



Sir William Cash,  
Chair, European Scrutiny Committee,  
House of Commons  
London, SW1A 0PW

13 March 2019

Dear Sir Bill,

**7876/18: Proposal for a Directive amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules (the “Omnibus Directive”)**

Thank you for your report of 13<sup>th</sup> February. As requested, I am writing to respond to some specific questions you had regarding UK-EU consumer protection after the UK leaves the EU in addition to updating you on progress on the Omnibus Directive.

### **Omnibus Directive**

As I flagged in my letter dated 31 January, we were expecting the Omnibus Directive to be tabled at a Competitiveness Council on 18 February. This however was delayed, and the file instead went to a COREPER meeting on 1 March. The UK was able to achieve the three negotiating objectives that I set out in my letter on 31 January which were anchored by a desire not to see UK consumer protection reduced or limited by the proposals. We therefore supported the text and a mandate was endorsed by COREPER to enter into formal negotiations with the European Parliament.

### **UK-EU Consumer Protection**

You asked for further clarification on how the Government envisions UK-EU consumer protection working in practice within the context of the future relationship with three specific questions. I have addressed these in turn below.

**Do any existing EU arrangements for countries other than the EEA/Switzerland provide a level of reciprocal consumer protection that the Government would consider to be adequate within the scope of the future economic partnership (if so, please provide details of these arrangements)?**

As I noted in my letter of 26 September 2018, cross-border consumer protection is relatively new in the international landscape and there are few trade deals which offer as detailed a framework for cross-border consumer protection as under EU law. Specific consumer protection provisions are not present in most trade deals, whether between the EU and non-EU countries, or between two non-EU countries. Where cross border protection is formalised through agreements between governments, it tends to be through standalone agreements or memoranda of understanding.

**How far do the consumer protection provisions of the EU-Ukraine Association Agreement (see particularly Chapter 20 and Annex XXXIX) go in terms of facilitating reciprocal consumer protection between the two territories?**

The EU-Ukraine Association Arrangement is one of the EU trade arrangements that fall under The Eastern Partnership. This has existed since 2009 and covers the relations between the EU and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The Eastern Partnership is intended to provide a venue for discussions of trade, economics, travel agreements and other issues between the EU and its neighbours. In practice, the trade agreements signed between the EU and Eastern Partnership countries tend to entail the latter changing their laws to match those of the EU, for a very high level of market access. This is the case with the EU-Ukraine Association Arrangement which requires a nearly full approximation of the consumer acquis set out in the annex of the Consumer Protection Cooperation Regulation as well as the Regulations itself. Although this agreement will eventually see levels of consumer protection in the Ukraine being closely aligned to that of the EU, it is unclear whether this would be reciprocal across borders. In addition, although the cooperation envisaged is built around some solid principals such as exchange of information, it is unclear whether there would be any cooperation on enforcement.

**Whether any current EU agreements with third countries, other than the EEA/Switzerland, provide for a high level of participation in the intra-EU legal cooperation mechanisms and infrastructure that facilitate the protection of European consumers (e.g. RAPEX, the EU Rapid Alert System for dangerous non-food products; the European Consumer Centre Network, an EU-wide network of advice centres for consumers shopping across borders; cooperation facilitated by the Consumer Protection Cooperation Regulation).**

There are currently 31 countries using RAPEX (28 EU Member States and Norway, Iceland and Lichtenstein (the EEA)). The General Product Safety Directive provides for access to the Rapid Alert System for Non-Food Consumer Products (RAPEX) to be open to applicant countries, third countries or international organisations, within the framework of agreements between the EU and those countries or international organisations, and according to the arrangements defined in those agreements.

The EU Consumer Protection Cooperation (CPC) Regulation allows cooperation deals between the EU and third countries, but so far none have been agreed. Similarly, there is nothing to stop third countries joining the European Consumer Network, however we are not aware of any third countries who are members currently.

You also noted the Government's recent No Deal technical notice regarding consumer protection in your report and asked the following four questions in relation to this publication.

### **Different application of consumer protection law by member states**

- i) To what extent do Member States have discretion in transposing EU consumer protection law into domestic law to not require businesses to extend these protections to consumers based in third countries? Please provide us with the Government's legal analysis of this point, including a range of examples.**
- ii) To what extent have EU countries, in practice, as the Government states in its guidance, "brought in consumer protections in ... different ways" and "offered different consumer protections to EU-based consumers and non-EU based consumers"? Please also provide us with some relevant examples, as well as an overview of the extent to which the Government has sought to arrive at a comprehensive overview of this issue.**
- iii) To what extent do the Member States have discretion to apply the EU right of withdrawal differently to consumers in third countries, and to what extent they have done so in practice?**
- iv) Are there any other factors which may mitigate these concerns? For example, may some businesses, irrespective of the legal changes brought about by the UK exiting the EU, choose to continue to offer the same protections to UK consumers purchasing goods from them?**

I have answered these questions together. The Government is analysing the potential impact of the UK's withdrawal from the EU on UK consumers, and will keep this under close review throughout the EU Exit process.

EU consumer legislation is addressed to EU Member States and is generally adopted as internal market measures under Article 114 of the Treaty on the Functioning of the European Union. As such, EU consumer legislation is, in principle, intended to confer rights and protections on nationals of the Member States to which it applies rather than nationals of third countries such as the UK post exit.

It is possible that the laws of specific EU Member States might continue to confer protection on UK consumers in relevant circumstances. For instance, current EU-derived UK consumer laws do not distinguish between the nationality of consumers in relation to transactions to which those laws apply.

However, the Government has not undertaken analysis of each Member States' implementation of each EU consumer protection Directive to ascertain the extent to which that might be the case. As the Committee will understand, it would be a significant task to track the implementation of legislation of 27 Member States some of which, in any event, have federal or devolved constitutional arrangements.

It is also possible that EU traders will, as a matter of contract, provide consumers with full rights under EU law and will not distinguish between EU and non-EU consumers. We do not consider that EU traders are prevented from doing so, but the extent to which this will be the case in practice, or it will be practicable for consumers to enforce those rights in the case of dispute, is unclear. This is why we encourage all consumers to check the terms of the contract, whether they are making purchases within the UK or from a non-UK trader.

Recognising the importance of these matters for UK consumers, I would like to draw the Committee's attention to the Government's decision, in the event of a no deal exit, to fund the UK European Consumer Centre for at least one year, until March 2020, so that consumers can continue to contact the Centre for free advice about their rights and protections in purchasing goods or services in EU Member States.

I will continue to keep the Committee updated regularly on the progress of the negotiations and the UK's objectives. 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,

A handwritten signature in blue ink that reads "Kelly Tolhurst". The signature is written in a cursive style with a large, looping initial "K".

**Kelly Tolhurst MP**

Minister for Small Business, Consumers & Corporate Responsibility