

BEUC CONTRIBUTION TO THE EP HEARING ON CONSUMER RIGHTS

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We are grateful to the IMCO Chair and Rapporteur for this hearing because this is the right moment to take stock. I consider it BEUC's role, as a consumer organisation, to provide you with the perspective of the consumer organisations in Europe on this proposal for a directive

We only have a few minutes and I would not wish to take too much time with setting the scene and the context. Our written contribution, prepared by my colleagues Ursula Pachl and Nuria Rodríguez, is more complete and I would like to refer you to it for our global assessment and more detailed comments on the proposal. I would like to limit my intervention here to the most important developments that have taken place since the publication of the proposal:

The EP has taken a leading role in analysing the foundations and the practical implications of the proposal, both for consumers and for business. I thank the EP, and especially the working group of the previous house, for the excellent job that was done. I would also like to mention the very important work of clarification engaged by by the Czech presidency.

My colleagues and I also welcome the dialogue which we were able to start, after the last hearing in March, here in this house, with representatives from BusinessEurope, Eurocommerce and UEAPME, and which have led to constructive debates with the Commission on clarification needs of the proposal. With this in mind, but more fundamentally and institutionally on the basis of the requests from the EP, and pursuing many requests from stakeholders, the Commission has engaged into a exercise of clarification of the scope and the impact of the Directive. We welcomed this exercise and the energy that both the Cabinet of Commissioner Kuneva and DG Sanco have put into it.

In spite of all this sometimes very hard work, however, the results that we expected have not been achieved. And I would like to use my speaking time to detail some of the very important remaining shortcomings. Before doing so, please let me share with you one important reflection.

This piece of legislation is a major piece of consumer law and policy in Europe. This proposal is not limited to cross-border or online consumer contracts. It concerns consumers' every day life, for every single contract they conclude: buying a book in a store, buying a car, renting a holiday home. The vast majority of totally local and domestic consumer contracts should not be sacrificed, when it comes to level of protection, because of the need for encouraging cross-border markets. Also, this legislation, which was supposed to provide a revision of the consumer acquis, will rule the life of consumers and traders for many years. It is there to stay for a long time: therefore it is crucial that EU legislators get this right.

In order to take up this challenge, it is essential that EU legislators have a very precise knowledge of the impact of this directive on EU markets and on consumer legislation. And this is even more the case because the Commission wants it to be a full harmonisation tool, which de facto means that there will be a cap on the level of consumer protection that is set at EU level, and MS will not be able to deviate from it. Therefore, we ask the EU and Member States to devote sufficient time to these works: EU consumers do not expect fast legislation. They expect good legislation.

FIRST, THERE IS A MAJOR LACK OF CLARITY AS TO THIS IMPACT:

The non-paper of the Commission gives rise to a lot of criticism

- We have to comment on a paper we barely received in advance, we have to rely on an older version. Likewise, policy-makers and stakeholders have to rely on oral information from the Commission, and I have to tell you that this information is changing and evolving with time and with the people who are present at the meeting. Everybody is working on the basis of unofficial, sometimes unwritten and peripheral information. At the end of the day, it is the content of the legislative text that counts and for the moment there is no transparency at all on what is the exact scope and content of the proposal that is being discussed by the various parties.
- The table is not exhaustive. The assessment is based on an arbitrary selection of provisions: it leaves aside some important provisions, such as for example the definitions of consumer and trader, the modalities for the exercise of the right of withdrawal, exceptions from the right of withdrawal, the question how many repairs a consumer must accept in case of a faulty product.
- Moreover, the Commission's table does not cover two of the four major areas of the proposed directive: the crucial chapters on information requirements and on unfair contract terms are simply missing in the Commission's table.
- We do not agree with some of the Commission's assessments which are described as increases in consumer protection, while there are not or only in a very marginal fashion.
- Against our expectations, the table has not been validated by the Member States and the Commission has not called on the Member States to evaluate the table for their country: yet they are the only ones to know correctly the way a provision will impact in their national tradition. Now, the status of the table is that of the interpretation by the Commission and in many cases only for some Member states, not for all. It has therefore only an "illustrative" value.
- Regarding the Commission's note on the scope of the proposal, we think that it is not very helpful to clarify some of the key aspects of the proposal, such as for example the relationship with national general contract law and it contains sometimes creative interpretations as to the link with other pieces of EU legislation, on which we cannot agree.

(To summarise, the Commission's table in its current format is rather more confusing than helpful and it will need significantly more work and input from Member States before it can fulfil its objective)

THE LEVEL OF HARMONISATION

It is essential to note that BEUC has no dogmatic position against full harmonisation: full harmonisation could, under some circumstances, make life easier for business, and we can of course accept this as long as this is done at a very high level of consumer protection, with a clear scope. However, in this case, the level of protection for consumers is far from being acceptable, while a thorough analysis shows that, in practice, this directive will only very partially remove legal barriers for traders, because, and this is the very nature of contract law, much is left to interpretation by courts of legal concepts. Even more, in some cases, there is a misleading message to traders who wrongly believe that there is a harmonized legal framework whilst in real

life this is far from being the case, because of the complex interaction of this directive with well established national case-law or national general contract law. So in this context, the proposal will lead in many cases to a limitation of existing consumer protection while not providing traders with a level playing field. We are convinced that in the current state the proposal will not achieve this objective. That is what we at BEUC call a "lose-lose situation".

WHAT IS THE WAY FORWARD?

1) We need to assess what consumers really need in order to have more confidence and to engage more in cross-border shopping; all we know now is that the main reasons are not divergence of legislation. We believe that much more consumer oriented research should be done in order to propose legislation that is based on the real needs for consumers to benefit from the internal market.

2) We need to reflect upon what the future challenges are for European consumers, what responses we need to digital technology, sustainably consumption, and an Internal Market which is tangible for consumers. The proposed directive is not future proof, it is a missed opportunity. The Swedish presidency conference is devoted to this topic and will certainly provide a lot of useful information, but one could already mention the right to be informed about conditions of interoperability, or the definition of unfairness in software licensing agreements, etc.

3) We need to assess, what are the economic and legal effects of full harmonisation? So far, we know nearly nothing about the costs and benefits of full harmonisation in economic terms in the field of consumer contracts. Does it really provide the promised benefits to business and will business pass them on to consumers? We also need to assess, seriously and objectively, what are the regulatory effects of full harmonisation in a field embedded into national civil law, as proposed by the Commission.

4) In terms of what kind of harmonisation should be applied, BEUC supports the opinion of the previous Parliament, which asked for a so-called mixed approach, which means

full harmonisation that **is set at a clearly high level of protection and is applied to cross-cutting and/or technical issues** (such as for example the length of the withdrawal period, the conditions to exercise it and the definitions, e.g. of a consumer).

and

minimum harmonisation for other issues, such as unfair contract terms and guarantees, for which Member states should be allowed to maintain national particularities valued by consumers and to adapt quickly to market changes.

To use a mixed approach could create a **win-win situation**: for business, - in the fields which have not been fully harmonized - it would approximate standards and therefore make it easier for business to know what they have to comply with. For consumers, they would have more rights to make safer and easier use of cross-border offers.

There remains a lot to be done in order for this proposal to deliver both to consumers and to traders. We at BEUC wonder whether it would not be better to start all over again rather than try to paper over the cracks.

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