



Brussels, 4 March 2011

Mr Andreas Schwab, MEP
European Parliament
15E130
60 rue Wiertz
1047 Brussels

Dear Mr Schwab,

The undersigned trade associations represent specifically the Distance Selling industry in Europe, from E-Commerce and Mail Order to Television Shopping and Direct Response Television.

As you know we have closely followed the discussions on the proposed Consumer Rights Directive for which you are the *Rapporteur*.

In this context, we would like to bring to your attention the serious concerns both our associations have in particular with

- **Article 17.1** introducing free returns for consumers above a goods value of €40, in addition to the 14 days' period after withdrawal proposed by the European Commission for returning the goods;
- **Article 11.1a. b) and c)** introducing a complicated "double-click" procedure for internet orders of services and a burdensome confirmation procedure for orders of services over the phone;
- **Art.22a** giving the consumer the right to ask for delivery in another Member State.

We urge you to carefully consider our comments below and to table, before the decisive plenary sessions of the European Parliament, modified compromise amendments correcting the threats the current provisions of the cited articles pose for distance sellers.

Article 17.1

We have a couple of serious concerns regarding this provision:

1. the extra 14 days' period for returning the goods and
2. the introduction of free returns if the price of the goods to be returned is more than €40.

EMOTA and ERA have never been given any serious argument as to whether the 7 days' period of the Distance Selling Directive would not suffice for say, checking whether a shirt has the right colour or a TV screen the expected size. Art.17.1 proposes even another 14 days, in addition to the extended 14 days' withdrawal period of article 12, for the return of the goods after withdrawal. Further, the IMCO text proposes free returns for goods that cost more than €40.

Hence, we understand that according to the Parliament's proposal, consumers should be allowed to dispose of a product during 28 days without having to

pay for it, and, if its value exceeds €40, even not to pay for its return afterwards. This is totally excessive and disproportionate with regards to the spirit of the right of withdrawal which is to allow customers to check whether the goods correspond to what they had in mind when ordering them.

Currently, the costs for distance sellers resulting from consumers' withdrawals are already significant, even in those EU countries where there are no free returns, which are all except Germany and Finland. Considering that an important proportion of goods sold online cost more than €40 the new provision of article 17.1 excusing consumers from bearing the return costs is likely to leave a large number of companies exposed to the risk of being abused by irresponsible consumers ordering products for temporary use without any serious intention to purchase them. SMEs especially could face a very difficult cash flow situation.

We therefore suggest the provision be amended as follows:

17.1. For distance or off-premises contracts for the supply of goods the consumer shall send back the goods or hand them over to the trader or to a person authorised by the trader to receive them, without undue delay and in any event within the withdrawal period established in article 12, unless the trader has offered to collect the goods himself.

The consumer shall only be charged for the direct cost of returning the goods. He shall not be charged for that cost if the trader has agreed in the contract to bear it.

Article 11.1a. b) and c)

11.1a.b) The "double click" procedure proposed by the IMCO text-confirmation of total price plus confirmation of understanding of total price and price components - would make online orders of services unattractive for consumers and burdensome for traders, especially in the case of mobile e-commerce. There is no need to complicate and slow down the ordering process by a further step. Furthermore, IMCO is already proposing in article 9.1 (c) an extensive information requirement regarding the price.

11.1a.c) For distance contracts for services concluded over the telephone which require immediate payment, this provision introduces particular confirmation requirements on a durable medium.

Today consumers, after reading all necessary preliminary information under the proper distance trading requirements, can safely place an order for both services and goods by telephone, providing a credit card number or, like in France, paying by check. The product or service is delivered or provided to the consumer without a printed confirmation by the trader and without the consumer having to sign and send back any confirmation. After all, there are already mechanisms in place protecting consumers against imprudent orders: the extensive information requirements and the right of withdrawal. The latter allows consumers to verify that what they received is what they intended to order and obliges the trader to reimburse the payments received from them.

The telephone has been for decades an indispensable communication channel for enterprises and consumers for the establishment of a "personal contact" in a distance trading context. Even though the internet develops into a prominent

ordering channel within distance selling, telephone orders are still quite important in many countries, in particular in Eastern and Southern Europe. Article 11.1a ignores these elements of the operational model of distance sales conducted by telephone.

So, we respectfully suggest the deletion of Art. 11.1a.b) and c).

Article 22a

According to this new provision the consumer should be entitled to require the trader to supply the goods or deliver the service in another Member State. This is very worrying.

By no means must the freedom of contract be put into question. Traders must remain free to decide with whom they get into a contractual relationship.

Article 22a should not be adopted.

Thank you for your attention. Please do not hesitate to contact us for any question you may have in this context. Our contact details are listed below.

Yours sincerely,



Susanne Czech , Dr iur
Secretary General
EMOTA



Marcel Avargues
Executive Director
ERA EUROPE

EMOTA is the European trade organisation that represents all aspects of e-commerce and distance selling. Over 2500 European distance traders are represented via EMOTA which has 20 member associations and one cooperation partner. EMOTA advocates a barrier-free European single market for distance sales and collaborates with business partners that actively encourage cross border distance selling across the European territory as a whole. EMOTA's priority is to ensure that all European policymakers are au fait with EMOTA's key issues and recognize the positive contribution of e-commerce and distance selling to the economy and to consumer welfare.

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The Electronic Retailing Association, Europe (ERA EUROPE) , is the association representing European companies involved in retailing products and services directly to the consumer via audiovisual, television and other electronic media, according to a recognized code of ethics.

The association mission is to grow the economic impact and size of the industry in Europe, by increasing the confidence of consumers in Electronic Retailing, by protecting them through Self Regulated industry business standards, while fostering a positive relationship between the industry, consumers and regulators.

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