

# DIGITALEUROPE's comments – Directive on certain aspects concerning contracts for the online and other distance sales of goods

Brussels, 15 April 2016

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While DIGITALEUROPE welcomes the full harmonisation approach proposed by the Directive, the current proposal requires some more work to increase trust for businesses to provide sales services – incl. cross-border.

In particular, DIGITALEUROPE calls on:

## **Extending the scope of the Directive to all sales contracts:**

In its current form, the Directive introduces a competing regime for online sales (as opposed to offline sales).

This would provide a competitive advantage to the sales channel, which is the most favourable to the consumer – to the detriment of the other sales channel. This is not the role of the European Commission to promote specific business models.

## **Delivering on full harmonisation:**

Co-legislators must ensure that the full harmonisation approach is maintained throughout the legislative process - as this enhances legal certainty for consumer rights, encourages eCommerce and strengthens the internal market for goods and services.

## **Ensuring the new rules do not create unrealistic and/or unbearable obligations on businesses:**

Article 7 must be amended as it is technically and legally impossible to ensure that high-tech products are cleared from all IPRs – inter alia because of the complexity and breadth of all IPR involved (as an example, technology embedded in a Smart TV-set would typically be covered by at least 10,000 patents). The proposal to extend from 6 months to 24 months the period where the burden of proof lies on the manufacturer carries cost implications and changes should be made to limit such costs.

## **Promoting the circular economy:**

The current proposal does not sufficiently promote a sustainable consumption by placing replacement and repair of product which are not in conformity with the contract (i.e. faulty goods) and by giving the choice of such remedy to the consumer. Allowing the consumer to choose the remedy would lead to a significant increase of the number of electronic devices refunded or replaced rather than repaired – often unnecessarily. Not only this contradicts the EU circular economy policy (which promotes a more sustainable economy and an increased reparability of products), this also has grave consequences for the environment and jobs in the European repair

sector, a cost impact on consumers and industry (leading gradually to price increases for consumer electronics and IT goods), and loss of innovation born through knowledge acquired from repairing defective products.

DIGITALEUROPE believes that the seller should, first, have the right to repair or to replacement to, and only if this fails, the consumer could be entitled to a refund or a reduction of price. We would like to stress that this last option is extremely difficult to assess. A reduction of the price also creates confusion with hidden defects warranty which has a different legal basis, but also as, in the end consumer will retain a non-conform product with a commercial warranty still attached to it. This would make it difficult for the seller to provide appropriate aftersales support, i.e. to determine what is covered by the warranty or not once the price reduction has been agreed. If new remedies such as these are to be considered, as well as for existing remedies, the choice should ultimately be on the seller if the option chosen by customer creates a disproportionate cost for the seller but also if it hinders the latter's ability to service the goods properly.

### **Clarifying provisions on conformity assessment:**

DIGITALEUROPE believes that conformity should continue to be understood as a product being fit for the purposes for which goods of the same description would ordinarily be used. Providing installation instructions (other than safety and security instructions) or other instructions alongside products should not be a requirement to consider a product in conformity; industry practice is now to make such guides available for download on a durable support. Qualities and performance capabilities taken into consideration for assessing the conformity of a product should be limited to the seller and to the producer or its representative, under the conditions already existing under current regulations.

### **Increasing legal certainty for commercial warranty and durable medium:**

We further propose that, in cases where the consumer requests for the text of the guarantee statement to be made available in a durable medium (as art. 15), the seller should be allowed to offer the statement in an electronic format (for instance via email or through a web link). Such a format would be environmentally friendly and sustainable, as no printing or postage would be required. In view of this, we suggest that art. 2 is amended to clarify that electronic formats come under the definition of "durable medium".

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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 60 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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