



The Consumer Voice in Europe

# The new initiative for online and digital purchases

**(Letter sent to Ms. Věra Jourová, Commissioner for Justice, Consumers and Gender Equality on 20 March 2015)**

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## The Consumer Voice in Europe

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20 March 2015

### **Re: The new initiative for online and digital purchases**

Dear Commissioner,

I am writing to ask you about the approach that you and the European Commission will take regarding the announced initiative for online and digital purchases and to inform you as to BEUC's position in this respect.

In principle, BEUC welcomes that the European Commission intends to launch a legislative initiative for online and digital purchases as announced by President Juncker in his speech to the European Parliament in July 2014. However, we are strongly convinced that the announced modification of the proposed Regulation for a Common European Sales Law must provide for a substantial change, both on the nature of the instrument and its content.

BEUC believes the initiative provides a real opportunity to increase consumer confidence in online and digital markets and believes developing consumer confidence must be the principal aim of it. We would like to provide constructive input to these workings. Therefore, please find below some ideas and proposals and a short outline of our main concerns.

#### European model contract for consumer online contracts for tangible goods

In the area of online sales of tangible goods, we have heard that you would consider reflecting on work towards a European model contract, the preparation of which would involve the stakeholders concerned. BEUC would welcome such an initiative, as we have worked on the concept of a European model contract for e-commerce since 2012 and would be happy to provide you with any initial input you would be interested in. Combined with the new ADR and ODR facilities, such a voluntary, European Commission sponsored initiative, would be a win-win project for both consumers and business.

#### A legislative initiative to harmonise certain aspects of digital content/services

In the field of online sales of digital content and services, there is a clear gap in European consumer legislation leading to consumer detriment; it needs to be addressed by a legislative initiative. Several important elements which go beyond the scope of the recent Consumer Rights Directive such as consumers' remedies in case of the purchase of a non-conforming digital content as well as the prohibition of the most unfair contract terms in this field should be harmonised.

European consumers are currently often left in great legal uncertainty as the national laws do not offer clear-cut and appropriate solutions to protect consumers when they buy these products and services. We note that the UK has recently introduced a new regime along these lines. BEUC believes the UK's initiative is a balanced, considered approach and consequently there is a good case for using it as an advanced starting point for a European initiative.

We are however aware that several other options are currently under discussion within the European Commission and believe it is key for you to be aware of our fundamental concerns, based on our long experience in the area of consumer law and policy and the systematic feedback of our members.

#### A single set of rules for online sales of both digital and tangible goods

After an initial consultation of our members, the approach of a single set of rules for all online purchases (including both tangible and digital goods) and potentially on an optional basis, is of significant concern. It would raise the same or similar issues as the proposed Common European Sales Law, for example creating consumer confusion, perhaps lowering protection, disrupting competition, doubling EU law in the same field of law (legal guarantees) and thereby more complexity for traders and consumers alike. If such a dual system were to apply to online and offline sales, there is another source of fragmentation of legal systems, which is exactly what should be prevented.

#### The 'home option'

We have also been told that if the above mentioned single set of rules would not be achievable, the European Commission could consider opting for the so-called "home option", which would entail the application of the country of origin principle (of the supplier) to cross-border consumer contracts.

As consumer protection laws currently stand, implementing the "home option" would lead to a reduction in consumer protection for many consumers shopping across borders. Such a situation would undoubtedly erode consumer confidence in online and digital markets. We are also concerned that such an approach would also lead to further fragmentation of the Single Market and mean no further harmonisation of consumer contract law (which could improve consumer protection and increase consumer confidence). Therefore, we would not be able to support the implementation of the 'home option'.

Overall, BEUC would be extremely concerned if these two options are being seriously considered by the European Commission, given the likelihood that both would undermine, rather than improve, consumer confidence.

However, as set out above, BEUC believes that the initiative does provide a real opportunity to support consumers. As repeatedly stressed, we wish to provide a constructive and helpful contribution to support the European Commission in its efforts to enhance consumer protection and empowerment within the Digital Single Market. Therefore, it is key for us to clarify the exact scope and the nature of the envisaged initiative.

BEUC's proposed 'package' for online consumer contracts

We would be very supportive of a combination of initiatives shaped along the following lines:

- Propose a legislative proposal on digital content/services to complement the Consumer Rights Directive, without any optionality;
- Launch a voluntary initiative for a European model contract for consumer on-line purchases sponsored by the European Commission, endorsed by businesses and by BEUC;
- Link this to the ODR platform and the ADR schemes which will soon be operational, which would be a very interesting illustration of holistic approach and smart regulation;
- Link this to the European trustmark discussion, which has been pending for years;
- Continue with the evaluation of the Legal Guarantees Directive and the Unfair Contract Terms Directive. Propose a review where relevant after thorough assessment;
- Explain the impact of the Rome I Regulation, for example via an interpretative guideline to clarify for SMEs what their concrete obligations are in relation to cross-border selling to consumers and following the ECJ cases on the Brussels I Regulation; the European Commission should present its report on the impact of Article 6 on consumer contracts of Rome I, which was due in 2013.

I would appreciate discussing this with you in order for BEUC and our members to understand the exact scope and the nature of the envisaged initiative and so we are in a position to make the best possible contribution to the ongoing deliberations in your Directorate General and other services - including providing the most useful input to the stakeholder group on online purchases and the new ECGG subgroup on the same topic.

I will also write to Vice President Ansip and First Vice President Timmermans to share our approach and provide them with an outline of our position as above.

With best regards,

Monique Goyens  
Director General

C/c: Ms Renate Nikolay, Head of Cabinet;  
Mr. Eduard Hulicius, Member of Cabinet;  
Ms. Paraskevi Michou, Director General, DG JUST;  
Ms. Despina Spanou, Director, DG JUST.