



EUROPEAN COMMISSION

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*Mr Liviu DRAGNEA
President of the Camera Deputaților
Palace of the Parliament
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Dear President,

The Commission would like to thank the Camera Deputaților for its Opinion on the amended proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council {COM(2017) 637 final}.

On 9 December 2015, the Commission adopted a proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods together with the proposal for a Directive on certain aspects concerning contracts for the supply of digital content¹. These proposals are important elements of the Commission's Digital Single Market Strategy, which is among President Juncker's ten political priorities.

During the discussions on the proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods in the European Parliament and in the Council, the need to avoid legal fragmentation by applying different rules for distance and face-to-face sales was stressed. A number of national Parliaments raised similar concerns against an undesirable fragmentation of the law. By presenting this amended proposal, which extends the scope of the original proposal to face-to-face sales, the Commission responds to the concerns expressed in the legislative process.

The Commission welcomes the Camera Deputaților's broad support for the proposal. The Commission is pleased to have this opportunity to provide a number of explanations regarding its proposal and trusts that these will address the points raised by the Camera Deputaților.

¹ COM(2015) 634.

While the Commission acknowledges that the proposal will have an impact on national law and that some of its rules may decrease the level of certain aspects of consumer protection in some Member States, other rules in the proposal provide a higher level of consumer protection. An example is the extension of the reversal of the burden of proof from six months to two years.

Once the proposal is adopted, consumers will enjoy a uniform set of rules offering them a level of protection that is overall higher than in the current European Union acquis. Consequently, the Commission does not consider it necessary to introduce transitional periods in addition to the general period for transposition of the Directive².

In response to the more specific comments of the Opinion, the Commission would like to refer to the attached Annex.

Discussions in the European Parliament and the Council concerning the proposal are underway. The proposal is listed among the legislative priorities for 2018-2019 in the Joint Declaration of the Presidents of the European Parliament, the Council and the Commission³. The Commission is confident that an agreement can be reached in the near future.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourová
Member of the Commission*

² The proposal envisages that Member States shall have two years to bring their national laws into conformity with the Directive (Article 20 paragraph 2 of the proposed Directive).

³ Joint declaration on legislative priorities for 2018-2019, 14 December 2017
(https://ec.europa.eu/commission/publications/joint-declaration-eus-legislative-priorities-2018_en).

Annex

The Commission has carefully considered each of the issues raised by the Camera Deputaţilor in its Opinion and is pleased to offer the following clarifications.

- *On the interplay of the proposal with sector specific Union laws on ecodesign, energy labelling etc.*

Regulations implementing Ecodesign or Energy Labelling for specific products do not contain provisions on remedies in case of infringement. However, under Directive 2009/125/EC establishing a framework for the setting of Ecodesign requirements for energy-related products⁴, Member States must establish effective, proportionate and dissuasive penalties for breaches of the national provisions adopted pursuant to the Directive. In addition, according to Regulation 2017/1369 setting a framework for energy labelling and repealing Directive 2010/30/EU⁵, Member States must establish effective, proportionate and dissuasive penalties for infringements of the Regulations and the delegated acts adopted under it.

The Commission proposal on certain aspects concerning contracts for the sales of goods {(COM(2017) 637 final)} foresees remedies for consumers in case of non-conformity. The energy label and other information made mandatory under Energy Labelling or Ecodesign, and communicated to the consumer prior to the contract may be considered as 'pre-contractual statements' and, therefore, may be considered a requirement of conformity in accordance with Article 4(1)(c) of the proposal. In addition, applicable Ecodesign requirements may be considered as requirements of conformity, even if they are not communicated to the consumer prior to the contract, if they consist of "qualities and performance capabilities which are normal in goods of the same type and which the consumer may expect given the nature of the goods [...]" as per Article 5(c) of the proposal.

- *On the revision of the Consumer Protection Cooperation Regulation*

In order to respond better for the challenges stemming from the digital economy and to provide for a more efficient framework for the enforcement of consumer protection laws, the current consumer protection cooperation framework has recently been reviewed. The new Consumer Protection Cooperation Regulation (Regulation (EU) 2017/2394) entered into force on 17 January 2018⁶. The new Consumer Protection Cooperation Regulation will be applicable from 17 January 2020, and at the same time the current Consumer Protection Cooperation Regulation (Regulation (EU) 2006/2004)⁷ will be repealed.

⁴ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products; OJ L 285, 31.10.2009, p. 10–35.

⁵ Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU; OJ L 198, 28.7.2017, p. 1–23.

⁶ 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.

⁷ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation); OJ L 364, 9.12.2004, p. 1–11.

The new Consumer Protection Cooperation Regulation brings a number of improvements for a more solid enforcement of Union consumer protection laws. Amongst others, it enhances the status of national enforcement authorities in cross-border situations by granting them additional powers; it introduces a one-stop-shop approach for addressing widespread infringements with a Union dimension; and it also enhances vigilance and market surveillance by establishing a new Union-wide market alert system, so that emerging threats are detected more rapidly.

The proposal on certain aspects concerning contracts for the sales of goods {(COM(2017) 637 final)} should be listed in the Annex to the new Consumer Protection Cooperation Regulation in order to facilitate cross-border cooperation on enforcement of this Directive. This has been already foreseen in relation to the current Consumer Protection Cooperation Regulation (Regulation (EU) 2006/2004) in Article 19 of the proposal.

- *On transparency of platforms and the liability of platforms in relation to consumer sales*

Online platforms are key enablers of digital trade and online sales of goods and services are increasingly facilitated through them. In this regard, online intermediation services offered by these platforms are distinct from the conclusion of a sales contract between a third party seller who lists his/her goods in the website of the platform and a consumer. It is the latter contracts to which the proposal on certain aspects concerning contracts for the sales of goods refers. Online platforms are usually not a party to these sales contracts and therefore cannot be held liable for non-conformity with the contract concluded between the seller of a good and the consumer. Accordingly, the consumer cannot seek remedies from the platform when the underlying reason giving the right for such remedies lies in a contract to which the platform is not a party.

In some cases, an online platform may not be a mere intermediary but actually sell goods to the consumer. In such a case, it must assume the contractual obligations generated out of its contract with the consumer, and that contract falls within the scope of the proposal on certain aspects concerning contracts for the sales of goods.

In the context of the forthcoming "New Deal for Consumers" legislative initiative, the Commission is considering amending Directive 2011/83/EU⁸ in order to increase transparency when consumers conclude contracts with third parties using online marketplaces. Specifically, online marketplaces could be required to clearly inform consumers about whether the contract is concluded with a trader or an individual, whether consumer protection legislation applies or not, and which trader is responsible for ensuring consumer rights in relation to the contract, such as legal guarantee rights.

⁸ 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.

- *On the need to ensure compliance with Union personal data protection rules*

As pointed out by the Camera Deputaților, any processing of personal data under the proposal should be done in compliance with Union legislation on the protection of personal data. On 27 April 2016, the European Union adopted Regulation (EU) 2016/679 (the “General Data Protection Regulation”)⁹, which entered into force on 24 May 2016 and applies as of 25 May 2018. The Regulation sets forth one comprehensive set of rules directly applicable within the European Union to processing operations carried out by companies and organisations. Companies processing personal data in the course of commercial operations under the proposal are therefore also required to comply with European Union data protection legislation, and in particular the forthcoming General Data Protection Regulation.

- *On the applicability of the proposal to 3D printing, smart goods, Artificial Intelligence (“AI”) and unmanned drones*

Regarding the opinion of the Camera Deputaților on the need for uniform rules applicable to visual modelling files required in the context of 3D printing, the proposal for a Directive on certain aspects concerning contracts for the supply of digital content sets out such a uniform regime applicable to all digital content including visual modelling files as indicated in its Recital 16.

The applicability of the proposal on certain aspects concerning contracts for the sales of goods (COM(2017) 637 final) to smart and connected goods is subject to on-going negotiations between co-legislators. The Commission follows closely the discussions on this important point, and is ready to support any solution that would ensure a proper balance for the benefit of consumers and businesses throughout the Union.

A clear and stable legal framework applicable to the new technologies will boost investments and, combined with research and innovation, will help bring the benefits of these technologies to every business and citizen. Consequently, the Commission will look into liability issues resulting from the advent of the new technologies such as Artificial Intelligence, advance robotics etc. To analyse various aspects of liability an Expert Group on Liability and New Technologies has been set up in March 2018 to assist the Commission in developing principles that can serve as guidelines for possible adaptations of applicable laws at Union and national level relating to new technologies.

The Commission services are working towards specific regulatory proposals related to unmanned drones, which should help unmanned drone services get up and running by the end of 2019. Irrespective of possible national legislation that may be in place or put in place specifically on liability for remotely controlled or fully autonomous drones, drones are aircrafts and as such are covered by national laws and international conventions as far the liability for aircraft is concerned. In this respect, typically aircraft

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); OJ L 119, 4.5.2016, p. 1–88.

are subject to a strict liability regime and the party liable for damage is generally the operator.

- *On the need to adequately protect consumers against misleading practices in the Digital Market*

The Commission proposal on certain aspects concerning contracts for the sales of goods {(COM(2017) 637 final)} would provide consumers with specific remedies where the goods are not in conformity with the contract and other requirements for conformity laid out in Articles 4 and 5 of the proposal. These requirements also take into account any public statements made by the seller or other persons in the chain of transactions including the producer.

Additional safeguards against misleading advertising are provided the Unfair Commercial Practices Directive 2005/29/EC (UCPD)¹⁰. This Directive provides uniform rules across the Union on business-to-consumer commercial practices. It applies to both traditional and online marketing and enables Member States to take action against misleading commercial practices. In the context of the forthcoming "New Deal for Consumers" legislative initiative, a number of measures are being considered to improve traders' compliance with the existing consumer protection law, including the Unfair Commercial Practices Directive. These include more dissuasive and proportionate penalties especially for widespread cross-border infringements, individual right of consumers to redress when they are victims of unfair commercial practices and strengthened injunctions procedure under Directive 2009/22/EC¹¹ with the inclusion of procedural mechanism of collective redress, also in respect of the breaches of the Unfair Commercial Practices Directive.

- *On the fair treatment and protection against discrimination in relation to arrangements for payment and acceptance of sales for customers in non-euro area Member States:*

The issue of fair treatment of European Union citizens, in the context of cross-border sales of goods and services, has been already addressed through another European Union initiative - Regulation (EU) 2018/302 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market¹². This Regulation generally prohibits different treatment of customers on the basis of their nationality and place of residence,

¹⁰ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'); OJ L 149, 11.6.2005, p. 22–39

¹¹ 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.

¹² Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22; OJ L 60I, 2.3.2018, p. 1–15.

including in the context of payments. Under the specific conditions laid down in the Regulation, customers from other Member States are entitled to engage in transactions under the same conditions as a local customer and should have full and equal access to any of the different goods or services offered, though special arrangements may apply in respect of cross-border delivery. The Regulation will apply as of 3 December 2018.

It shall be further noted that under Union law traders are, in principle, free to decide which means of payment and which currencies they wish to accept. However, once this choice has been made, in accordance with the Regulation, traders should not discriminate against customers within the Union by refusing certain transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to customers' nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union.

- *On the need for objective criteria for determining the “reasonable time”, which is necessary to complete a remedy under the proposal*

The reasonable time, within which the seller shall complete a repair and replacement, should indeed be objectively ascertained; this is why Recital 18 of the proposal on certain aspects concerning contracts for the sales of goods provides that the reasonable time for completing a repair or replacement should be objectively ascertained having regard to the nature of the goods and the lack of conformity.

- *On the need for minimum requirements of the right of redress in the proposal*

As noted by the Camera Deputaților, it is justified that where the seller is liable to the consumer because of a lack of conformity resulting from an act or omission by a person in earlier links of the chain of transactions, the seller should have the right to pursue remedies against the liable person. This principle is enshrined in Article 16 of the proposal. Such a regime should not, however, affect the principle of freedom of contract between the seller and other parties in the chain of transactions, and the details for exercising that right, in particular against whom and how remedies are to be pursued, are to be provided by the Member States.
