Tithe an Oireachtais
Houses of the Oireachtas

An Comhchoiste um Poist, Fiontar agus Nuálaíocht

An Cion Polaitiúil maidir le **COM(2015)635** Togra maidir le Treoir ó Pharlaimint na hEorpa agus ón gComhairle maidir le Gnéithe Áirithe a Bhaineann le Conarthaí le haghaidh Earraí a Dhíol Ar Líne agus Ciandíol Eile Earraí.

Eanáir 2016

Joint Committee on Jobs, Enterprise and Innovation

Political Contribution on **COM(2015)635** Proposal for a Directive of the European Parliament and of the Council on Certain Aspects Concerning Contracts for the Online and Other Distance Sales of Goods

January 2016

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31 JEI 024

PART 1

Report of the Oireachtas Joint Committee

Introduction

1. The Oireachtas Joint Committee on Jobs, Enterprise and Innovation, hereinafter referred to as "the Committee", considers **COM(2015)635** Proposal for a Directive of the European Parliament and of the Council on Certain Aspects Concerning Contracts for the Online and Other Distance Sales of Goods to be significantly important to Ireland and the EU.
2. On that basis, the Committee has undertaken initial consideration of the proposal.
3. The Committee has set out a number of points for consideration by the Commission in Part 2 of this document.

Decision of the Oireachtas Joint Committee

Marcella Corcoran Kennedy TD

Committee Chair

(FG)

The Committee agreed to submit a Political Contribution to the EU institutions on **COM(2015)635** Proposal for a Directive of the European Parliament and of the Council on Certain Aspects Concerning Contracts for the Online and Other Distance Sales of Goods, which sets out the initial consideration of this proposal by the Committee. The Committee notes both benefits and negative impacts potentially arising from the proposed Directive, and seeks, by way of this contribution to provide productive feedback to the Commission. The Committee hopes that other Parliaments participate in this process and that a mutually satisfactory Directive can be prepared, one which protects consumers' rights while also providing greater clarity for suppliers.

The Political Contribution, in Part 2 of this Report, was agreed by the Committee on 26 January 2016 and is hereby formally communicated to the European Commission, the European Parliament and the respective relevant Irish Government Minister, the Minister for Jobs, Enterprise and Innovation. The report will also be laid before the Houses of the Oireachtas.

Marcella Corcoran Kennedy T.D.

Marcella Corcoran Kennedy, T.D.,

Chair,

Joint Committee on Jobs, Enterprise and Innovation.

26 January 2016.

PART 2

COM(2015)635 Proposal for a Directive of the European Parliament and of the Council on Certain Aspects Concerning Contracts for the Online and Other Distance Sales of Goods.

The Joint Committee:

1. **Notes that:**
   - **A.** The Digital Single Market (DSM) offers significant potential to benefit both the consumer and retailers/suppliers and simplification of contract rules plays a significant role in enhancing this.
   - **B.** Use of the standards set out in the Directive as a minimum promotes far greater clarity than currently exists. A common approach is to be favoured over a fragmented approach whereby some Member States have regulated and others have not.
   - **C.** The DSM can be enhanced for both the consumer and supplier without recourse to methods which negatively impact domestic consumer protections.
   - **D.** The proposed Directive may enhance the rights of consumers in Ireland and in other Member States in certain instances. This is welcomed by the Committee.

2. **Is concerned that:**
   - **A.** By advancing the DSM, the Commission is potentially fragmenting and damaging the domestic markets of Member States. The proposal appears to create a dual regime which prioritises the DSM over domestic markets. The focus on the DSM is to the greater detriment of domestic markets and the certainty of the consumer as to their rights within the domestic market.
   - **B.** Any proposal which takes retrograde steps in terms of consumer protection serves to deny the citizens of this State, and likely those of others, of rights to which they are currently entitled.
   - **C.** The proposed Directive breaches the principle of proportionality, in particular, by affecting rules applicable at national level and by preventing development and advancement of these rules and rights.[1] The domestic implications of the Directive are excessive, going beyond what is required to achieve the objectives of the Directive.

3. **Is of the opinion that:**
   - **A.** Consumers in each Member State must be allowed to continue to avail of existing remedies and protections which are greater than those provided for in the Directive in the Member State in which they are habitually resident regardless of the mode/method of contracting.
   - **B.** This would allow consumers to benefit from a standardised set of rules when shopping online and purchasing from a supplier outside of their own state. This Directive should set a minimum standard, guaranteeing the minimum rights of consumers in online/distance transactions with the Union.
   - **C.** In order to provide clarity to consumers, online retailers could be obliged to make it clear at the point of purchase, in which Member State they are based.
     - This would allow a consumer to know whether they were entitled to protections guaranteed by their home state; or
     - To determine that the supplier is based in another member state and that therefore the harmonised rules apply.

[1] European Commission, Proposal for a Directive of the European Parliament and of the Council on Certain Aspects Concerning Contracts for the Online and Other Distance Sales of Goods: *Article 3* Level of Harmonisation (2015).

D. This would allow suppliers, by assessing the harmonised rules which would apply to exports, to determine whether or not they wish to enter the broader European market rather than just their own national market.

E. In cases where consumers have an order delivered to an address in another Member State,[2] a provision could be included whereby suppliers would be subject to whichever set of rules were less onerous. This would insulate suppliers from unforeseen contractual responsibilities while prohibiting consumers from abusing protections granted in other jurisdictions.

4. Recommends that:

A. The Commission allow Member States to provide for enhanced protection of consumer rights regardless of the method of contracting, within their own borders.

B. The Commission refrain from undermining existing consumer rights.

C. The Commission consider promoting the DSM through a methodology as set out in point 3 above.

Marcella Corcoran Kennedy T.D.

Marcella Corcoran Kennedy TD
Chair – Oireachtas Joint Committee on Jobs, Enterprise and Innovation

[2] Some services allow for packages to be delivered to boxes linked to customer accounts. Those packages can be transferred from one branch of the service provider to another, in some cases across borders. Such services are often used by consumers to purchase from retailers who won't sell/deliver directly to the State In which they are habitually resident.