

# DIGITALEUROPE views on the Fitness Check of EU consumer and marketing law

Brussels, 5 September 2016

DIGITALEUROPE welcomes the purpose of the Fitness Check of EU consumer and marketing law, looking at the interplay between the existing consumer acquis. This exercise needs to be conducted to benefit consumers and businesses alike by identifying existing administrative burdens and inconsistencies which are detrimental to a functioning single market.

DIGITALEUROPE believes that on top of sector-specific rules (e.g. telecoms rules, audiovisual media services Directive, etc.), European consumers currently benefit from a strong EU consumer and marketing law framework. This framework offers a high level of protection.

We would like to stress that the efficacy of consumer protection across Europe lies on the proper implementation and enforcement of existing rules rather than on the addition of new layers. Minimum harmonisation contributed to a fragmented implementation of EU law via “gold plating” of provisions by Member States, leading to a complex consumer acquis.

New rules should only be drawn where necessary. In this regard, the Fitness Check and the evaluation of the Consumer Rights Directive (CRD) are essential to maintaining a fit for purpose consumer acquis as well as to ensure consistency with newly published legislation (e.g digital contracts package).

Furthermore, as a principle, DIGITALEUROPE is against the extension of the provisions of the consumer protection directives to B2B relations.

## *Links with the digital contracts package*

We recognise that harmonisation of EU law for digital content and cross-border online sales of tangible goods can provide further confidence and consistency across the Digital Single Market. However, we are still unclear as to why there is a need to introduce new rules and why there is not more focus on promoting existing rules first, in the spirit of the better regulation agenda. A combination of harmonisation to boost trust and the “home option” for businesses to engage in cross-border trade with legal certainty is a pragmatic and sustainable approach.

## Compliance with EU consumer and marketing law

DIGITALEUROPE does not only represent companies involved in B2C relations, however consumer satisfaction is of paramount importance to us. Therefore, on top of the usual benefits for businesses complying with EU consumer and marketing law (e.g. loyalty of consumers, attraction of new consumers), those businesses also should not be subject to administrative and legal proceedings.

Furthermore, consumer legislation forms an enormous part of the body of laws companies need to comply with when conduct their business in the internal market. Inconsistencies within this body of law give rise to legal uncertainty, different interpretations, an unlevelled playing field and administrative burdens. If a well-functioning single market is to be achieved based on non-discrimination and fair competition, the rules must be interpreted in the same way in the different Member States when applied to the different platforms, devices, social media etc. this area is even more cross-border in nature. Different national solutions or interpretations are not viable especially when the trend is to work towards better cooperation between national consumer protection authorities (e.g. the e-commerce package from 25 May 2016: proposal for a revision of the Consumer Protection Cooperation Regulation).

## Information provided to consumers

When the European Commission assesses the format of the information provided to consumer by businesses, it must have in mind that the information to be given to consumers is mandated by law. To ensure compliance with relevant rules, members of DIGITALEUROPE are therefore required to provide very detailed information in their contracts, terms and conditions and other relevant communications with consumers. It is then wrong to assume that using icons, for instance, would simplify the presentation of terms and conditions or pre-contractual information to consumers. Such a “simplified model” would not replace the format of information mandated by the legislation. Icons should only be used on a voluntary basis.

## Choice of remedies

The consumer sales & guarantees Directive provides with a clear indication of available remedies. As a principle there should not be a free choice of remedies available for consumers, but the trader should be first given the option to repair the good. Granting the trader the choice between repair and replacement in the first instance when a product is defective is reasonable and in line with current practice. This rule also avoids situations where in cases of an easily repairable defect, the consumer would be able to opt for direct replacement or refund. This is particularly important for products of high value or personalised products or those that would lose substantial value if returned or resold.

## Legal guarantees

The consumer sales and guarantee Directive offers a sufficient level of consumer protection against defective products. The minimum two years legal guarantee period should not be revisited. More specifically, forcing longer legal guarantees through legislation or other schemes may hamper both competition and consumer choice, whilst increasing the prices paid by all consumers.

## Consumer redress

Because of confusing rules or abuses of certain traders, consumers may sometimes request redress directly with the manufacturers of the defective product – instead of addressing the trader who contracted with the consumer. This creates costs for manufacturers to deal with these requests and a very ineffective solution of the consumer to have his request addressed.

## Definition of consumer

There is no consistent and uniform definition of consumer in EU law and there are also divergences amongst Member States (namely because of the mismatch in transposing the directives). In the current EU consumer acquis, each EU instrument defines the notion of consumer separately for its own purposes. This contributes to fragmentation and creates uncertainties for businesses. The notion of “average consumer” has been clarified by the CJEU. However, there are some concerns if Member States do not stick to that definition thus creating even more fragmentation. If the Commission were to consider further clarification of that notion, it is important to ensure proportionality, clarity, consistency and single-market added-value, keeping in mind the costs linked to new regulatory requirements.

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## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 62 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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