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**The way forward on the Consumer
Rights Directive**

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

European Parliament,
Committee on the Internal Market and Consumer Protection

Brussels, 16 March 2010

Ladies and Gentlemen,

I am very grateful to the Committee on Internal Market and Consumer Protection for the invitation to discuss with you, Honourable Members of Parliament, the Commission's proposal for a Consumer Rights Directive.

As you know, I take the protection of consumer rights very seriously. In my previous position as Commissioner responsible for telecoms, I fought to ensure that consumers had more rights, more information and better protection. In these battles, I have been lucky to have the support of the European Parliament.

Today, we are here to discuss the proposed Consumer Rights Directive. This legislation needs to be the cornerstone for consumer protection in the Single Market in the coming years. It is therefore my priority to work with the European Parliament to make a breakthrough on this important legislation. I know that there have been serious discussions on this proposal over many months, both in the Parliament and in the Council. On a proposal of this importance, you have been right – on behalf of all your constituents – to want to make sure that you understand all the implications for consumers. Your dialogue with

national parliaments shows just how serious your examination of the proposal has been.

At the same time, I sense a growing understanding that we now need to move onto the next stage. In this time of economic crisis, it is more important than ever that we work hard and fast to bring clear and strong rights to consumers. Until consumers feel that their rights are protected when they shop across borders, they will limit their purchases to their own countries and won't take advantage of the EU's crown jewel – the Single Market. That is why the proposed Consumer Rights Directive needs to be deliberately ambitious. The current status quo of minimum harmonisation in the existing consumer protection directives does not come close to establishing a real Single Market for businesses and consumers.

Where consumer confidence in the Single Market stands

Ladies and Gentlemen,

We live in a Single Market of more than 500 million consumers. But when you go online and try to shop, you wouldn't realise it. Those 500 million consumers are some of the most tech-savvy, innovation-hungry consumers in the world. But at the moment, the Single Market is letting them down, especially when they go online.

There are many pitfalls: Many websites only let you shop online with an address in a certain country. One survey said that 61% of cross-border transactions cannot be completed because the online shops do not serve the consumer's country.

But online technology gets more consumer friendly all the time. Even though half of EU households have a high-speed internet connection, consumers' lack of confidence still holds them back from shopping online. Another survey showed that only 12% of EU web users feel safe making transactions on the internet.

What's encouraging is that there is strong desire to take advantage of the Single Market. A third of consumers would consider buying online from another country because it is cheaper or better. Sadly, only 7% actually do so. If we give consumers more confidence, we could unlock the full economic potential of Europe's single online market, worth more than €100 billion in revenues.

It is a huge disappointment that more than 20 years after the European single act many citizens in many Member States are actually denied access to the Single Market. Consumers should take advantage of our crown jewel. They should have access to better choices, products and competitive prices.

That is why the Commission's proposal was based on full harmonisation of the most essential consumer rights, as this would go a long way towards making a real Single Market for businesses and consumers.

A single set of consumer rights would make it easier for small businesses, especially for reaching out to consumers across the EU. A single set of rights would boost business's confidence to trade across borders. As a result, there would be fewer refusals of cross-border sales.

A single set of consumer rights would make it easier for the Commission to conduct pan-European information campaigns. Consumers who know their rights will be more confident to purchase from abroad.

For all this to happen, though, a Consumer Rights Directive must be worthy of its name. Consumers must be reassured that the Treaty guarantee of a "high level of consumer protection" is clear in the final text.

I'm aware that achieving these objectives is a complex and detailed task. **Community legislation based on a "full harmonisation" approach must meet a very high standard, both in the quality of the text and in the level of protection that is assured. I understand the concerns of the European Parliament and the Member States.**

Full harmonisation of these cross-border rights means that EU countries may have to adjust some national rules that go further than the proposal.

This has led to concerns among Member States, consumer organisations and European Parliament members that the level of protection would decline and that consumers would be worse off. There are also concerns that full harmonisation makes consumer protection inflexible and curtails the national legislators' ability to react quickly and appropriately to new market developments.

These are legitimate concerns, and I will address them.

In my view, consistently basing the proposal on the most stringent rules that already exist in the 27 Member States is not necessarily the most proportionate way to help consumers.

But it is clear that the proposal as it is today does not offer the right level of protection on all issues. I am therefore ready to work with the Parliament and the Member States to see whether increasing the level of protection for certain rules would lead to a better outcome for consumers, without putting too high a burden on businesses.

I am encouraged by rapporteur Dr Andreas Schwab's working paper, which demonstrates that the Parliament is looking creatively at finding a balanced way forward, in particular, with the idea of carefully targeting areas where there is full harmonisation. **I agree that we should look at whether the harmonisation in the Commission's 2008 proposal is sufficiently targeted towards those issues that have the most benefit from a Single Market point of view.**

In a dossier such as this, we have to look to the most practical solution, and that includes giving serious consideration to the option of more targeted harmonisation. A possibility could be to go for fully harmonised rules on distance contracts and allow diverging national rules for face-to-face contracts. Workable fully harmonised rules for the online world could then pave the way for more harmonisation for off-line contracts at a later stage.

The Consumer Rights Directive

Let me quickly review the main aspects of the proposal and how I see the way forward. The proposal consists of **five** main areas. Some are more difficult to resolve than others, but we will find solutions for all of them.

First, we must find a way forward on **definitions**, which have to be consistent if the overall proposals are going to bring coherent rules to the whole EU. I am confident we can make good progress here. I want to secure full harmonisation of all the definitions and acknowledge the hard work already done to tighten up this aspect of the proposal.

I know that some are arguing in favour of a **mutual recognition clause**. I have strong reservations as to whether this solution will work in the contract law area. Mutual recognition may be a solution for businesses but would shift legal uncertainty on to consumers who would get stuck in the jungle of legal fragmentation. This cannot be the way forward if we want to enhance consumer confidence in the single market.

Second, we must find a way forward on **pre-contractual information**. This is more difficult. Some countries have more detailed rules on specific sectors, such as health services or estate agents, which would be affected by the proposal. This is an area where we may need to be pragmatic, by focusing efforts on those transactions having a strong Single Market dimension, but retaining a minimum harmonisation approach for face-to-face contracts.

Third, we must find a way forward on **direct selling and distance selling**. This is essential for boosting e-commerce. Most governments accept that progress must be made to develop the Single Market. We must fully harmonise these specific rules to allow distance traders and direct sellers to move beyond their national borders. For example, EU rules on the proposed 14-day cooling off period and standard withdrawal forms will give distance traders and direct sellers the legal certainty they need for simplified cross-border trade.

Fourth: the tricky area of **sales contracts**. I believe a distinction has to be made:

- To create a level playing field, we must have rules on product delivery for online sales and who assumes the risk. For example, the rules on delivery diverge from country to country: In Germany, the risk of loss or damage falls on the seller until delivery of the product to the consumer, while in Italy the risk is transferred to the consumer with the conclusion of the contract.
- At the same time, we also must have rules on **consumer remedies and legal guarantees**. Now this is another tricky area. The relationship between the consumer remedies and the national contract law remedies is not always clear. In the UK, there is a right to reject a product. In France, consumers can have a

guarantee for hidden defects in a product. These are typical examples. I do not yet know whether the prospect of achieving full harmonisation of all the remedies for defective products is realistic. Again, this is an area where we should consider an approach differentiating between those contracts with the most compelling Single Market dimension – namely on-line sales – as opposed to face-to-face contracts, in order to advance negotiations.

And finally, we must find a way forward on the proposal to fully harmonise the rules on **unfair contract terms**. A single EU-wide clause on unfairness would do nothing to harm the important role national authorities and courts have in investigating and assessing unfair terms. The purpose of EU rules is to ensure that national authorities and courts follow the same standards when assessing contract clauses. Such rules would not affect their power to assess individual cases. So, we should be able to achieve full harmonisation here.

More challenging is the question how to proceed on the proposed EU-wide lists of terms that are banned or presumed to be illegal, which cannot be added to at national level. One option is to consider the possibility of having a closed list of banned terms only for distance

contracts, with greater flexibility allowed for face-to-face contracts.

Those are the five main issues currently on the table. As I have said today: there has been criticism, and I have heard it. Our common challenge now is to agree a text that balances **businesses'** need for legal certainty with a guarantee for **consumers** of the high level of protection required by the Treaty. **A well-crafted legislative text will work in the interests of both!**

Thank you.

