



May 25, 2011

The European Industry calls on the European Commission, Parliament and Member States for a balanced approach on the Consumer Rights Directive

The signatory organizations representing several thousand companies present on several markets of the Union would like to draw the attention of the national and European policy makers to the potentially negative effect this proposal could have on the economy of this sector by imposing unreasonable burdens and on consumer choice by increasing cost.

The signatory organizations support the idea of enhancing harmonization on consumer rights throughout the European Union, but they strongly call for a balanced approach based on the right balance between the need for a high level of consumer protection and the legitimate interest of industry.

Although the signatory organizations have already expressed serious reservations about the directive, individually and through EMOTA (European Multi-channel and Online Trade Association), they would like to jointly and publicly restate their deepest concerns about some of provisions provided by the directive.

The signatory organizations oppose in particular Articles 16, 17 and 22a of the draft directive. The effect of these three articles will be that a company could be faced with the obligation to pay for the collection of goods (Article 17) that have been used by consumers for 28 days and reimburse the totality of costs to the consumer, even before the goods can be checked for damage or use (Article 16). Additionally, as a result of Article 22a, companies could be forced into a contract outside their country being thus denied the freedom of contract.

The signatory organizations consider that these measures:

- Are contrary to consumer interests because they have a direct impact on the price of the products and consumer choices. Indeed, the total cost of the measures is estimated at 10 billion euros per year;
- Create a very considerable risk to the financial situation of many companies in the Union, in particular very small, small and middle-size companies, many of which will not survive due to the costs generated by these measures ;
- Undermine seriously several fundamental principles of community law and in particular the principle of proportionality, as evidenced by European law experts ;

- Will multiply uselessly the circulation of goods returned by consumers, as these measures will entail a two or five-fold increase in returned items, depending on the products, as can be observed in the case of Germany. This will surely have a negative impact on the environment by a rise of CO2 emissions.

The signatory organizations would like to point out that:

- The absence of any consultation or assessment impact whereas these measures will affect thousands of companies and millions of consumers in Europe ;
- The lack of support of consumers associations. Indeed these measures were not claimed by consumers and which exist, as far as the reimbursement of the costs of returning goods is concerned ;
- The ineffectiveness of the argument that these measures allegedly promote the development of e-commerce, while the sector is experiencing a very rapid growth which could be seriously undermined by such measures.

In this context, the signatory organizations are urging their representatives with the European authorities to refrain from adopting Articles 16 and 22a in their current state, and oppose article 17 such as proposed in the Parliament's last version, in the interest of European companies and consumers and the achievement of the Single Internal Market.

The signatory organizations :

ADIGITAL

Spanish Association of the Digital Economy
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BECOMMERCE

Belgian E-commerce Association
Contact: Marc PÉRIN, Managing Director
Web: <http://www.becommerce.be/>

FDIH

Danish Distance Selling and E-business Association
Contact : Annette FALBERG, CEO
Web : <http://www.fdi.dk/>

FEVAD

French E-Commerce and Distance Selling Federation
Contact: Marc LOLIVIER, General Director
Web: <http://www.fevad.com>

IMRG

English Interactive Media in Retail Group
Contact: James ROPER, CEO
Web: <http://www.imrg.org/>

NETCOMM

Italian E-commerce Association
Contact: Roberto LISCIA, President
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EMOTA

European Multi-channel and Online Trade Association
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THUISWINKEL

Netherlands E-commerce Association
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TOUCHE PAS À MA E-BOUTIQUE

French E-commerce Consortium
Contact: Sandrine LAVIGNE, President
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VERKKO TEOLLISUUS

Internet Industry Finland
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Common position of the European Industry on the proposed directive of the European Parliament and the Council on consumer rights of October 8, 2008, in the process of being adopted

ARTICLE 17

The reimbursement of the costs of returning goods incumbent upon the traders: an excessive requirement which threatens e-commerce directly

Article 17, such as amended by the European Parliament, stipulates that in the case of the exercise of the right to withdraw, the seller shall reimburse, in addition to the price of the product and delivery costs, for any order for an amount exceeding € 40, the cost of returning the product.

The payment by the seller of the costs of returning goods destroys the spirit and equilibrium of Directive 97/7/CE of May 20, 1997.

Such a measure allegedly has extremely severe consequences on the economic equilibrium of numerous companies. On the one hand, because it incites certain consumers to order products without the true intention of buying them and, on the other, due to the financial burden which this places on the companies in the sector, and in particular the very small, small and middle-size companies which sell on the internet whose financial margins are very small.

Certain member countries, such as Germany, have set up a system in which the costs of returning goods are paid solely by the professional. It has been shown that the number of items returned has multiplied exponentially, as the consumer behaves as though he were in an actual store, ordering three products of different sizes and then returning two of them for example.

In this context, the European legislature must be aware that such a measure will necessarily cause remote sellers to include this cost in the prices applied to consumers.

We would like to stress again that the obligation to reimburse the costs of returning products in the case of the exercise of the right of withdrawal is excessive and that this measure, adopted without consultation, or any impact evaluation, constitutes a direct threat for e-commerce.

We are therefore calling for the deletion of this provision or the setting up of a minimal clause, as is the case of Article 11§5 on contracts concluded by telephone.

ARTICLE 16

A reimbursement which is not conditional on the receipt of the item returned: a disproportionate requirement which destroys the contractual equilibrium between the seller and the consumer

Article 16§2 of the proposed directive stipulates that in the case of the exercise of the right of withdrawal, the professional must reimburse to the consumer all the sums paid, within a maximum of 14 days, following proof of the shipment of the item returned.

As the period of reimbursement begins on the date of the proof of the shipment of the item returned, a seller may be obliged to reimburse goods he has not yet received without having had the opportunity to verify the condition of these goods.

Proof of the mailing of the goods is not sufficient; effective receipt is the condition *sine qua non* for triggering reimbursement and thereby minimizing risky conduct on the part of consumers.

We would like it to be stipulated that for sales contracts the seller will be allowed to make the reimbursement once it has received and effectively checked the item returned.

***We consider that it is crucial that the 14-day period granted for reimbursement begin on the date of the effective receipt of the item by the remote seller. The seller receives the item, in an initial stage, in order to verify its condition and then proceeds, in a second stage, to make the refund.
We therefore call for the amendment of this provision.***

ARTICLE 22a
An obligation to deliver to the 27 States:
A requirement which violates the principle of contractual freedom

According to Article 22a, e-commerce websites will be required to deliver throughout Europe. Thus the seller must possess, for its website, a payment system in 13 different currencies, a translation system into 25 languages and delivery contracts in 27 countries.

This delivery obligation is excessive and disproportionate, in particular for very small, small and middle-size companies, of which there are many on the internet. This generates a substantial investment in order to put into place a translation system for the websites into a language which can be understood by the consumer, not to mention the setting up of partnerships with logistics companies. This also is contrary to the freedom which should exist in commerce. Indeed, the seller must be free to select its trading area and the countries to which it wishes to deliver.

***We consider that the obligation to deliver to the 27 member States impedes the seller's freedom to select its trading area.
We therefore call for the deletion of this provision.***