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Benefits and Cost Savings for Consumers – Communicating about Better Regulation

Dear First Vice-President Timmermans,

At the REFIT platform meeting on 24th November we had a short exchange about the Better Regulation Agenda's development. With this mail I would like to clarify my intervention by giving you a clear example about the persistent deficiency of the Better Regulation rhetoric to strike the balance between on the one hand highlighting cost savings for business and the potential positive impact of EU legislation for citizens/consumers – and costs savings for consumers - on the other hand.

In your Communication on "Completing the Better Regulation Agenda" and its accompanying staff working document, consumers are mentioned with regard to the "New Deal for Consumers"; but it only mentions that simplification of information requirements and of right of withdrawal rules will "help" consumers and save costs for traders.

This is a clear illustration that the **Better Regulation Agenda still needs to reorient its emphasis in order to send the right signal to European citizens/consumers.**

Let me explain why:

The REFIT of consumer law (which was a thorough and well-done exercise) shows that the real problem of consumer legislation and thus of the daily lives of European consumers lies in **non-compliance of traders, lack of enforcement, lack of remedies for consumers in EU law and lack of sanctions** in case of infringements.

Firstly, even though improving this big flaw would perfectly fit into the framework of the new Better Regulation Agenda's focus on enforcement (in the wider sense), the Better Regulation Communication instead chose to highlight elements of the REFIT report which are hardly relevant for consumers. The Better Regulation Communication¹ only mentions:

- The need to simplify one or two information requirements. This was only a marginal finding of the REFIT report (On the contrary the report showed strong support for maintaining most of information obligations²);

.../...

¹ See p. 14 and in the accompanying staff working document SWD (2017) 675, p. 26.

² European Commission, Report on the Fitness check of consumer and marketing law, SWD (2017) 209 final, 60-61.

- The alleged need to “simplify” the rules of the right of withdrawal. This is the one issue in the REFIT report where a lack of evidence³ (for the burdens on traders) was identified. In reality this “simplification” would mean limiting the consumer right to exercise the right of withdrawal - demanded by certain industry players but not based on convincing facts.

Secondly and more importantly, the Better Regulation Communication doesn't mention at all the high potential of **costs savings for consumers**: It is obvious that via better remedies and better enforcement (currently the key problem as identified by the REFIT report), consumer detriment could be reduced and **consumers could save costs of billions of Euros**.

The REFIT report gives robust evidence about the incidence and magnitude of individual consumer harm across a broad array of six important consumer markets. For example, in the examined period of only 12 months, consumers had suffered a financial detriment between about EUR 20 and 60 billion euros⁴. These data clearly point to **the huge potential of costs savings for individual consumers that could be achieved by improving enforcement and redress means to address market failure**.

Regrettably, such potential cost savings for consumers/citizens that could come from measures envisaged in the European Commission's “New Deal for Consumers” are not mentioned at all in the new Better Regulation Communication.

Thank you very much in advance for considering these points in your deliberations on how to make progress and complete the Better Regulation Agenda.

Yours sincerely,

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³ European Commission, Report on the application of the Consumer Rights Directive, COM(2017) 259 final, 4.2.

⁴ The numbers correspond to the final costs of consumers after they sought redress, see Study on measuring consumer detriment in the European Union Report on the Fitness check of consumer and marketing law, 33-34; European Commission – Final Report (2017) DOI: 10.2818/87261, 300.