# CESL: Good choice for the consumer?

The Right of Withdrawal
Chris Warner
24 Sep 2012

# Which? is....

- the largest consumer organisation in Europe with 1.3 million subscribers

- not-for-profit and independent

- completely self-funded – no advertisers, shareholders or Government funding

- a leading member of BEUC

- there to make things better for consumers:
  - Its advice helps them make informed decisions.
  - Its campaigns makes people's lives fairer, simpler and safer.
  - Its services and products put consumers' needs first to bring them better value

# Overview

- Significant and novel piece of legislation
  - Far-reaching consequences for business and consumers

- IMCO is focusing on the right question

- Which? is fully supportive of measures to improve the single market for consumers <u>but</u> it does not support CESL
  - No real evidence contract law is a barrier to cross border trade or that CESL will deliver any meaningful change
  - But it is likely to
    - Reduce consumer protection
    - Increase complexity and confusion

# Time to look at the details?

- Many unanswered questions of principle
  - Is there a need for CESL?
  - Will it improve cross border trade?
  - Can it achieve its aims?
  - Is an optional instrument appropriate?

- These should be properly considered before a detailed analysis
  - Which? welcomes the IMCO impact assessment

- But a look at the details can help answer these questions
  - The Right of Withdrawal is a good example

**Which?**

**Which? works for you**

# The Right of Withdrawal – what is it?

- Applies only to distance and off-premises contracts

- It gives consumer the right to change their mind and withdraw from contract

- Right lasts 14 days from receipt of goods

- Consumer has 14 days from withdrawal to return goods

- Trader has 14 days to refund consumer total purchase cost (incl. delivery)

- Contract treated as it never existed

**Which?**

Which? works for you

# The Right of Withdrawal - is CESL needed?

- No!

- Right almost exactly the same as under the Consumer Rights Directive

- CRD = max harmonisation

- And some consumers will be less protected under CESL

# CESL offers lower Consumer Protection

- Removes ban on payments during the withdrawal period
  - ➢ Impact on off-premises contracts in France

- CESL provides a more limited right to withdraw from off-premises contracts in 18 member States:

  - ➢ in Cyprus, Czech Republic, France, Greece, Hungary, Latvia, Luxembourg and Slovakia the right will be lost completely for <u>all</u> contracts worth <€50

  - ➢ In Austria, Germany, Estonia, Finland, Ireland, Italy, Netherlands, Poland, Sweden, Slovenia the right will be lost completely for <u>some</u> contracts worth <€50

# Can consumers avoid the reduction in protection?

- Not always:
    - ➢ Trader chooses whether CESL or national laws apply (not the consumer)
    - ➢ Consumer can only choose national laws by choosing a trader who is using them

        = Problem if all traders selling the same good use CESL

- But how will consumer be able to make informed choice?
    - ➢ Proposed CESL factsheet will not include this detail
    - ➢ Unlikely these differences will be flagged by trader

- And as a matter of principle, the burden of choice should not be on the consumer

**Which?**

# Will CESL reduce costs for business in relation to RoW?

- No – costs are likely to increase

- Although wording is very similar, it's not the same
  - ➢ Different interpretations over time?
  - ➢ Art 4, Annex 1 : CESL must be interpreted autonomously

- So, need to understand 2 parallel regimes
  - ➢ CESL and the Consumer Rights Directive
  - ➢ Even if not using CESL (to make sure right decision)

- Coherent development of CESL and CRD by legislators
  - ➢ Simultaneous reviews?

# Next steps for IMCO?

- Continue to focus on the same question: will consumers benefit?

- Defend the Consumer Rights Directive:
  - It was successful and needs time to develop

- Turn CESL into an instrument that
  - Is really needed;
  - Benefits consumers; and
  - Is useful to business.

- For example:
  - A model contract / code of conduct
  - Focus on 'non-optional' harmonisation where needed within the Consumer Acquis

**Which? works for you**

# Thank You.