

Prot. No. 167
Brussels, June 6 2017

Dear Sir or Madam,

Re: SMEs concerns on the Proposal for Directive on certain aspects concerning contracts for the supply of digital content

UEAPME, the European Association of crafts, small and medium-sized enterprises representing more than 12 million SMEs in Europe, would like to address you on the Proposal for a **Directive on certain aspects concerning contracts for the supply of digital content**.

In view of the Justice and Home Affairs Council meeting on 8 and 9 June, UEAPME would like to stress that the proposals on the supply of digital content and the online sales of goods cannot be viewed in isolation from each other.

Provisions for digital content and tangible goods should be **aligned as much as possible**. Indeed, the line to define whether a product is a tangible good or whether the main function is linked to the digital content will be more and more blurred in the near future. Nevertheless, the scope of applications should be made absolutely clear. In our view, digital content should be limited to software, pictures, music or videos, in other words to every product for which the purchase could technically be concluded through a download, and to goods that are merely a carrier of the digital content.

In addition to this, UEAPME has already pointed out in its position papers its **deep concerns on the provisions regarding the burden of proof in both proposals**. The Commission proposal to introduce an unlimited time for the reversal of the burden of proof for the supply of digital content is excessive. And so is the proposal to extend the presumption period from the existing 6 months to 2 years for the sale of tangible goods.

UEAPME would like to highlight that **provisions in the field of consumer law should be balanced, considering the legitimate interests of both consumers and business alike**. In our view, any extension of the existing 6-month period does not meet these demands. Half a year is the longest plausible time period for the legal presumption that a defect had already existed at the moment of the delivery.

The longer an item or a digital content is used, the more likely it is that a defect will result from a handling error, malpractice, wear out or in the case of digital content from the change of the digital environment of the consumer. Upon these reasonable grounds, the overwhelming majority of 25 Member States applies a 6 months presumption period. Only 3 Member States out of 28 provide a longer **presumption period** than 6 months. Therefore, it does not seem reasonable nor acceptable that a longer period for the reversal of proof, which only exists in 3 Member States, should be imposed as the new standard across the EU.

The Commission argues that such extension will not cause significant changes for entrepreneurs as there would not be major differences in practice. This argument does not take in consideration that currently it is the **voluntary decision of the seller to grant his consumer more than what is required by law**. The proposed extension takes away the freedom of action of SMEs and further restricts commercial freedom. Any extension of the presumption period would definitely have negative impacts, especially on SME.

Fulfilling more severe obligations will increase costs for SMEs all over Europe and it will further deter businesses from the use of e-commerce. This is why the proposal as now formulated will not, in our opinion, boost e-commerce or stimulate innovation. **UEAPME therefore urges the Council to keep the period for the reversal of the burden of proof at the time limit of 6 months.**

Finally, UEAPME would like to share its view on the discussion on the **level of harmonisation of such proposals**. In our view, the only meaningful solution is a full harmonisation approach, provided that the proposals are feasible for SMEs. This would increase legal certainty and transparency for consumers as well as a level playing field throughout the single market for SMEs. UEAPME has always supported the idea that full harmonisation should be the final objective and that legal fragmentation should be avoided. The level of consumer protection with regard to the consequences of a defect should be the same irrespective of the distribution channel. This said, it is of utmost importance to ensure that all the provisions are adapted to SMEs' needs and recourses. A reconciliation of interests and a balanced design of consumer law are of great importance for the competitiveness of SMEs.

UEAPME urges the European Council to carefully assess our analysis and to take decisions that will favour the competitiveness of SMEs and will give consumers more options in the market.

We remain at your disposal for any further information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'V. Willems', enclosed in a light grey rectangular box.

Véronique Willems
Secretary General