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**TREATY OF LISBON. REVISION OF THE CONSUMER ACQUIS
AND CONSUMER REDRESS**

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- ES GILT DAS GESPROCHENE WORT -

*Das Forum Constitutionis Europae ist eine gemeinsame Veranstaltung des
Walter Hallstein-Instituts und der Robert Bosch Stiftung.*

I am delighted to have this opportunity to address you on the transformation of European Consumer Policy law. Being here with you today, in Berlin - at the centre of the new Europe, it is striking that we are living in a privileged moment. We meet here today, as citizens of a continent uniquely reunited and bound together by the rule of law and the working of rights. As a prophet of liberal democracy, Wilhelm Von Humboldt would no doubt have been pleasantly surprised that his vision of fundamental rights could have found such resonance on a European scale. But as his example shows, for each generation it is not enough to know the law, you must use it to shape a better reality!

When I redefined Europe's consumer strategy last year, my aim was to give power to consumers and new opportunities to business large and small. For consumers to use the power of choice and comparison in making economic decisions, they must have businesses working across borders to compete for their custom. But as things stand, for historical reasons consumer law is currently a jigsaw of minimum harmonisation topped up with different national elements. In place of consumers and businesses benefiting from the power of a single retail internal market, we have 27 mini-markets. This is all the more important for small and medium sized businesses.

Law is the mediation between reason and rights. As economic decisions increasingly shape critical choices for people, their economic sovereignty and economic rights need to be ensured in modernised laws adapted to changing behaviour. This especially relevant in the online world where traders and consumers operate in a world without borders.

In today's Europe the law is seen as means to empower, where in the past it tended to be viewed predominantly as a means to prevent. For the European Commission better regulation is at the heart of our work. So in looking at the modernisation of European consumer law, we need to build consumer trust through effective and relevant laws underpinning consumer rights, and we need to simplify the legal environment for business to ensure a proportionate single set of rules for a single retail market. This involves a fundamental overhaul of consumer law from commercial practices to consumer contracts.

One important step has already been taken. The Unfair Commercial Practices (UCP) Directive is now in force and is being implemented in almost all Member States. UCP provides both consumers and traders with a single European set of common rules which apply to virtually all unfair "business to consumer" commercial practices in the EU. We now have a single concept and definition of what constitutes "unfair commercial practices" and the Directive has introduced a new general prohibition against these practices. The Directive also designates misleading and aggressive practices as specific categories of unfair practices, and spells out which commercial practices are banned in all circumstances – all over the EU.

Unfair Commercial Practices will transform life for both consumers and businesses within the EU, providing the same rights and obligations for all. But there is still a need to do this in relation to consumer contract law.

By the Autumn I hope to be ready to table the most far-reaching overhaul of European consumer law in 20 years by presenting a Framework Directive on Consumer Contractual Rights. This will simplify, regroup, align and harmonise the Distance Selling Directive, the Doorstep Selling Directive, the Unfair Contract Terms Directive and the Sales Directive.

Due to minimum harmonisation the Member States have transposed the consumer contract law directives very differently. Just to mention a few examples, different lengths of cooling off periods apply. Different information requirements are imposed. Indeed, consumers even have different rights and obligations when a good they have bought turns out to be faulty.

There are also inconsistencies between the directives. Different definitions are used and sometimes it is not clear which Directive actually applies. For instance when a sale has been

initiated by a doorstep salesman, but completed on the Internet. Given changes to technology, markets and consumer behaviour, the legislation needs to be updated.

The new Framework Directive would aim to harmonise certain key elements of Consumer Contract Law. This would increase consumer confidence and drive down the costs of doing business cross border. This proposal will result from a comprehensive Impact Assessment, following extensive consultations on the Green Paper and related issues. I would like to take this opportunity to thank so many leading universities for their invaluable legal contributions. In the true Von Humboldt spirit, the world of learning must keep the world of decision-making on its toes!

Until the Impact Assessment process is complete I will not be in a position to confirm the details of any future directive. However, a number of issues are clearly on the legal and economic radar screen.

- For example, information requirements. Transparency is critical to choice and essential to contract trust. What information must be provided before and after the conclusion of the contract? Today the requirements vary both between the different directives and between the Member States (due to "gold plating"). In this context simplification is the key word. Our starting point is that the situation can be clarified by aligning as far as possible the information that must be given, whether in the context of distance, off premises or on premises. We may also take more account of material information that (in accordance with UCP) must be given at the time of an invitation to purchase. Emerging technology like mobile phone based m-commerce may set limits on how information may be given.
- Second, the right of withdrawal. Real choice means the right to switch. This is currently a minefield, with different lengths of "cooling off periods" depending on the means of sale and the Member State in question. Sometimes there are detailed rules; and sometimes no rules at all regarding the modalities for exercising the right of withdrawal.
- Sometimes there is a right to impose a cost on the consumer for returning the good; and sometimes not.
- Thus, there is clearly a need for a detailed, common set of rules within the EU regarding the cooling off-period. Businesses and consumers should know their rights and obligations, no matter where they are or with whom they trade.
- Again we have to consider fairly new phenomena which are not taken into account in the present legislation, such as home delivery of food and beverages from supermarkets. For such purchases, a withdrawal right would not be reasonable.

- Third, delivery and passing of risk. At what point in time is a good considered to be delivered when the parties did not specifically agree on that aspect? And who bears the risk of damage or loss at different points in time – the business or the consumer?
- Again, different rules apply in different Member States. This puts both the seller and the consumer in a difficult situation, if an ordered item gets lost or destroyed between the sending of the order and arrival at the purchaser's address. I am aware that here we enter into an area with different legal traditions and systems, regulated by law and case law developed throughout the years.
- However, the information we have collected shows that issues related to delivery of goods – or should I say non-delivery and delivery of broken goods – are considered most important by consumers and businesses when it comes to problems they face when doing distance sales and purchases.
- If we want to make the Internal Market function it must be made clear at what point in time the responsibility for the good passes from the business to the consumer. At the same time harmonised European consumer legislation needs to be flexible enough to suit different kinds of contracts.
- And perhaps I should underline again that in this whole exercise we are only focussing on consumer contract law - transport law liability rules in a business-to-business context are well established and will not be touched on.
- Fourth, unfair contract terms. A major difficulty, in particular for small businesses, concerns the different contract terms requirements across the Member States.
- Today there is a non-binding list in the Unfair Contract Terms Directive indicating those contract terms that may be unfair.
- During the public consultation, a number of respondents supported the introduction of black and grey lists with unfair contract terms. That is to say, one list with contract terms forbidden throughout the EU in all circumstances (black). And another one with terms forbidden if not shown that they are acceptable in that particular situation (grey).
- The idea would be that businesses would not have to turn to expensive legal counselling or take other measures to adapt their conditions to different markets. Perhaps bad for lawyers but good for business!
- A challenge in this context is how to keep the lists up to date and how to retain full harmonisation despite development of national case law.

These are just some examples of issues to be investigated during the Impact Assessment, which will define the costs and benefits of different options to able a more proportionate and simplified future proposal.

But I am convinced that a single, simplified set of targeted harmonised consumer contract rules will unblock opportunity for consumers and business alike. In the spirit of the Von Humboldt, this will enable a Europe built on the rule of law to empower people to freely reap the benefits of an open and prosperous market.

Liberal laws enabling individual economic sovereignty. A fitting note on which to end.

Thank you.