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Date: 09/12/2015
Reference: BEUC-PR-2015-025

European Commission unveils first Digital Single Market proposals with mixed results for consumers

As part of its Digital Single Market strategy, the European Commission has released proposals which address consumer rights in the digital era¹. The European Consumer Organisation (BEUC) welcomes the rights put forward to protect consumers who purchase *digital* goods and who try to access and use their on-line subscriptions for films, TV programmes and series when travelling across borders.

However, the proposal for online purchases of *tangible* goods would create market fragmentation, confusion for consumers and weaken consumer rights for goods bought on-line in several countries.

Monique Goyens, Director General of The European Consumer Organisation, commented on the proposed law for online purchases of digital goods:

"Closing this gap in consumer protection is long overdue. To date, shoppers buying music files, games or software online do not have clear rights when the product they bought does not function. Today's legislative proposal addresses this problem with granting consumers rights to redress in case the digital good they bought malfunctions or when delivered was not what the trader had promised. We welcome this new initiative as an essential element to promote consumer trust in the digital Single Market.

As regards the tangible goods proposal, Monique Goyens said:

"The European Commission is wide of the mark when it comes to the purchase of tangible goods online. Not only is it proposing to undercut existing essential consumer rights in many countries² it also fragments the market by differentiating off- and on-line shopping rights. Why should the EU offer different guarantee rights to a person who buys a pair of shoes according to whether the purchase is made on-line or in high street?

"The proposal will make it easier for consumers to prove that a defect to their product already existed. However, that will not outweigh the fact that, in at least 12 countries, consumers would lose essential guarantee rights."

With regards to the proposal on portability³ and the communication on copyright, Ms Goyens added:

"Consumers have long been inconvenienced by online subscriptions which become inaccessible as soon as they travel to another EU country for business or pleasure. Often consumers are unable to use the service they are paying for because of outdated copyright laws. Thanks to this proposal, consumers will be allowed to use their online subscriptions regardless of their location in the EU.

"Unfortunately, the new rules will not solve the problem that many Europeans are currently still unable to buy film or video subscriptions from another Member State. The European Commission should consign geo-blocking in the EU to the dustbin of history and allow consumers to benefit from a real digital single market. If consumers could purchase content available in other Member States, they would have less of a reason to turn to piracy."

END

Notes:

¹ Today the European Commission adopted three legislative proposals: a directive on the sales of tangible goods online, a directive on the sales of digital goods and a regulation on the portability of online subscriptions. All three proposals for legislation need to be adopted by the European Parliament and Member States. The European Commission also published a communication on copyright.

² Examples of reduction of rights as a consequence of the proposed rules for on-line purchases of tangible goods:

The Commission's proposal introduces a maximum period of 2-years for the consumer's guarantee right in case of defective products. This provision would amount to a significant reduction of rights in five EU Member States and Iceland and Norway. In Sweden consumers enjoy a three-year legal guarantee whilst in Ireland and the UK there is no specific guarantee period but consumers have 6 years to exercise their rights (5 years in Scotland). Further to this, in the Netherlands and Finland, consumers would be deprived of better protection because their national guarantee period which is based on the expected lifetime of the product – and exceeds two years in many cases – would no longer apply to online purchases.

Example: This means in practical terms, that to date a UK consumer who buys for instance a PC online and which breaks down after 2 and a half year can still claim his/her guarantee rights. In the future this will no longer be possible. Due to the new proposal, consumers in such countries with a longer guarantee period would be better off buying such durable and often more valuable goods in a high street shop, but not on the internet.

The proposal also restricts consumer's ability to choose between different redress options. It stipulates that consumers can only ask for repair or the replacement of the defective good as a first option. This solution would imply a considerable reduction of rights in 7 Member States because a better choice of redress options exists in Greece, Portugal and Slovenia. In Ireland the consumer can claim a refund under national law as a first remedy and in the UK consumers would be deprived of the right to reject. Additionally, we have some variations in the hierarchy of remedies in countries like Denmark where consumers can ask for a refund as a first choice if the defect is significant. In Latvia consumers can claim partial or total refund during the first six months.

Example: To date, a Portuguese consumer who bought a product online which then turns out to be defective a couple of months after the purchase has several options: He can for example claim his money back and cancel the contract. Under the new rules, this well-established right would no longer exist. As a consequence consumers, if unsure about the trustworthiness of an online business, would rather buy in a high street shop so as to keep all options in case of problems.

³ Portability ensures that subscribers to online content services, when temporarily present in other Member States than their home country, can access these services.

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EC register for interest representatives: identification number 9505781573-45



This press release is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).