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## **REPORT**

on the Green Paper on the Review of the Consumer Acquis  
(2007/2010(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Béatrice Patrie

**CONTENTS**

|   | <b>Page</b> |
|---|-------------|
| MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .....               | 3           |
| EXPLANATORY STATEMENT.....                                      | 11          |
| OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS ..... | 16          |
| OPINION OF THE COMMITTEE ON LEGAL AFFAIRS .....                 | 20          |
| PROCEDURE .....   | 23          |

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the Green Paper on the Review of the Consumer Acquis (2007/2010(INI))

*The European Parliament,*

- having regard to the Green Paper on the Review of the Consumer Acquis (COM(2006)0744), and the EU Consumer Law Compendium – comparative analysis<sup>1</sup>,
  - having regard to Community law in force on consumer protection, electronic commerce and the development of the information society,
  - having regard to its resolution of 23 March 2006 on European contract law and the revision of the acquis: the way forward<sup>2</sup>, its resolution of 7 September 2006 on European contract law<sup>3</sup>, and its resolution of 21 June 2007 on consumer confidence in the digital environment<sup>4</sup>,
  - having regard to the public hearing on the review of the European consumer acquis, which took place at the European Parliament on 10 April 2007,
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A6-0281/2007),
- A. whereas 48% of retailers are prepared to trade cross-border, but only 29% actually do so; and whereas 43% of retailers believe that their cross-border sales would increase if the provisions of the laws regulating transactions with consumers were the same throughout the European Union<sup>5</sup>,
- B. whereas half of all Europeans (50%) are warier of making cross-border purchases than domestic purchases; and whereas over two-thirds (71%) think it is harder to resolve certain problems such as complaints, returns, price reductions and guarantees when shopping cross-border<sup>6</sup>,
- C. whereas the overarching aim of the review is to achieve a real consumer internal market while striking a balance between a high level of consumer protection and the competitiveness of enterprises,

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<sup>1</sup> [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/acquis/comp\\_analysis\\_en.pdf](http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/comp_analysis_en.pdf).

<sup>2</sup> OJ C 292 E, 1.12.2006, p. 109.

<sup>3</sup> OJ C 305 E, 14.12.2006, p. 247.

<sup>4</sup> Text adopted on this date P6 TA-PROV(2007)0287

<sup>5</sup> *Business attitudes towards cross-border sales and consumer protection*, Eurobarometer, December 2006.

<sup>6</sup> *Consumer protection in the internal market*, Eurobarometer, September 2006.

- D. whereas 90% of enterprises in Europe are very small enterprises, which by their nature establish a direct relationship of trust with the consumer, and are generally very local, and that account should be taken of these specific characteristics in the context of the review of the *acquis* on consumer protection,
- E. whereas the minimum harmonisation approach does not achieve the aim of harmonisation and in 20 years of evolving consumer law has not been able to create an integrated internal retail market that benefits the public,
- F. whereas the eight consumer protection directives<sup>1</sup> named in the Green Paper need to be simplified and made consistent to avoid fragmentation and to achieve the modernisation of Community consumer law,
- G. whereas it is determined to complete the European internal market, for the benefit of the Community's 493 million consumers, and to remove remaining restrictions on competition in contract and commercial law,
- H. whereas, in order to enhance European citizens' confidence in the internal market, legal security, both for consumers and economic operators, needs to be increased and the legislation in force needs to be effectively applied;
- I. whereas this review, which will deal with consumer contract law, should utilise the current work on contract law and the creation of a common frame of reference (CFR) for European contract law, and should be integrated coherently therewith,
1. Welcomes the Commission's Green Paper on Review of the Consumer Acquis, particularly the stated goal of modernising, simplifying and improving the regulatory regime for professionals and consumers, thus facilitating cross-border trade and strengthening consumer confidence;

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<sup>1</sup> Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 31.12.1985, p. 31).

Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, 29.10.1994, p. 83).

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19).

Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).

Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (OJ L 166, 11.6.1998, p. 51).

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).

## ***SCOPE OF THE REVIEW OF THE ACQUIS***

2. Recommends that the scope of this review concentrate on updating and creating coherence between the eight consumer protection directives named in the Green Paper; calls on the Commission to present, to Parliament and the Council, a report on the implementation of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('e-commerce Directive')<sup>1</sup>, identifying questions relating to consumer confidence;
3. Believes that it is essential for the Community legislature to take action to eradicate any inconsistencies that exist between the consumer directives under review;
4. Believes that it is essential to have a clear overall vision of how the various legal and regulatory regimes affecting consumer and commercial law activities at EU level interact and function together, especially the relationship between any instrument produced by the Review and those dealing with conflict-of-law rules (Rome I and Rome II) and others based on the country-of-origin principle (e.g. the e-commerce Directive);

## ***GENERAL LEGISLATIVE APPROACH***

### ***The choice of a mixed approach***

5. Expresses its preference for the adoption of a mixed or combined approach, i.e. a horizontal instrument with the primary goal of ensuring the coherence of the existing legislation and enabling loopholes to be closed by grouping together, in consistent law, cross-cutting issues common to all the directives; considers that specific questions which are outside the scope of the horizontal instrument should continue to be considered separately in the sectoral directives;
6. Considers that the horizontal instrument should be regularly reviewed and its effectiveness and impact evaluated, with a view to a revision if necessary;
7. Is against the review of the Community acquis being used as a pretext to extend the scope of the legislation in the existing sectoral directives or to bring in additional directives;

### ***Scope of the horizontal instrument***

8. Considers that the horizontal instrument should be applied as widely as possible to all consumer contracts, whether for national or cross-border transactions, in order to avoid introducing a further element of complexity by imposing different legal arrangements on consumers depending on the nature of the transaction;

### ***Degree of harmonisation***

9. Points out that harmonisation must not lead to a decline in the level of consumer protection achieved under certain national arrangements, but should lead to a comparable level of consumer protection in all the Member States;

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<sup>1</sup> OJ L 178, 17.7.2000, p. 1.

10. Welcomes the Commission's proposal for a horizontal instrument and acknowledges the possible advantages of what some have termed a basic 'Consumer Rights' Directive; suggests that the horizontal instrument with cross-cutting policy areas, which should help to increase the coherence of the terminology and remove loopholes and inconsistencies, should start from the principle of full targeted harmonisation;
11. Suggests that sectoral tools that are being reviewed should be based on the principle of minimum harmonisation, combined with the principle of mutual recognition where the coordinated area is concerned; notes, however, that this does not exclude full targeted harmonisation where this proves necessary in the interest of consumers and professionals;
12. Points out that as the law stands at present as regards the non-coordinated areas, the applicable law is determined by the rules of international private law, in particular the Rome Convention of 19 June 1980 on the law applicable to contractual obligations ('Rome I'); in this regard it will be important, during the current discussions, to avoid divergences between this convention and specific Community legal acts;
13. Recommends the inclusion, in the sectoral instruments, of an internal market clause to allow consumers to benefit fully from the internal market;

#### ***CONTENT OF THE HORIZONTAL INSTRUMENT AND RESPONSES TO THE GREEN PAPER***

14. Notes that Annex 1 of the Green Paper contains at points 4 and 5 an extensive list of legal contractual issues relevant to consumer contracts, that some of those issues have already formed part of the work on the CFR and that many are of a highly 'political' nature where, were any general rule to form part of a harmonised instrument at EU level, there would need to be extensive (including public) debate and consideration;
15. Is in favour of certain cross-cutting principles, applicable to all consumer contracts, being included in the horizontal instrument if they make it more coherent, e.g. common definitions, general rules covering information requirements and the way the law on termination and withdrawal operates;

#### ***Definitions of consumer and professional***

16. Considers that the definitions of 'consumer' and 'professional' are not consistent either in Community legislation or in national legislation and that it is essential to clarify these concepts in the horizontal instrument given that they determine the scope of consumer law;
17. Considers that a 'consumer' should be defined as any natural person acting for purposes which are outside their trade, business or profession; and considers that a 'professional' should be defined as any person acting for purposes relating to their trade, business and profession;
18. Furthermore, supports the inclusion in the horizontal instrument of further definitions such as 'written form' and 'durable media';

### ***General clause of good faith and fair dealing***

19. Opposes the insertion in the horizontal instrument of a general clause of good faith and fair dealing applicable to consumer contracts;

### ***Unfair terms***

#### *Scope*

20. Does not consider it appropriate to apply the rules on unfair terms to individually negotiated terms so as not to restrict the freedom of the contracting parties to conclude contracts;

#### *List of terms*

21. Considers that, in order to boost consumer confidence in the internal market, arrangements affording more protection should be introduced while retaining a degree of flexibility; requests the Commission to carry out further examination of the use of a combination of a black list of banned terms, a grey list of terms presumed to be unfair and other terms which consumers could demonstrate to be unfair by means of legal action, on the basis of previously determined and uniform criteria;

#### *Scope of the unfairness test*

22. Rejects the idea of extending the unfairness test to all the core terms of a contract, including the main subject matter of the contract and the assessment of the price, having regard to the principle of contractual freedom;

### ***The contractual effects of failure to provide information***

23. Considers that at this stage it is very difficult to determine general rules on the contractual effects of failure to provide information which will take into account the characteristics of each contract;

### ***The right of withdrawal***

#### *Duration and the method of calculating the withdrawal period*

24. Underlines the need to standardise the methods for beginning and calculating the withdrawal period by giving priority to calculation according to calendar days in order to enhance the legal certainty of transactions;
25. Considers that the length of the periods should be harmonised where this is justified by the circumstances;

#### *Methods of exercising the right of withdrawal*

26. Emphasises that consumer confidence in the internal market will be enhanced if the horizontal instrument provides for the consumer to be able to withdraw from a contract; considers that the means for withdrawal should be harmonised to improve legal certainty

for both consumers and economic operators; considers also that the horizontal instrument should affirm that consumers should not bear any costs other than the direct cost of returning the goods;

27. Takes the view that in the case of a horizontal instrument, the Member States at national level could provide for exceptions to the right of withdrawal, if the contract is drawn up in the form of an authentic instrument;
28. Believes that the introduction of a 'standard withdrawal form' in all the Community languages would simplify procedures, reduce costs, and increase transparency and consumer confidence;

#### ***Introduction of general contractual remedies***

29. Considers that the introduction of general contractual remedies goes beyond the scope of this review as it is a concept which falls under the applicable contract law in each Member State;
30. Recalls the discussion on collective redress and believes it deserves further consideration, despite national differences in the conduct of business rules;

#### ***Specific rules on consumer sales***

##### *Types of contracts to be covered*

31. Considers that it is appropriate to examine the issues relating to the protection of consumers when they conclude contracts providing digital content, in the light of the protection afforded by Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees; asks the Commission to examine this matter in detail so as to determine whether it is appropriate to propose specific rules or to extend the rules set out in the above directive to this type of contract;

##### *Second-hand goods sold at public auction*

32. Proposes excluding this issue from the scope of the horizontal instrument and maintaining the possibility for Member States to provide that the definition of consumer goods does not include second-hand goods sold at public auctions; recommends, however, the adoption of specific rules for on-line auctions;

##### *Definition of delivery and rules on passing of risk*

33. Considers that the definition of delivery is closely linked to the rules on passing of risk; proposes, therefore, the inclusion in the horizontal instrument of a common definition of delivery, in which in principle priority should be given to a contractual agreement;

##### *Conformity of goods*

34. Considers that the horizontal instrument could, to good effect, extend the length of the statutory guarantee to include the period when the goods are out of use for repair;

35. Stresses, however, that the horizontal instrument should not include specific rules for second-hand goods, in order to respect the rules adopted by the Member States in accordance with their own legal traditions;

*Burden of proof*

36. Proposes to maintain the principle of rebuttable presumption in its present form;

*Remedies*

ORDER IN WHICH REMEDIES MAY BE INVOKED

37. Considers that the horizontal instrument could establish an order of available remedies in the case of wrong performance, with termination of contract being reserved for complete non-performance or particularly serious breaches of contract;

NOTIFICATION OF THE LACK OF CONFORMITY

38. Considers it appropriate for the horizontal instrument to eliminate the existing divergences concerning the notification of lack of conformity, which are currently a source of confusion;

DIRECT PRODUCERS' LIABILITY FOR NON-CONFORMITY

39. Considers that it is not appropriate to introduce direct producers' liability for non-conformity;

*Commercial guarantees*

40. Points out that the issues relating to commercial guarantees (content, transfer, limitation) are subject not to a legal framework but to the principle of contractual freedom; considers, therefore, that these issues should not be part of the horizontal instrument;

***THE GREEN PAPER AND EUROPEAN CONTRACT LAW***

41. Insists that this review, which will deal with consumer contracts, should be coherently integrated with the work being carried out on contract law in general, within the continuing process to achieve a CFR; stresses, therefore, that this review and the work on the CFR need to progress in a complementary way, whilst acknowledging that achieving this coherence should not impede or delay the current review process;

***EFFECTIVE APPLICATION OF CONSUMER LAW***

42. Underlines the need to ensure the effectiveness of consumer law in order to strengthen consumer confidence in the internal market;
43. Urges the Commission to improve the existing consumer protection and information arrangements, including ensuring proper application of and compliance with the rules in force;

44. Urges the Commission to thoroughly assess the impact of any measures proposed within the framework of this review to ensure that they increase consumer confidence without adding unnecessary burden to businesses, especially small and medium-sized enterprises, and that they contribute to the completion of the single market;
45. Urges the Commission to coordinate its action internally and favour coherent development of sectoral legislation;
46. Recommends scrupulous application of the principles of 'better regulation';
47. Urges the Member States to strengthen cooperation between their national authorities responsible for the application of consumer law and to facilitate judicial or extrajudicial remedies enabling consumers to enforce their rights at European level;
48. Calls on the Member States to take up their responsibility to complete the internal market for goods and services and to refrain from 'gold-plating' European consumer legislation; calls on the Member States to agree instead on a coherent strategy for targeted harmonisation of consumer legislation combined with an internal market clause that would enhance consumer confidence in the functioning of the internal market;
49. Supports the Commission's current and planned initiatives on the education of consumers; takes the view that more could be done also through cooperation between governments and the business sector in order to promote the provision of high-quality training in the financial sector so as to increase financial literacy, the quality of products and the legitimacy of the sector as a whole; welcomes the study commissioned on initiatives for general financial literacy in the European Union, the results of which are scheduled for the end of 2007;

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50. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

### I. Background

The Commission's Green Paper on the Review of the Consumer Acquis is in line with the commitments undertaken as part of the *'better lawmaking'* initiative by simplifying and completing the existing regulatory framework with the aim of achieving a real consumer internal market.

The Green Paper is also at the centre of an ambitious project on behalf of consumers. Your rapporteur shares the ideal expressed in the Green Paper: to be able to say to European citizens when the project is complete, 'wherever you are in the EU or wherever you buy from it makes no difference: your essential rights are the same'.

The review of the consumer acquis and the work done on *European contract law* are directly linked. This constraint introduces an element of complexity into the Green Paper process, but does not, however, justify postponing the review to take into account the far-from-precise timetable for drawing up European contract law. Nevertheless, it should be borne in mind that certain concepts do relate to general contract law (good faith, remedies, etc.).

Certain findings made by the Commission are incontestable and in themselves substantiate the need for a review. The *rapid development of the market*, and in particular the emergence of new forms of commercial transaction, such as e-commerce, has in part rendered the existing legislation obsolete.

In that regard the Green Paper contains an inconsistency which it is important to point out: it excludes the electronic commerce directive from the scope of the review. Your rapporteur recommends including that text, and also the directives on distance marketing of financial services, consumer credit and unfair commercial practices, because they too form part of the European provisions on consumer protection.

Furthermore, the *fragmentation of the rules*, owing, in particular, to the margin for manoeuvre which the Member States are allowed in transposing the legislation creates inconsistencies and divergences in the rights and obligations of the parties to a commercial transaction.

It is therefore essential to modernise this law in order to help develop the internal market by increasing legal security for both consumers and economic operators.

However, *effective implementation of consumer law* remains a major problem, and one which is not addressed in the Green Paper.

The best way to restore the confidence of consumers and economic operators is to ensure that the law is effective. If consumers are reluctant to conclude contracts outside their country of residence it is mainly because they are afraid they will be unable to enforce their rights in the event of a dispute. Better enforcement and application of the law is therefore essential.

## II. Legislative approach

### 1. *The choice of a mixed approach*

For reasons of clarity and consistency, a horizontal legal framework needs to be adopted covering the issues common to all aspects of consumer protection. A horizontal instrument also has the advantage of flexibility: to respond to new market conditions it will be easier and quicker to review this single instrument than to re-examine numerous directives.

However, certain issues are sector specific and cannot be subject to a common instrument. In that case a vertical approach needs to be maintained.

Your rapporteur therefore recommends a mixed approach.

### 2. *Scope of the horizontal instrument*

Your rapporteur believes that the horizontal instrument should be applied as widely as possible to all consumer contracts, whether for national or cross-border transactions.

Imposing different legal arrangements depending on the nature of the transaction would run counter to the objective of the review by introducing a new element of complexity.

### 3. *Degree of harmonisation*

At the moment Community legislation on consumer protection is governed by the principle of minimum harmonisation, allowing Member States to impose higher levels of protection than those laid down in the directives.

For the consumer, it is not acceptable under any circumstances for a rule affording more protection which had previously been granted to him to be waived. Moreover, the benefits of maximum harmonisation are not proven. The directive on unfair commercial practices, which is the only example of harmonisation of this type, was adopted too recently to serve as a useful gauge.

Consequently, your rapporteur proposes the adoption of a combined approach. The horizontal instrument would be based on maximum harmonisation while the sectoral tools would continue to be based on the principle of minimum harmonisation, with the exception of the directives already adopted on the basis of maximum harmonisation, such as the directive on unfair commercial practices. Initially, the ambitions could be modest – limited to subjects on which there is a real consensus, either in response to an objective market need or because there is no real divergence between national rules.

This approach inevitably raises the question of the rules applicable to the sector which is not fully harmonised. In the interests of consumer protection, your rapporteur proposes the following formula: *‘without prejudice to the application of international agreements on the conflict of laws, and in particular the Rome I convention, the consumer shall benefit from the mandatory provisions of the legislation of their habitual residence’*.

### **III: Content of the horizontal instrument**

#### ***1. Definitions of consumer and professional***

Your rapporteur recommends including in the definition of ‘consumer’ only natural persons acting for purposes which are outside their trade, business or profession.

The systematic exclusion of legal persons from this definition is justified in the interests of clarity. Criteria should be adopted which are as objective as possible: company ‘size’ is a concept that is too open to interpretation. Your rapporteur favours the negative approach of the purpose of the agreement, as that seems to prevail in both Community law and national legislation.

As the consumer is only protected when he enters into a contract with a professional, your rapporteur recommends a simple and clear definition of this concept, and ending the use of multiple terms (seller, supplier, distributor, etc.). It is then not necessary to make distinctions based on the nature of the activity pursued (commercial, industrial, craft, professional); it is sufficient that it is exercised on a professional basis. Obviously the professional can be a natural or legal person.

Furthermore, your rapporteur takes the view that contracts between private persons must be considered to be consumer contracts where one of the co-contractors acts through a professional intermediary because if a private person uses a professional intermediary with the aim of benefiting from that person’s technical and legal expertise it is logical that his co-contractor should be protected in the same way as if he concluded a contract with a professional.

#### ***2. Unfair terms***

##### *Scope*

Currently the provisions on unfair contractual terms only apply to terms that have not been individually negotiated.

Your rapporteur considers that, in certain cases, it could be necessary to protect consumers even where terms have been individually negotiated. Obviously the principle of contractual freedom must be maintained, but the consumer is not always able judge the effect of his commitments faced with a professional having technical expertise.

##### *Lists*

The list annexed to the current directive is purely indicative and is consequently subject to differing interpretations by the Member States. In order to enhance consumer confidence in the internal market, your rapporteur recommends establishing a flexible arrangement providing greater protection.

- Banned terms: a short list of terms characterising the most important contractual imbalances;

- Terms presumed to be unfair: a list of terms which the professional could demonstrate not to be unfair;
- Other terms: all other terms which the consumer could demonstrate to be unfair by means of legal action.

#### *Scope of the unfairness test*

Your rapporteur recommends widening the unfairness test to all the core terms of a contract, including the main subject matter of the contract and the assessment of the price. Certain insurance contracts, for example, contain terms on exclusion of guarantee which under the current provisions cannot be deemed unfair because it is precisely the guarantee which is the subject of the contract.

### **4. Right of withdrawal**

#### *Duration and calculation method*

Your rapporteur recommends standardising the methods for calculating the duration by opting for a calendar-based calculation (including public holidays because they differ in each of the Member States).

The start of the period should also be fixed unequivocally. Your rapporteur proposes fixing that starting point at the moment when the consumer is able to give free and informed consent, i.e. when he is in possession of the goods.

However, your rapporteur does not consider that the period can be made uniform. This is an area in which Member States have different traditions to which they are attached. In addition, these periods correspond to different objectives which certainly justify variable durations. As regards distance selling, it is a matter of allowing the consumer to make up his mind about an item which he did not have in his possession at the moment the contract was concluded, while in the case of doorstep selling it is a matter of authorising the consumer to change a decision which may have been taken hurriedly.

#### *Method of exercising the right*

Major divergences exist between the Member States and between the directives (simply in writing, by registered letter, return of goods). Moreover, certain practices which hinder the right of withdrawal (obligation to obtain a return number before sending the items back, obligation to return an item in the original, undamaged packing, etc.) are tending to emerge. What is more, the development of new technologies provides an argument for a simple e-mail to be sufficient to indicate withdrawal.

In the opinion of your rapporteur, consumer confidence in the internal market will be greatly enhanced if the horizontal instrument permits withdrawal by any means, it being the consumer's responsibility to provide proof of his withdrawal.

## **5. Consumer sales**

### *Definition of delivery and rules on passing of risk*

Currently, the question of who assumes the risk and the cost of any deterioration of the goods sold is regulated differently depending on the Member State concerned. In some Member States, the risk passes to the buyer at the moment the contract is concluded, while in others the risk passes at the moment of delivery.

Your rapporteur proposes including these two issues jointly in the horizontal instrument. In order to provide appropriate protection for the consumer, your rapporteur believes that delivery should be defined as the moment when the consumer takes physical possession of the goods, unless the parties have agreed otherwise. The passing of the risk takes effect at the moment of delivery.

### *Direct producers' liability for non-conformity*

Your rapporteur does not consider it appropriate for the horizontal instrument to introduce direct producers' liability for non-conformity. The directive on certain aspects of the sale of consumer goods and associated guarantees has very recently been transposed in certain Member States and it is too early to assess the appropriateness of any modifications.

MOREOVER, INTRODUCING DIRECT PRODUCERS' LIABILITY FOR NON-CONFORMITY WOULD APPEAR TO RAISE A NUMBER OF LEGAL DIFFICULTIES, SOME OF WHICH ARE THE SUBJECT OF CONTRACT LAW (E.G. CHALLENGING THE PRINCIPLE OF PRIVACY OF CONTRACTS).

28.6.2007

## **OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

for the Committee on the Internal Market and Consumer Protection

on Green Paper on the Review of the Consumer Acquis  
(2007/2010(INI))

Draftsman: Olle Schmidt

### **SUGGESTIONS**

The Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Strongly supports the review of the consumer acquis, which it considers to be of the greatest importance for improving the functioning of the internal market, attracting investment and achieving sustainable growth and employment in line with the revised Lisbon Strategy;
2. Recalls that this opinion relates mainly to the consumer aspects of the financial services sector and direct investment;
3. Points out that the review of the consumer acquis must be carried out with the participation of stakeholders, in accordance with the principles of good governance; emphasises that, in the financial field, the following are of particular importance for improving the reliability and functioning of the internal market:
  - drawing up an annual report on complaints and claims by users in this area,
  - carrying out education programmes and programmes to promote a financial culture;
4. Stresses the importance of a functioning consumer acquis directive; regrets the fact that Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit<sup>1</sup> has failed to achieve a harmonised system at EU level;
5. Supports a principles-based, rather than prescriptive, approach; expresses the need to evaluate under what circumstances a horizontal approach would allow the tailoring of

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<sup>1</sup> OJ L 278, 11.10.1988, p. 33.

sector-specific legislation, so as to reflect the actual risk for consumers; believes that special consumer protection rules in the financial services sector should be applied, if appropriate, over general rules and in line with the recently published Green Paper on Retail Financial Services in the Single Market (COM(2006)0226); stresses, however, that when formulating or reviewing legislation, consideration should be given to promoting an integrated, comprehensive and systematic approach consistent with the consumer acquis and in line with the principles of better regulation;

6. Notes that the implementation of MiFID rules will bring a higher level of consumer protection to retail investors in the EU;
7. Welcomes the Commission's intention to simplify and modernise the existing legislative framework, thus facilitating cross-border trade, promoting investment and strengthening consumer confidence;
8. Welcomes the Commission's ambition to simplify and modernise the existing consumer acquis, thus facilitating cross-border trade and strengthening consumer confidence;
9. Considers that financial services suffer from the discrepancies between existing rules, particularly since in many cases the rules in force do not meet the practical needs of business and consumers; supports a review of these rules with the aim of creating consistent, easily understandable and manageable rules at a qualitatively high level of consumer protection; is particularly in favour, in this connection, of bringing together the mainly technical rules of cross-sector significance – i.e. definitions, pre-contractual information obligations and modalities for the right of withdrawal – in a horizontal instrument, whereby the corresponding rules should be definitive; stresses that any proposal for the revision of consumer protection rules requires that a cost-benefit analysis be carried out;
10. Notes that, whereas investment products such as UCITS or life- insurance can be sold cross-border, issues remain concerning classical retail banking services, such as mortgage credits, consumer credits and bank accounts;
11. Recalls, in view of the final report and Recommendations of its Temporary Committee of Enquiry into the Crisis of the Equitable Life Assurance Society, that neither consumers nor service providers are always able to determine which legal regime is applicable to each aspect of their activities, that is, whether the civil law or the regulatory regime of the host or home country applies;
12. Calls on the Commission to define clearly the interaction between private international law instruments and internal market instruments with a view to leaving no doubt as to when home or host country legislation or regulation applies and to leave no gaps in the liability regime applicable to service providers;
13. Recalls the discussion on collective redress and believes it deserves further consideration, despite national differences in the conduct of business rules; requests the Commission to submit a scientific and legal assessment of collective redress;
14. Supports the Commission's current and planned initiatives on the education of

consumers; takes the view that more could be done also through cooperation between governments and the business sector in order to promote the provision of high-quality training in the financial sector so as to increase financial literacy, the quality of products and the legitimacy of the sector as a whole; welcomes the study commissioned on initiatives for general financial literacy in the EU, the results of which are scheduled for the end of 2007;

15. Encourages the industry to agree upon and follow a set of principles on disclosure, thus providing relevant information for the retail investor on any retail financial product;
16. Calls on all Member States to implement Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services<sup>1</sup> in a coherent way, in order to increase public confidence in cross-border financial services products.

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<sup>1</sup> OJ L 271, 9.10.2002, p. 16.

## PROCEDURE

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|---|---|--------------|-----------|
| <b>Title</b>  | Green Paper on the Review of the Consumer Acquis  |              |           |
| <b>Procedure number</b>   | 2007/2010(INI)  |              |           |
| <b>Committee responsible</b>                                      | IMCO  |              |           |
| <b>Opinion by</b><br>Date announced in plenary                    | ECON<br>18.1.2007   |              |           |
| <b>Drafts(wo)man</b><br>Date appointed                            | Olle Schmidt<br>13.2.2007   |              |           |
| <b>Discussed in committee</b>                                     | 8.5.2007  | 11.6.2007    | 18.6.2007 |
| <b>Date adopted</b>   | 27.6.2007   |              |           |
| <b>Result of final vote</b>                                       | +:<br>-:<br>0:  | 34<br>1<br>0 |           |
| <b>Members present for the final vote</b>                         | Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Ieke van den Burg, David Casa, Elisa Ferreira, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Gunnar Hökmark, Sophia in 't Veld, Othmar Karas, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Cristobal Montoro Romero, Lapo Pistelli, John Purvis, Alexander Radwan, Heide Rühle, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Margarita Starkevičiūtė |              |           |
| <b>Substitute(s) present for the final vote</b>                   | Katerina Batzeli, Harald Ettl, Werner Langen, Gianni Pittella, Kristian Vigenin, Corien Wortmann-Kool   |              |           |
| <b>Substitute(s) under Rule 178(2) present for the final vote</b> | Slavi Binev, Philip Bushill-Matthews, Adam Gierek   |              |           |

**28.6.2007**

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on the Internal Market and Consumer Protection

on Green Paper on the Review of the Consumer Acquis  
(2007/2010(INI))

Draftswoman: Diana Wallis

### **SUGGESTIONS**

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the Commission's Green Paper on Review of the Consumer Acquis, particularly the stated goal of modernising, simplifying and improving the regulatory regime for professionals and consumers;
2. Insists on the linkage between that Review, which will deal with consumer contracts, and the work being carried out on all contract law in general within the continuing process to achieve a Frame of Reference in European contract law (CFR), and therefore stresses that the Review and the work on the CFR need to progress in a complementary way, whilst acknowledging that achieving this linkage should not impede or delay the current Review process;
3. Believes that it is essential to have a clear overall vision of how the various legal and regulatory regimes affecting consumer and commercial law activities at EU level interact and function together, especially the relationship between any instrument produced by the Review and those dealing with conflict-of-law rules (Rome I and Rome II) and others based on the country-of-origin principle (e.g. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market<sup>1</sup> ("the E-commerce Directive"));
4. Believes that it is essential for the Community legislature to take action to eradicate any inconsistencies that exist between the consumer directives under review;

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<sup>1</sup> OJ L 178, 17.7.2000, p. 1.

5. Points out that harmonisation should lead to a comparable level of consumer protection in all Member States without unnecessarily harmonising all national arrangements;
6. Suggests that the sectoral directives should be based on the principle of minimum harmonisation, without ruling out the possibility of targeted full harmonisation with respect to certain clear-cut provisions;
7. Welcomes the Commission's proposal for a horizontal instrument and acknowledges the possible advantages of what some have termed a basic 'Consumer Rights' Directive; remains concerned at the level of maximum harmonisation any such approach might lead to and the possible resultant loss of certain national rights;
8. Suggests that cross-cutting provisions of the horizontal instrument should be based on the principle of targeted full harmonisation, in order to ensure legal coherence;
9. Recommends, as regards the non-harmonised areas in the coordinated field, application of the internal market principle of mutual recognition by the inclusion of an internal market clause; this internal market clause would allow for the application of the law of the economic operator if the applicable consumer law lays down stricter rules and imposes an unjustified barrier to the internal market, an unjustified barrier being one that is not justified by reasons of public policy and public security, the protection of public health or the protection of the environment; states that, for those areas that do not fall within the coordinated field, consumers will benefit from the mandatory provisions of the legislation of their habitual residence as provided for, in particular, by the Rome Convention of 19 June 1980 on the law applicable to contractual obligations;
10. Notes that Annex 1 of the Green Paper contains at points 4 and 5 an extensive list of legal contractual issues relevant to consumer contracts, that some of those issues have already formed part of the work on the CFR and that many are of a highly 'political' nature where were any general rule to form part of a harmonised instrument at EU level, there would need to be extensive (including public) debate and consideration;
11. Considers that both consumer confidence and cross-border trade could be assisted by the development of a 'blue flag' system allowing parties to opt for one of a number of possible EU-approved standard terms and conditions of business, and that more effort could be directed towards such practical solutions.

## PROCEDURE

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|---|--|
| <b>Title</b>                                    | Green Paper on the Review of the Consumer Acquis   |
| <b>Procedure number</b>                         | 2007/2010(INI)   |
| <b>Committee responsible</b>                    | IMCO   |
| <b>Opinion by</b><br>Date announced in plenary  | JURI<br>18.1.2007  |
| <b>Drafts(wo)man</b><br>Date appointed          | Diana Wallis<br>10.4.2007  |
| <b>Discussed in committee</b>                   | 11.6.2007  |
| <b>Date adopted</b>                             | 25.6.2007  |
| <b>Result of final vote</b>                     | +: 17<br>-: 0<br>0: 0  |
| <b>Members present for the final vote</b>       | Bert Doorn, Cristian Dumitrescu, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Othmar Karas, Piia-Noora Kauppi, Klaus-Heiner Lehne, Manuel Medina Ortega, Hartmut Nassauer, Francesco Enrico Speroni |
| <b>Substitute(s) present for the final vote</b> | Sharon Bowles, Luis de Grandes Pascual, Kurt Lechner, Marie Panayotopoulos-Cassiotou, Gabriele Stauner, József Szájer, Jacques Toubon  |

## PROCEDURE

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|---|--|-------------------|-------------------|-----------|----------|
| <b>Title</b>  | on the Green Paper on the Review of the Consumer Acquis  |                   |                   |           |          |
| <b>Procedure number</b>   | 2007/2010(INI)   |                   |                   |           |          |
| <b>Committee responsible</b><br>Date authorisation announced in plenary | IMCO<br>18.1.2007  |                   |                   |           |          |
| <b>Committee(s) asked for opinion(s)</b><br>Date announced in plenary   | ECON<br>18.1.2007  | ITRE<br>12.7.2007 | JURI<br>12.7.2007 |           |          |
| <b>Not delivering opinion(s)</b><br>Date of decision                    | ITRE<br>6.3.2007   |                   |                   |           |          |
| <b>Enhanced cooperation</b><br>Date announced in plenary                |  |                   |                   |           |          |
| <b>Rapporteur(s)</b><br>Date appointed                                  | Béatrice Patrie<br>19.12.2006  |                   |                   |           |          |
| <b>Previous rapporteur(s)</b>   |  |                   |                   |           |          |
| <b>Discussed in committee</b>   | 21.3.2007  | 10.4.2007         | 5.6.2007          | 27.6.2007 | 9.7.2007 |
| <b>Date adopted</b>   | 9.7.2007   |                   |                   |           |          |
| <b>Result of final vote</b>   | + : 34<br>- : 3<br>0 : 0   |                   |                   |           |          |
| <b>Members present for the final vote</b>                               | Charlotte Cederschiöld, Gabriela Crețu, Rosa Díez González, Evelyne Gebhardt, Malcolm Harbour, Edit Herczog, Pierre Jonckheer, Kurt Lechner, Arlene McCarthy, Toine Manders, Nikolay Mladenov, Bill Newton Dunn, Béatrice Patrie, Zita Pleštinská, Zuzana Roithová, Luisa Fernanda Rudi Ubeda, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Alexander Stubb, Eva-Britt Svensson, Horia-Victor Toma, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler, Nicola Zingaretti |                   |                   |           |          |
| <b>Substitutes(s) present for the final vote</b>                        | André Brie, Wolfgang Bulfon, Othmar Karas, Wolf Klinz, Manuel Medina Ortega, Joseph Muscat, Catherine Neris, Olle Schmidt, Marc Tarabella, Gary Titley, Anja Weisgerber  |                   |                   |           |          |
| <b>Substitute(s) under Rule 178(2) present for the final vote</b>       | Dieter-Lebrecht Koch, Klaus-Heiner Lehne, John Purvis  |                   |                   |           |          |
| <b>Date tabled</b>  | 16.7.2007  |                   |                   |           |          |
| <b>Comments</b><br>(available in one language only)                     | ...  |                   |                   |           |          |