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PUBLIC HEARING ON “THE CONSUMER RIGHTS DIRECTIVE” EP COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION, 29 SEPTEMBER 2009 BRUSSELS,

BUSINESSEUROPE’S VIEWS ON THE PROPOSAL AND THE COMMISSION’S NON-PAPER

Good afternoon Members of the European Parliament, Ladies and Gentlemen.

First I would like to thank the Committee and in particular its Chair Mr Harbour and the rapporteur Mr Schwab for organising this hearing, and for continuing to listen to the views of stakeholders on this important proposal.

Since its presentation in October 2008, a lot of debate has taken place in the European Parliament, the Council and among stakeholders to analyse the proposal and its impact.

In parallel, the main EU organisations representing consumers and businesses including BUSINESSEUROPE have engaged in a structured informal dialogue. Companies and consumers have strong common interests and both want to have a high quality and clear piece of legislation that strikes a fair balance between the interests at stake.

This dialogue has made clear how complex the proposal is and how important is to understand its implications not only in national laws but also the various sectors and types of goods covered.

Our opinion on the Commission’s proposal¹ continues to be one of strong support, in particular for the creation of a harmonised legal framework that provides a single set of clear rules which are relevant in business-to-consumer contracts.

To achieve that objective, we need a full harmonisation directive with a well-defined scope that addresses aspects having a particular cross-border importance. This is the best instrument to create a level playing field and remove national divergences that stifle the business-to-consumer cross-border trade.

¹ The BUSINESSEUROPE position paper on the proposal is available at :
<http://www.business-europe.eu/DocShareNoFrame/docs/2/JAAAKBJAEMCLILPMEHKACAGBPDBG9DB3GY9LTE4Q/UNICE/docs/DLS/2009-00741-E.pdf>

The benefits of this proposal are various:

For companies, it should reduce compliance costs to adapt to foreign legal orders and increase legal certainty.

For consumers, it should boost their confidence since consumers will benefit from more common rights and consequently more even level of protection no matter where they buy from. Enforcement of those rights will be also easier and more comparable from one country to the other.

Finally, the Single Market and the economy at large will win from a more harmonised regulatory framework that will enhance competition. This will most likely result in greater choice of and easier access to goods and services from other Member States.

The proposal then offers a genuine opportunity to improve the Single Market and to implement the better regulation agenda. However, there are several areas where improvements are needed:

- To better understand the proposal and its impact: The Commission should provide substantial clarification on key aspects such as scope, interaction with other Community legislation or impact on national legal orders especially on general contract law.
- To improve the text of the proposal:
 - i) To make sure that the concept of “consumer” encompasses not only his rights but also his obligations as a responsible and active player in the market. The necessary safeguards are needed to ensure that the consumer acts with due diligence and is made liable for any undue use or damage to the good.
 - ii) To strike a fair balance between the level of consumer protection and the interests of traders. The common level of consumer protection should not be based on the highest or the lowest standards. Several parts of the proposal do not strike a fair balance and create an unnecessary burden on companies, for instance:
 - In the case of withdrawal (article 16), the trader should not have to reimburse payments received to cover the costs of express or special delivery and product installation specifically requested by the consumer.
 - The consequences of late delivery by the trader are too stringent allowing the consumer to ask for reimbursement of any payments made in 7 days even if the delay is minor. Parties should be able to agree on an extension and cases of “force majeure” should be taken into account.
 - The consumer would have 14 days to exercise his right of withdrawal during which he should have to communicate it to the trader. In this case and according to article 17, the consumer must return the goods



within 14 days from the day on which he communicates his withdrawal to the trader. He could exercise and communicate it on the 14th day of the withdrawal period which would result in the consumer being in possession of the good for around 28 days (14 days to communicate withdrawal plus 14 extra days to return the goods). This is disproportionate for the trader who would be deprived of the good for around a month.

- iii) To ensure full respect of the parties' freedom of contract and exclude areas which are better dealt with at national level such as contractual effects of failure or omission to provide information, the right to damages or the content of commercial guarantees.

Regarding the Commission's non-paper, our preliminary assessment is that it helps understand better the implications of the directive and its scope. The Commission's efforts to provide clarification are therefore much welcome. However, there are a number of questions which require further elaboration, namely:

- the interaction with existing Community legislation, in particular the E-commerce Directive, the Services Directive and sectoral legislation.
- the impact on national general contractual remedies. It has to be clarified how the Commission plans to adapt the proposal regarding its effect on these remedies in particular as to the conditions that those national remedies must meet to consider them unaffected by the proposal.
- the effects on "mixed-purposed contracts" (a contract whose object includes a service and a good) need to be better explained especially as to when and how the provisions applicable to the service or to the good apply.
- scope: it is not clear to what extent and how services are covered, for example, social services, financial services, transport services or tourism. Concerning dual usage contracts, there is too much uncertainty as to how national courts are going to determine the predominance of the private purpose in a contract which would make the proposal applicable.
- in several occasions, the non-paper acknowledges that modification of the proposal will be needed to increase certainty. The Commission should indicate where possible if the clarification will imply a modification of the legal text and what type of amendment (i.e. in the recitals or in the body of the directive).
- on the comparative table, although non exhaustive, we believe it provides a good picture of the changes that the proposal will produce in national regimes and shows that overall the level of consumer protection will be reinforced.

We encourage the Commission to pursue with the clarification and to make the non-paper and any future clarification document available to all parties as soon as possible. This is key for a well informed debate. It is also important to take into consideration the

implications that the proposal will have in the different service sectors and the various types of goods it will apply.

Finally, I would like to express our concerns about the current discussions in the Council Working Party. We fear that the proposal is being examined from an almost exclusively national angle. As a result, discussions seem to focus on substantial changes to the proposal seeking to fit Member States' legal orders. Such "nationalisation" of the proposal risks undermining gravely its full harmonisation effect creating unnecessary burdens on traders and legal uncertainty.

BUSINESSEUROPE and its national members are not dogmatic about the scope or the level of protection. We are open to discuss changes in those areas whenever those changes are well evidenced and properly justified. However, it is essential not to compromise the functioning and the usefulness of full harmonisation which is key to ensure legal certainty and create a harmonised legal framework.

I will finish by recalling the main guiding principles that we believe should be taken into consideration throughout the entire legislative debate:

1. The directive must truly improve the operation of the Single Market;
2. Provide legal certainty;
3. Result in genuine full harmonisation of the relevant national laws;
4. Ensure a balanced common level of consumer protection avoiding unnecessary burdens on traders, and
5. be pragmatic and workable, responding to the needs and the reality of the market.

We therefore call on the Members of the Parliament and in particular this Committee to "think European" and to make sure that future discussion on this proposal seeks the European interest and the well functioning of the Single Market.

A purely national approach to this debate will inevitably end in a failure and in an example of bad legislation to the detriment of both business and consumers.

I thank you for your attention!

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