer. If the different composition or characteristics of the product are not significant enough to affect consumers' choice in any way, the practice cannot be considered as unfair.

The Commission takes note of the Senato della Repubblica's proposition to reinsert the reference to 'complaint handling policy', which has been deleted from the list of material information requirements contained in Directive 2005/29/EC³.

The Commission would like to take this opportunity to clarify that a similar requirement existed in Directive 2011/83/EU⁴ (Article 5(1) (d) and Article 6(1) (g)) on Consumer Rights when it comes to information to be provided at the pre-contractual stage, and this requirement is untouched.

On penalties, the Senato della Repubblica considers that non-financial penalties should also be identified and assessed, such as for example temporary suspension of advertising activities. The Senato della Repubblica would welcome further discussion on the criteria for establishing penalties to ensure the balance between the level of the penalties, the extent of the damage and the financial situation of companies. Finally, the minimum amount of 4% of the trader's annual turnover should be reconsidered for reduction due to Italy's economic reality.

The Commission takes note of these concerns and is indeed willing to continue the discussion with the co-legislators, the European Parliament and the Council, on these issues. The Commission would however like to clarify that the listed criteria for establishing penalties are non-exhaustive. In addition, they would apply not only to fines (financial penalties) but also to other penalties, as for example the suspension of advertising activities. The amount of 4% of the trader's annual turnover is designed as the maximum fine that should be available under national law for such cases. Member States' authorities that are co-operating in the framework of Regulation (EU) 2017/2394⁵ may decide on the imposition of fines that are below this maximum threshold, depending on the type of infringement. Regulation (EU) 2017/2394 requires Member States' authorities to ensure proportionality and to comply with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union when imposing fines. The common criteria for the imposition of penalties provided in the proposed rules include taking into account the gravity and nature of the infringement.

Finally, regarding the obligations of the trader in the event of a withdrawal, the Senato della Repubblica believes that the current wording of Article 13(3) of Directive

³ Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests; OJ L 110, 1.5.2009, p. 30–36.

⁴ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council; OJ L 304, 22.11.2011, p. 64–88.

⁵ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004; OJ L 345, 27.12.2017, p. 1–26.

2011/83/EU gives more protection to the consumer than the proposed amendment, therefore Article 2(7) (a) should be deleted.

The Commission wishes to reassure the Senato della Repubblica that it stands fully behind the right of withdrawal as one of the fundamental consumer rights in eCommerce. The proposal only amends two specific aspects of the right of withdrawal that, according to the Commission's assessment, put excessive burden on European businesses, in particular small and medium-sized enterprises.

In this respect, the amendments proposed to remove the obligation on sellers to reimburse consumers only on the basis of the proof of dispatch of the goods, before actually receiving the goods back is meant to address situations where the seller has reimbursed the consumer but the good is damaged during 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 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. Such risk is not expressly regulated in Directive 2011/83/EU and is therefore subject to national general contract law in accordance with Article 3(5) of the Directive.

The Senato della Repubblica's Resolution has been made available to the Commission's representatives in the ongoing negotiation with the co-legislators and will inform these discussions. The Commission remains hopeful that an agreement will be reached before the next European elections in 2019.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourová
Member of the Commission*