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6 November 2018

Dear Bill,

Document 13927/17: Amended proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council

Thank you for your letter dated 11th July 2018, in reply to Andrew Griffiths' letter of 18th June, and for your support for our negotiating objectives.

Update

i. Timetable

I would like to update the Committee on progress with the negotiations for this draft Directive. Since our letter of 18th June, a second draft of the proposal was published based on the outcome of the 4th June Justice and Home Affairs (JHA) Ministerial Council meeting. Technical working group meetings are continuing throughout the autumn. There is an ambition to complete EU negotiations on both this file and the related draft Digital Content Directive ('DCD') before the European Parliament elections in May, so it is likely that the EU Presidency will seek to achieve a Council General Approach in December. If so, I will write again in the coming weeks to request that the Committee considers granting a scrutiny waiver.

ii. Consumer remedies

The UK has presented a drafting proposal that sets the regime for consumer remedies at minimum harmonisation, which would allow Member States to retain or adopt provisions on consumer remedies that go beyond existing minimum EU law. This would avoid requiring the UK to weaken certain aspects of its existing consumer remedy regime, such as abolishing the short-term right to reject a faulty good, meeting a key UK negotiating objective. At present, evidence suggests that there is enough support for the UK's proposal to represent a blocking minority. However, these are only initial positions and it will not be debated until late October.

iii. Time limits

On the period within which a fault must arise for the consumer to be entitled to a remedy (known commonly as the 'liability period'), the new draft text reflects JHA Council's desire to set this at minimum harmonisation and this is supported by most Member States. However, we do not yet consider that this drafting fully meets our objectives because the text assumes that Member States have a liability period in the first place. This is not the case in the UK. UK laws provide for limitation periods (six years in England and Wales and five years in Scotland), which serve a different purpose by setting a time limit for pursuing legal action. In practice, the existence of a limitation period acts as a *de facto* liability period because the fault must arise before the deadline for bringing a claim, but it is a distinct legal concept. Our objective is to resist introducing a new concept of a liability period into UK consumer law, and we will therefore press for more clarity in the drafting.

iv. Period for a reversed burden of proof

On the period for the reversed burden of proof in favour of the consumer (during which any fault is presumed to have been present at the time the consumer acquired the goods, unless it can be proven otherwise or unless the presumption is incompatible with the nature of the goods or with the nature of the lack of conformity), Council currently supports setting this at a period of one year, aligning it with the current position in the draft DCD. The existing period in most Member States, including the UK, is six months, so this would represent an increase in consumer protection in the UK.

Interactions with the new European Electronic Communications Code ('EECC')

The Committee asked how the proposed Directive interacts with the new EECC. There are no explicit interactions between the two instruments. There are stronger links between the EECC and the draft DCD, about which I have written separately today. However, the DCD-EECC links are, to a limited extent, relevant to tangible goods, and are summarised below.

EU discussions on the interactions between the EECC and the draft DCD have focused, in part, on how to treat instances in which electronic communication services (as defined by EECC) are bundled together with digital content or services (as defined by DCD). It is possible that such bundles may also contain tangible goods in the form of terminal equipment. The EECC provides that where a bundle comprises, as a minimum, an internet-access service or a traditional number-based interpersonal communication service (i.e. that which is connected to the national numbering plan), then consumer rights as provided for by EECC apply to the whole of the bundle, rather than only the services that EECC regulates.

Furthermore, if a consumer has the right to terminate one element of such a bundle (due to a lack of conformity or failure to supply), then they would have the right to terminate the whole bundle. This helps to prevent a situation in which a consumer might be locked into a bundle in which only some of the services operate, but it is limited to bundles containing terminal equipment, not other types of good, and only where electronic communication services as specified by the EECC are also provided.

The DCD has been amended to clarify that the effects that the termination of one element of a bundle has on other elements of that bundle (such as terminal equipment) shall be governed by national law, but that this is subject to specific rules in the EECC and the DCD itself. It is still to be considered in working groups whether similar amendments to the proposed Sale of Goods Directive are required to reflect the EECC provisions.

Discussions on the EECC also examined the possible responsibility of the consumer to compensate traders in the event of early termination of fixed-term contracts. The EECC provides that the consumer is not liable to compensate the provider in the event of early termination, other than for retained terminal equipment. If the consumer does choose to retain the equipment, the EECC imposes conditions on how such compensation should be calculated.

EU withdrawal

Finally, on EU withdrawal, the Committee will be aware that the Government published its White Paper on the future relationship between the UK and EU on 11th July. Section 1.6.6 sets out the Government's commitment to maintaining high standards of consumer protection in the future relationship and that there should be a negotiated agreement on future cooperation on cross-border enforcement. The European Union (Withdrawal) Act 2018 will retain UK consumer protections that are based on EU law. This means that after we leave the EU, and when buying from UK-based traders, UK consumers will be able to rely on the same rights they have now, delivering stability and continuity for consumers and businesses. This will protect most purchases by UK consumers.

I will continue to keep the Committee updated on the progress of these negotiations. The Committee will note that I have today also provided a written update on the parallel negotiation for the DCD, which is in the interinstitutional ('trilogue') phase.

I am copying this letter to Lord Boswell, Chair of the House of Lords European Union Committee, Les Saunders (DExEU), and Callum Gray (BEIS Scrutiny Coordinator).

Yours sincerely



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Minister for Small Business, Consumers & Corporate Responsibility