



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

Committee on the Internal Market and Consumer Protection

Hearing on “Review of the European Consumer Acquis”

Tuesday, 10 April 2007 – 3.00 p.m. to 6.30 p.m.

European Parliament – Room ASP 3G2

Session 1 – Overview of the implementation of the consumer acquis from the point of view of SMEs and retailers – main issues.

Luc Hendrickx, Director Enterprise Policy and External Relations, UEAPME.

I. Introduction.

The main problem with the existing acquis and consequently the greatest weakness is the fact that the SME point of view was not sufficiently taken into account in the creating of European consumer policy in the 90ies.

This has led to a situation in which some important parts of this legislation are not adapted to the needs and particularities of the small enterprises. The negative impact on the competitiveness of SMEs, which are acting mainly on regional or local level, has been completely ignored.

A good example of this is the obligation to indicate not only the selling price but also the price per unit of measurement to facilitate comparison of prices, even if there are no other products to compare with.

Apart from for this example, **lobbying for exemptions for SMEs** has never been a general option for UEAPME. Indeed, exemptions for SMEs in such an important area as consumer protection and safety, could give consumers and the public as a whole, the wrong impression that they are less protected or receiving less quality when the purchase in SMEs.

An additional problem is that the main assumption of the consumer regulatory framework considers that the consumer has always a weaker position than the trader or, in other words, that the relation between the consumer and the seller is fundamentally unequal.

One can seriously doubt this is still always the case. In any case, in our view it is unjust to build a regulatory framework on this assumption (not to speak about aggression, fraudulent behavior of consumers,...) Nowhere in the acquis is attention paid to the obligations of consumers. The review should also lead to the introduction of a **rule on general duty to act in accordance with the principles of good faith and fair dealing which should apply to both professionals and consumers.**

Having said this, the objectives of the main directives in the field of consumer protection are just common sense and deal with the basics.

Small enterprises have been and still are the natural alliances of the consumers in their concern for quality and service.

II. The consumer acquis – 3 main problems for SMEs.

1. Directive 1998/6/EC on consumer protection and the indication of prices and products offered to consumers.¹

The objectives of the principle of the indication of the prices, which UEAPME fully support, are threefold:

- To safeguard the interest of the consumers against abuses, by giving them, as far as possible, a clear and direct information about the price. The aim is to allow the customer to have a sure picture of the price that he will have to pay for the product and it should allow him, without or with the lowest possible pressure, to be ascertained about the asking price. Thereby it is assumed that the announced price is also the asking price in reality.
- To protect competitors against less scrupulous traders;
- To ensure price competition.

However, the rules concerning the indication of prices are very complex, not only at the European level but also even more at national level.

This is due to the variety of products and services, national customs and the impossibility to catch this diversity in simple rules.

As a consequence the rules are not always applied, not deliberately, but due to their complexity. The introduction of the obligation to indicate the selling price and the price of unit of measurement has certainly not simplified the situation.

One of the problems with the directive is that it has introduced a general rule (indication of the selling price and the price of unit of measurement of products), which has absolutely no sense for a lot of products, as there is no link between the price of these products and any kind of unit of quantity.

The main problem is however that the obligation to indicate the price of unit of measurement constitutes for small retailers a very high administrative burden and often imposes heavy costs.

- Firstly the administrative burden for the retailer is not in proportion with the advantage it brings to the consumer. The motives of a consumer to buy in small shops are completely different from those in a supermarket. In addition, the indication of the unit price for the limited assortment of small shops offers not at all an additional value to the consumer, due to the fact that there is often no choice between different brands and consequently price comparison is not possible.

¹ For UEAPMEs position paper on this issue see: “ [UEAPME RETAIL FORUM Position on the Communication from the Commission on the implementation of Directive 1998/6/EC of the European Parliament and the Council of 16 February 1998 on consumer protection and the indication of prices of products offered to consumers. COM \(2006\) 325 Final](http://www.ueapme.com/docs/pos_papers/2006/0609_pp_prices.pdf)”.

http://www.ueapme.com/docs/pos_papers/2006/0609_pp_prices.pdf

- The obligation constitutes also a competitive disadvantage for the small retailers towards the big retailers. Larger retailers have the necessary technical equipment and logistics to indicate the unit price in an automated way, while small retailers have to do this manually. Itinerant traders have the same problem. Fulfilling the obligation is very time consuming and expensive for a small retailer.
- Both technical (no scanning or computer systems) as well as practical reasons (small retailers do not belong to a commercial group) lead to problems in fulfilling the obligation of double pricing.

The European Commission, European Parliament and the Council have recognised these problems by adopting Directive 98/6/EC, which states that “*the obligation to indicate the unit price may entail an excessive burden for certain small retail businesses under certain circumstances.*” Article 6 allows the Member States to waive the obligation for a transnational period. However the problems and barriers for small retailers still remain. **That is why UEAPME urges to make the derogation for small retail businesses permanent. The definition of “small retail business” should be left to the Member States.**

2. Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.

The main problem is here the right of redress of the final seller, (especially small) retailers and installers.

The directive in its article 4 contains a provision, designed essentially to ensure SMEs have a legal basis on which to work with suppliers. It entitles in principle the final seller to pursue remedies against the persons liable in the contractual chain.

In practice however, the suppliers/producers do not consider themselves liable for two years (mainly one year or less).

In addition their liability starts also from the time of delivery to the retailer/installer, reducing thereby noticeable the liability period as there is often a time period of a couple of months between the delivery to the retailer/installer and the delivery/installation to the final consumer.

In Finland for example the professional organisation of the installers has been able to conclude an agreement with the suppliers. In the Netherlands, however, such an agreement has been forbidden by the competition authorities as a cartel.

In the time, the ESC stressed in its opinion² that “*issues regarding legal and commercial guarantee arrangements and after-sales service should not be viewed in isolation as consumer problems alone, but considered part of the chain manufacturer-wholesaler-*

² See: Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on the sale of consumer goods and guarantees', more especially point 2.6. *Official Journal C 066*, 03/03/1997 P. 0005.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51996AC1387:EN:HTML>

retailer. Greater attention must therefore be paid to relationships within the marketing chain, in particular, the unsatisfactory contractual or de facto situation in which retailers often find themselves with regard to their suppliers. The options open to retailers for gaining redress from the person in the marketing chain responsible for a defect is generally a crucial consideration in how far they are willing to go to find a solution acceptable to their customers.”

We can only support this analysis.

A possible solution could be a redrafting of article 4 or the introduction of the direct liability of the producer.

3. Directive 97/7/EC on the protection of consumers in respect of distance contracts.

Concerning this directive UEAPME is in favor of a maximal harmonization, due to the more direct competition between companies that use distance contracts, especially e-commerce.

E.g. the prohibition to ask for any payment before the delivery of the goods in some countries, is putting small retailers in an inferior competitive position.

III. Comments on the Green Paper.

UEAPME has from the beginning welcomed and supported the Commission, and especially DG SANCO, when it launched in 2004 the Review of the Consumer acquis with the objective to better achieve its Better Regulation goals by simplifying and completing the existing regulatory framework.

We fully support the overreaching aim of the Review, which is to achieve a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring the strict respect of the principle of subsidiarity.

The green paper states that “consumers’ confidence in the internal market must be stimulated by ensuring a high level of protection across the EU. Consumers should be able to rely on the equivalent rights and have resort to equivalent remedies if something goes wrong.”

This statement is quite strange: if there are not yet **equivalent** rights, then this means that the directives are not implemented. Or is it the aim to bring the level of consumer protection up to the level of the country with the highest level of consumer protection? Here the GP gives already the impression to extend consumer protection which was never the aim of the review.

The GP also states that it sums up the Commissions initial finding. We are wandering what these findings are, apart from some general statements on new market developments, fragmentation of rules and lack of confidence.

So far, no general consultation³ has been launched amongst the stakeholders on the possible shortcomings of the acquis. Any further review should and can only be based on proper consultation, analysis and proven shortcomings and gaps in the directives concerning consumer protection and a well functioning internal market.

The whole Green Paper gives more the impression that it deals with the question ‘how to increase cross-border’ transactions than with consumer protection.

Even more, cross-border transactions are defined in the narrow sense, as distance selling. Apparently “lack of confidence” is a main issue, but also here it deals exclusively with distance selling. Distance selling will always suffer from some problems as there are: the distance (which results in higher prices for transport), language, no personal contact, no-confidence in the payment system...

We have the impression that shortcomings in one or some directives and possible solutions are simply extrapolated and presented as shortcomings and solutions for the whole acquis.

In addition, we have the impression that the Commission has already decided to follow the mixed approach.

However the arguments against the vertical approach mentioned in the green paper are not convincing: also with the mixed approach the same issues have to be transposed consistently by the Member States.

The volume of legislation as such is not a problem, as it has to be transposed anyway in national legislation and SMEs are never consulting the directives but the national legislation.

If there would be the need for a common definition for lets say “consumer”, therefore we do not need a framework directive. The same common definition can be introduced in the different directives. For the accessibility and readability of the directives this can even be better than having a specific directive and a framework directive to which you have to refer.

It is indispensable to firstly undertake an analysis (including a business impact assessment and more specifically the possible impact on SMEs) prior to propose any legislative proposal.

³ The Flash Eurobarometer 186 survey on Business attitudes towards cross-border trade is not representative: it is a survey amongst enterprises with more than 10 employees. (50% of all enterprises in Europe are on-person enterprises. 90 % have less than 10 employees.)