

# PROPOSAL FOR A DIRECTIVE ON CONSUMERS' RIGHTS

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Synopsis of BEUC's opinion

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## Summary

While in principle BEUC and its members agree with the objectives of the Commission's proposal, we are not able to support the proposal in its current form. Those objectives cannot be achieved on the basis of the current proposal. There are a large number of reasons for this, the main ones of which include:

- The Commission has not fully justified the approach it has adopted mainly as regards the application of maximum harmonization across the board.
- The existing impact assessment is not accompanied by qualitative data proving the benefits of the approach taken, in particular as regards the full harmonization of the rules on remedies and on unfair contract terms:
  - there is not enough evidence that fragmentation through legal differences is the main reason for lack of cross border trade: the latest Eurobarometer surveys show that most traders will not increase their cross border sales even if consumer laws are fully harmonized across the EU; other factors (e.g. lack of appropriate cross-border redress mechanisms, language barriers, Internet access, fears regarding security and data protection) influence consumers and businesses attitudes toward cross-border contracts much more;
  - full harmonization across the board (e.g. in areas that are closely linked with national contract law), will not lead to unification of legal systems but will on the contrary create a lot of legal uncertainty.
- The objective to open the Internal Market has to be embedded in a wider and more fundamental objective to truly enhance consumer confidence by providing consumers with the means to play an active role in the market.
- In many Member States, the proposal would lead to the removal or reduction of important consumer protection rights; this will not increase consumer confidence, neither will it ensure a high level of consumer protection as required by the Treaty.
- The scope of the proposal is unclear. In particular, it is essential that the interface between the proposal and general civil/contract law in each Member State as well as its relation with other Community instruments is clearly set out. The impact assessment has not provided enough information on this.
- Many of the positive aspects of the proposal as highlighted by the Commission are already in place in one or more Member States and even if they are truly 'novel' rights, they cannot outweigh the negative impacts of the proposal.
- The proposal is too focused on the existing directives: insufficient steps have been taken to 'future proof' the proposal; in particular, the proposal is silent on consumers' rights when purchasing digital content.

## WHAT IS THE WAY FORWARD ?

- We need to assess what consumers really need to have more confidence and to engage more in cross-border shopping; all we know now is that the main reasons are not the fragmentation of legislation. We believe that much more consumer oriented research should be undertaken in order to identify on an evidence base how consumer confidence in the Internal Market can be promoted.

For example, the introduction of a joint liability of the producer and the trader for defective products or the possibility for the consumer to terminate the contract quickly during a short period after purchase, if a product turns out to be faulty, would be meaningful novelties in this context.

- We need to reflect upon what the future challenges are for European consumers, what responses we need to digital technology, sustainably consumption, an Internal Market which is tangible for consumers. The proposed directive would shape consumer legislation for the generations to come, yet is not future proof, it is a missed opportunity. Digital products and services for example (on-line music, films, software as well as I-net services) raise many issues, which have not been addressed properly in the proposed directive.
- We need to assess, what the economic and legal effects of full harmonization are. So far, we do know nearly nothing about the costs and benefits of full harmonization in economic terms in the field of consumer contracts. Does it really provide the promised benefits to business and if at all, will business pass them on to consumers?

## BEUC IS IN FAVOUR OF A “MIXED” HARMONISATION APPROACH

In the light of the above, we conclude that full harmonization can only be envisaged from a consumer perspective, if the following strict conditions are met:

- 1) it only applies to technical and cross-cutting issues such as the length of the withdrawal period, the conditions to exercise it and the definition of a consumer for example; Beyond those, full harmonization will not bring about the expected benefits for consumer or increased legal certainty;
- 2) its application does not result in an overall decrease of the level of consumer protection, but is set at a high level of protection;
- 3) the scope of the fully harmonised field is clear from the text of the directive so that legal certainty is provided.

In relation to issues which are very closely linked to national civil law orders, such as unfair contract terms or many elements of legal guarantees, the approach of the legislative revision should be based on minimum harmonisation, which allows Member States to maintain more advantageous rules for consumers and to adapt them quickly to market changes.

If minimum harmonisation is done at a high enough level, it can deliver the benefits of max harmonisation without the pitfalls: EC consumer protection legislation set at a high enough level does not provide an incentive for Member States to ‘go further’.

This approach could de facto create (nearly) the same rules everywhere, just as maximum harmonisation.

## **THE LEVEL OF CONSUMER PROTECTION HAS TO BE IMPROVED**

In many of its provisions, the proposal at hand suggests to re-harmonise a harmonized field by imposing the existing minimum level of protection as the "maximum", that member states will not be able to challenge. In some cases the provisions of the existing directives have been weakened (without any clear justifications) when taken over by the directive.

Many examples of the negative impact of the proposed directive on important national consumer law can be found. In particular, in the field of legal guarantees, consumers from many countries would be deprived of current rights, for example to directly proceed with the cancellation of the contract, if a product is faulty and get the money back. Equally, in many countries, the legal guarantee period is longer than the proposed 2 years, which is particularly important and justified for durable goods such as cars and household appliances.

Yet, the EC Treaty requires the EU institutions to set measures in the field of consumer law at a high level of consumer protection and it stipulates that the activities of the Community must contribute to a strengthening of consumer protection. Thus, the level of protection set up in the proposal has to be increased in order to comply with the Treaty and to truly promote consumer confidence in the IM.

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