

European Commission
Rue de la Loi 200

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29 April 2015

The Digital Single Market Strategy – Consumer organisations & e-commerce businesses’ joint call re: online purchases

Dear First Vice-President Timmermans, Vice-President Ansip, Commissioner Jourova,

On behalf of The European Consumer Organisation (BEUC) which represents 41 national consumer associations across Europe and Ecommerce Europe which represents more than 25.000 companies selling products and services online to consumers, **we ask you to ensure that the envisaged on-line consumer purchases initiative will efficiently strengthen consumer trust while facilitating businesses’ cross-border sales.**

E-commerce is growing fast in Europe. Consumers and online retailers need clear and targeted rules which address existing problems and will be quickly adopted by the European legislators. Therefore, our organisations welcome your intention to propose further harmonisation of EU law for online consumer contracts, particularly for digital products, to close the gaps in consumer contract law which would help improve cross-border e-commerce.

For the last 9 months, the 2011 Consumer Rights Directive which fully harmonises nearly all the main aspects of online consumer contracts, has been fully applicable. This new legislation, combined with the new national Alternative Dispute Resolution systems which will be linked from 2016 via a European online platform, will significantly boost cross-border activities by consumers and business.

An additional legislative initiative to harmonise the remaining gaps for online purchases as envisaged in the Digital Single Market Strategy (DSM) and the REFIT exercise on the 1999 Consumer Sales and the 1993 Unfair Contract Terms Directives will complete the legal framework needed for cross-border e-commerce.

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Preference for law harmonisation as the best option

Both our organisations agree that legal harmonisation is the preferred regulatory tool for B2C contract law as the best way to improve cross-border e-commerce above other regulatory means like changing the Rome I regulation, introducing the traders' home country principle or establishing an optional EU system as in the previous Common European Sales Law.

Clarification of Article 6(2) of the Rome I regulation

As long as more complete harmonization will not be achieved and national law systems diverge, Ecommerce Europe and BEUC would prefer a clarification of article 6.2 of the Rome I regulation rather than introducing the traders' home country principle.

We consider that the home option would not solve the differences between the national legal systems and it would lead to a standstill of EU law harmonization. It therefore would undermine the trust and willingness to engage cross-border of European consumers as they would never know whether they would lose rights or not, depending on the traders' home country rules.

This would be counterproductive to the objective of the DSM.

The consumer regime in Rome I serves as a last resort and safeguard. It helps consumers to engage in cross-border purchases as they can be confident that they have at least the protection and rights they are used to in their own country and that the trader will respect their mandatory rights. The fact that article 6.2 is unclear and its impact explained differently however leads to confusion. To date, traders cannot rely on national supervisory authorities or courts explaining Rome I in a consistent and uniform way, thus a compliance risk exists which discourages them from trading cross-border.

Our organizations agree that under article 6.2 the applicable law is the law that parties have chosen albeit respecting the mandatory rights which the consumer has in his country of residence. This means that mostly the traders' home country law can be made applicable and that the contract has to be compliant with that national law system (the traders' home country system).

Consequently, article 6.2 does not impose an obligation on traders to adapt the contract terms to the law of the Member State they sell to. For example, a German company offering goods to consumers in the Netherlands via the Internet does not have to provide the contract based on Dutch law as they can legally make a choice of law in favour of German law. The Rome I regulation only stipulates that if something goes wrong with the purchase, the consumer cannot be deprived from any higher protection standards that would be available in in the consumer's country of residence.

Ecommerce Europe and BEUC would be keen to start a dialogue about how consumers and business should be informed about the mandatory rights which could be applicable to a cross-border contract. Such information could then be made available in a standardized way to consumers and businesses, for example on the European Justice Portal.

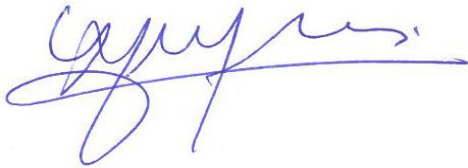
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The Digital Single Market Strategy will only be successful if it provides the necessary well-measured elements which benefit all market players. It will miss its aim if it encourages further fragmentation of rules.

We hope that you will take our call into account when designing the Digital Single Market Strategy and we remain at your disposal for any further information or clarification you might require.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Goyens', with a long horizontal stroke extending to the right.

Monique Goyens
BEUC Director General

A handwritten signature in blue ink, appearing to read 'Marlene ten Ham', with a long horizontal stroke extending to the right.

Marlene ten Ham
Secretary General Ecommerce Europe