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**MINISTER FOR INDUSTRY,
BUSINESS AND FINANCIAL
AFFAIRS**

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The Danish Government response to the public consultation on the targeted revision of EU Consumer law directives

The Danish Government is grateful for the opportunity to reply to the consultation regarding the targeted revision of the EU Consumer law directives. The Danish Government finds the Commission's fitness check of the consumer and marketing legislation highly relevant and important and supports the Commission's efforts in this area.

The Danish Government would like to supplement the issued questionnaire with this substantive response.

Behavioural insights and targeted information disclosure

In May 2017 the Commission completed the fitness check of the consumer and marketing legislation and the evaluation of the Consumer Rights Directive. In general, the Commission concluded that the general consumer law remains fit for purpose, and when applied effectively, the existing rules tackle the problems that European consumers are facing today. However, findings also point to the need to improve awareness, enforcement and the rules of redress opportunities to make the best of the existing legislation.

Based on these evaluations the Commission is currently assessing the need for possible changes in the legislation, and the Commission is undertaking the current targeted revision of EU Consumer law directives based on the conclusion of the fitness check.

However, the Danish Government does not fully agree with the conclusion on the fitness check nor the underlying premise for the issued questionnaire.

The Fitness Check was an important exercise, because active consumers are an important part of the Single Market, as active consumers make demands on businesses which give them incentives to provide better service. This can lead to an improvement in competition and create well-functioning markets.

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It is therefore the hope of the Danish Government that the follow-up on the Fitness Check in the end will make it easier for consumers and businesses to navigate within the area of the directives that are subject to the Fitness Check.

‘Behavioural insights’ refers to the range of behavioural science research into how biases influence consumer decision making. The term has gained prominence as a result of the wealth of research calling into question the traditional assumption that consumers and citizens act like rational agents in the marketplace. Behavioural insights are an obvious means to ensuring that regulation aligns with actual consumer behaviour to the benefit of both consumers and businesses.

The gap between the intended consumer protection of information disclosure requirements and the observed consumer behaviour especially calls for the consideration of insights from behavioural sciences.

The Danish Government would therefore like to emphasize the importance of continuing the implementation of behavioural insights in the development of EU consumer and marketing law, for instance by striving to shift from full information disclosure to better targeted information disclosure based on evidence, impact assessments and behavioural insights.

The Danish Government is of the opinion that neither the Fitness Check nor the consultation on the EU consumer legislation thoroughly take these considerations into account.

The Danish Government has enclosed a non-paper regarding the implementation of behavioural insights in the development of EU consumer and marketing law. The non-paper was also circulated by the Danish Government at the Competitiveness Council meeting on May 29 2017.

Clearer consumer rules for the digital economy

One of the targeted areas covered by the consultation is clearer rules for the digital economy.

The Danish Government is of the impression that consumers increasingly rely on online platforms in their decision-making process. However, particularly when the online platform facilitates communication and contractual transactions between other market players, the application of EU consumer law is sometimes unclear. This is particularly the case when considering whether platforms should be measured according to the standards of the Unfair Commercial Practice Directive.

Even more pressing are the standard of correctness and validity of information provided to the consumer and under which circumstances platform operators, particularly those who have a certain control over the transactions, should be held liable for the (non-) performance under supplier-consumer contracts. There seems to be a strong need to update EU consumer law in this regard.

In general the Danish Government finds that there is a need for a Digital Single Market that is open to competition, innovation and new business models.

The Digital Single Market should have efficient rules for all businesses in the digital economy. Regulation should be future-proof and not impose new unnecessary burdens on businesses or create barriers to entry that stifle competition and innovation. We should focus on regulating actions that are harmful to society, consumers or competition irrespective of whether these actions are taken by online platforms or other types of businesses.

Furthermore, high quality impact assessments should be made and alternatives to regulation should be properly considered. For instance, cooperation with consumer organizations to enhance consumer awareness rather than imposing new regulatory requirements could be considered.

Free online services

Regarding free online services the Danish Government is not in a position to comment on whether the Consumer Rights Directive should be extended to contracts for online services for which the consumer provides data and does not pay with money.

It should, however, be noted that a general approach on the proposal for a directive on certain aspects concerning contracts for the supply of digital content was reached by the JHA Council on the meeting of 8-9 June 2017. According to the general approach, which Denmark supports, the directive should apply when the consumer pays, or undertakes to pay a price or to provide personal data to the supplier.

Better enforcement and redress opportunities for consumers

The consumer's right to remedies/redress for harm caused by unfair commercial practices are not always sufficiently guaranteed under national law. Different and ineffective national rules on remedies/redress may lead to costs for traders engaging in cross-border trade and detriment for consumers resulting from continued existence of many breaches on national and cross-border level.

The mystery shopping exercise on the Unfair Commercial Practices Directive conducted in the context of the Fitness Check study on consumer markets reveals to a large extent the difficulties that consumers encounter, when it comes to seeking redress as a result of an unfair practice. It is indicative that 62% of the mystery shoppers evaluated the traders as unwilling to offer a remedy. The evidence of traders' reactions to complaints is compelling. 48% of traders totally ignored the consumers reaching out to them for redress due to an unfair practice, while only 2% of the traders recognised the unfair practice from their side. Eventually, 16% of the traders offered a remedy, as opposed to 32% that did not offer any remedy whatsoever, while there were instances where the trader ceased communication (Consumer Market Study to support the Fitness Check of EU consumer and marketing law, DS-02-17-419-EN-N, at 246-252).

The Danish Government supports alignment of sanctions and improvement of redress and therefore also supports the new CPC-Regulation.

Penalties for breaches of consumer rules

Regarding penalties for the breaches of consumer rules it is not possible for the Danish Government on the present basis to determine whether possible differences in the investigation and sentencing of breaches of EU consumer protection rules result in consequences for the enforcement of these rules.

However the Danish Government would like to draw the Commission's attention to the response given by the Danish Forbrugerombudsmand, who has independently answered the questionnaire.

Doorstep selling

The Danish Government is not in a position to comment on whether the Member States should be allowed to introduce a general ban on doorstep selling, or whether national restrictions on doorstep selling makes cross-border trade difficult.

It should, however, be noted, that since 1978 the Danish Consumer Contracts Act has imposed a general prohibition on doorstep selling in business-to-consumer commercial practices: Without the consumer's prior request, a trader is not allowed to approach the consumer at any location to which there is no general public access, e.g. the consumer's home or workplace, with the view to obtain an offer or acceptance of an offer to conclude a contract.

Few exceptions are made to the general prohibition. Traders are allowed to contact consumers by telephone with regard to the ordering of books, subscriptions for newspapers and magazines, brokering of

insurance, and subscription for emergency services and medical transport. The listed exceptions are justified by the interest in securing a certain information level in society and because it is presumed that the purchase of these products and services benefits society.

Simplification of the rules on the right to withdrawal

As addressed by the Commission in its evaluation of the Consumer Rights Directive, the Danish Chamber of Commerce has stressed the practical challenges related to the right to return used goods according to article 14(2) in the Consumer Rights Directive. Among other things the Danish Chamber of Commerce argues that it is difficult for the traders to resell the returned used goods and that there is uncertainty about the calculation of the diminished value of the goods. Based on a survey conducted among their members, the Danish Chamber of Commerce has additionally stated that the practical difficulties result in a tendency for the trader to refund the full amount for the returned used good to the consumer.

The Danish Government thanks the Commission for addressing the issue and the fact that if consumers at a large scale exercise the right to withdrawal after having used a good more than they would in a shop, this may distort the balance between consumer protection and competitiveness of enterprises. In continuance hereof the Danish Chamber of Commerce has agreed to provide further data that can illustrate the extent of the burden on the traders.

With regard to the trader's obligation to reimburse the consumer as soon as the consumer has supplied evidence of having sent the goods back, stakeholders, e.g. the Danish Chamber of Commerce, have expressed that this obligation entails challenges for the traders, as it does not allow sufficient time for the trader to inspect the returned good before reimbursing. More study should be conducted at the EU-level in this area to shed light on the extent and nature of the effects of the implementation of article 14 (2).