

Opinion of the Committee of the Regions on consumer rights

(2009/C 200/14)

THE COMMITTEE OF THE REGIONS

- supports the political objective of securing further consistency within the single market and improving the functioning of the business-to-consumer internal market, particularly for SMEs;
- also upholds the objective of stronger, more fully developed consumer protection within the EU which is a necessary condition for the functioning of the single market;
- feels that the current proposal for a directive is not, as yet, conducive to boosting consumer confidence in cross-border trade;
- rejects the principle of full harmonisation on a broad scale as Member States may thereby have to sacrifice particular consumer protection provisions in the name of standardisation;
- trusts that Member States will, in future too, retain scope to go further than uniform EU-wide standards;
- thus advocates a modulated approach, where full harmonisation remains an acceptable option for provisions of a more technical nature, while Member States retain regulatory scope in other areas;
- would stress the need to be more specific about core information applicable to all contract types;
- sees a need for further clarification and adjustment in the case of distance contracts.

Rapporteur: Mr Wolfgang G. Gibowski (DE/EPP), State Secretary, Plenipotentiary of the Land of Lower Saxony to the Federation

Reference document

Proposal for a Directive of the European Parliament and of the Council on consumer rights

COM(2008) 614 final — 2008/0196 (COD)

I. POLITICAL RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

General points

1. supports the political objective of securing further consistency within the single market and improving the functioning of the business-to-consumer internal market, particularly for SMEs;

2. also upholds the objective of stronger, more fully developed consumer protection within the EU; which is a necessary condition for the functioning of the single market;

3. therefore welcomes the proposal set out here to consolidate existing consumer protection directives into a single set of rules to be applied across different sectors to all consumer-trader contracts as identified in the draft;

4. at the same time laments the failure to include all consumer directives and regrets that the Commission proposal sets out to revise four directives only. For the Commission, this represents a missed opportunity to establish a common set of rules for all consumer rights within the internal market;

5. also deplores the failure to fully remove inconsistencies and ambiguities from existing provisions and boost the overall transparency of the consumer *acquis*;

6. is concerned about the (growing) divergence between consumer protection regulations in the EU and those in non-Member States and therefore recommends that the European Commission pay more attention to this subject;

Competence, subsidiarity and proportionality

7. notes that the directives in place up to now have provided for a minimum European standard, leaving Member States free to go further than the EU level of consumer protection. Several countries have made wide use of this facility; hopes that giving this opportunity would lead to an overall increase of consumer protection in all Member States;

8. rejects the principle of full harmonisation on a broad scale as Member States may thereby have to sacrifice particular consumer protection provisions in the name of standardisation, even where these have proved effective in the country concerned;

9. feels that the tried-and-trusted principle of minimum harmonisation as provided for under Article 153(5) of the EC Treaty — the key consumer protection article — should in essence be retained. Member States must, as a matter of principle, retain the flexibility to adapt consumer law to their own national legal system by mandating higher levels of protection;

10. notes that full harmonisation on a broad scale represents a new departure in European consumer protection that does not appear to be strictly necessary. Full harmonisation should be considered selectively, i.e. in specific technical cases only, where the different national provisions in place up to now are genuinely and demonstrably placing a burden on cross-border businesses or represent a substantial obstacle to achieving the four freedoms of the European Union;

11. disputes whether full harmonisation on a broad scale is consistent with the basic tenets of subsidiarity. The Commission has so far failed to give cogent reasons for its move to appropriate a full regulatory remit in this area. Full harmonisation should therefore be applied in just a few core areas of the internal market;

12. also has its doubts as to whether full harmonisation will boost consumer confidence and foster competition. Up to now, consumer difficulties have, in the main, been caused by the uncertainties and complexities of law enforcement in cross-border trade (language barriers, legal fees, courts costs, etc.) The directive provides no improvement on that front;

13. feels that questions must be asked about the Commission's objective in submitting this proposal — i.e. the desire to regulate not only cross-border trade but also domestic trade within the Member States. At any event, there is no evidence that different domestic rules are an obstacle to cross-border trade;

14. also notes that any harmonised rules must be backed by readily understandable and empirical reasoning and subject to a realistic impact assessment;

15. feels in particular that the Eurobarometer survey used as a basis here does not constitute sufficient grounds for adopting the proposed directive. The Commission must in any case provide empirical and coherent reasons as to why action needs to be taken on the individual provisions. Currently, the impact assessment merely gives an abstract indication of the effects of various different options for action;

Specific points

Definitions

16. feels that the proposed directive does not do enough to purge the terms used in the current consumer directives of the ambiguities that have so compromised transparency. Tighter definitions are needed — even for terms such as ‘consumer’ and ‘trader’;

Consumer information

17. considers that the provisions relating to general information requirements remain ambiguous and may in certain circumstances result in significant legal uncertainty; at any event, the qualification placed on information requirements (‘the trader shall provide the consumer with the following information, *if not already apparent from the context*’) is too vague and hardly a sound criterion on which differentiations can be made;

18. would stress the need to be more specific about core information applicable to all contract types;

Consumer information and withdrawal right for distance and off-premises contracts

19. notes the complaints of small businesses in particular that they are no longer able to meet even today’s information requirements without legal advice. A standard form would be useful for businesses and consumers alike. By using a set form prescribed by the directive, businesses could be sure that the information they are providing does in fact meet the directive’s requirements. Consumers would have access to the information in the same format across Europe. The form annexed to the proposal only partially serves that purpose;

20. sees a need for further clarification and adjustment in the case of distance contracts. On the one hand, the proposal in this regard goes further than current national provisions but, on the other, it fails to take up the exception permitted under the old distance selling directive whereby the right of withdrawal does not apply to goods which ‘by reason of their nature, cannot be returned’;

21. is critical of the plan to fully harmonise provisions on doorstep selling. The vast majority of doorstep and off-premises contracts are conducted at national level;

22. questions why the right of withdrawal is not to apply to periodical subscriptions and gaming and lottery services. The same applies to private online auctions which, in some Member States (in Germany at any rate) are viewed as normal sales contracts. Here too, provision should be made for national derogations;

Other consumer rights specific to sales contracts

23. welcomes the ‘seller-friendly’ proposals on the sale of consumer goods (right to rectify any subsequent defects, performance times);

24. is, however, critical of the proposals on material defects, particularly the deadline for the enforcement of claims in this regard;

Consumer rights concerning contract terms

25. is critical of the proposals on standard contract terms, some of which would curtail consumer rights. Legal rights currently in place in the Member States must not be undercut further;

Conclusions

26. feels that the current proposal for a directive is not, as yet, conducive to boosting consumer confidence in cross-border trade. On the contrary, if the proposed legislation means an adjustment of national law to a lower level required to conform to the EU provisions it could even result in a further weakening of consumer demand as lower consumer protection standards could unsettle consumers and make them reluctant to buy;

27. emphatically opposes full harmonisation on a broad scale and trusts that Member States will, in future too, retain scope to go further than uniform EU-wide standards;

28. thus advocates a modulated approach, where full harmonisation remains an acceptable option for provisions of a more technical nature, while Member States retain regulatory scope in other areas. Member States would thereby also be able to react more quickly to problems than the European legislator can;

29. favours an integrated approach, i.e. definitions and rules that are conducive to improvements not only in the partial areas covered by the proposed directive, but in the rest of the consumer *acquis* as well;

30. given the current stage in the negotiations, sees an ongoing need for clarification and consultation. In the upcoming negotiations, attention must be paid to striking a balance between a high level of consumer protection on the one hand, and business competitiveness on the other. Care must be taken not to impose disproportionate burdens, particularly on medium-sized companies, or to reduce the markedly high level of consumer protection already in place in some Member States. The negotiations should also seek to make consumer information simpler and more readily understandable across the board;

31. eagerly looks forward to the continuing discussion and intends to monitor it constructively.

Brussels, 22 April 2009

The President
of the Committee of the Regions
Luc VAN DEN BRANDE