



24.10.2012

NOTICE TO MEMBERS

Subject: Petition 0334/2012 by T.K. (German), on the application by Germany of Directive 97/7/EC on the protection of consumers in respect of distance contracts

1. Summary of petition

According to EU legislation consumers have a right to return goods purchased by distance contracts for seven days following receipt of such goods. They are entitled to a full refund for the goods and the postage costs for dispatching the goods to them. Buyers do, however, have to pay the postage costs for returning the goods. According to the German transposition of the directive, the seller has to even reimburse the buyer for the postage costs for sending goods worth over €40 back to the seller. The petitioner says that puts German distance traders at an unfair disadvantage and asks the Parliament to prevail upon Germany to bring its law into line with most other EU Member States.

2. Admissibility

Declared admissible on 4 July 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 October 2012

Article 6 of the Distance Selling Directive (97/7/EC) provides that the only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods. Additionally, Article 14 provides for a minimum harmonisation clause which means that Member States may introduce or maintain more stringent provisions, compatible with the Treaty, to ensure a higher level of consumer protection. The German rule and practice referred to by the Petitioner are therefore compatible with the Directive.

However, Article 14 of the Consumer Rights Directive, adopted in October 2011, introduces a new formulation according to which the consumer shall only bear the direct cost of returning the goods unless the trader has agreed to bear them, or the trader failed to inform the consumer that the consumer has to bear them. Moreover, Article 6.1 (i) requires that traders inform consumers about the cost of returning the goods before the conclusion of the contract, if the goods by their nature cannot normally be returned by post. The Member States shall adopt and publish by 13 December 2013 the laws, regulations and administrative provisions necessary to comply with the Consumer Rights Directive. The level of harmonisation has also changed, since Article 4 provides that Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in the Directive, including more or less stringent provisions to ensure a different level of consumer protection.

Conclusion

The issue at stake relates to the implementation of Directive 97/7/EC which allows the Member States to provide for more stringent provisions, compatible with the Treaty, to ensure a higher level of consumer protection. The changes in the German law requested by the petitioner should however be achieved through the implementation of the Consumer Rights Directive which will, by the end of next year, repeal and replace Distance Selling Directive 97/7/EC.

For the reasons mentioned above, and in the absence of further data, the Commission does not have grounds for pursuing this matter further.