



EU Regulatory Watch

October 16, 2008

European Commission adopts a proposal for a Consumers Rights Directive¹

The European Commission unveiled on October 8, 2008 its proposal for a Directive on Consumers Rights.² Its aim is to “make it easier for consumers to shop on the Internet and in the main street, (...) boost consumer confidence and at the same time to cut red tape holding back businesses within national borders.”³

European Consumer Commissioner Meglena Kuneva outlined the importance of the proposal hailing it “the most far reaching overhaul of consumer rights in 30 years.”⁴

Several reasons account for this policy step taken by the Commission. On the one hand, Directives on consumer protection date back to the 1980s⁵ and have been complemented at national level by differing regulations and statutes that should be harmonized.⁶ Also, the Commission has conducted studies that show that European citizens are reluctant to purchase goods from Internet sites different from their country of origin. One reason for this reluctance is the perceived difference in consumer protection regimes in the Member States.

The Commission proposes to merge several existing Directives and to set standards to harmonize laws on consumers protection with a distinct focus on online transactions.

The Proposal must now be adopted by the European Parliament and the Council of Ministers.

Contents

Scope

- Contracts for sales of goods and services from business-to-consumers comprising
 - Distance contracts: Internet, mobile phone or catalogue sales
 - Off premises contracts: sales where consumers and traders are present at the moment of the sale but are not on business premises, e.g. doorstep sales
- Concerning contracts with non-EU businesses, the Proposal provides that consumers will still be protected by its provisions as the conflict-of-laws mechanism set out in the Rome I Convention would still apply.⁷

Areas excluded from the scope of the proposal

- financial services
- timeshare and package travel⁸
- sale of immovable property
- vehicle rentals
- transport
- leisure services
- accommodation services
- vending machines
- supply of food by rounds men (i.e.: milkmen)

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Main rules introduced

- Pre-contractual information must be provided on the characteristics, costs, additional costs of the product, delivery information, payment methods and information on the trader.
- Traders have to deliver the goods within 30 days of signature of contracts and bear the cost of deterioration of products. Consumers are entitled to refunds within 7 days if traders fail to fulfill their obligations.
- A 14 day cooling off period is proposed and withdrawal periods are extended to three months when traders fail to give information. A standard withdrawal form is proposed.
- The proposal introduces a standard set of remedies for repairs, replacement, and guarantees when consumers have bought faulty products.
- An Unfair Contract Terms black list is created.
- A Grey List of terms is created for terms deemed to be unfair unless the trader proves otherwise, e.g. automatic renewal of subscriptions or energy-indexed price variations.
- New rules are created for online auctions and against pressure selling.
- A rule provides that information must be given to the customer when the seller is an intermediary of the trader.
- Harmonizing rules permitting traders to use the same contract term in all EU Member States are provided.

A reference for future EU legal standards in consumer protection?

The proposal marks a shift in the Commission's approach to consumer protection from minimal harmonization to maximum harmonization. In the former case, EU law set minimal consumer protection standards and Member States had the option to enact or maintain stricter rules. The Commission, this time, chose the option of full harmonization. It aims to introduce high standards that Member States have to comply with in order to avoid differences in consumer protection regimes across the EU.

This move enables greater protection globally but does not fill all the gaps that exist under the current consumer protection legislation in the EU. Consumers organizations have already criticized the content of the proposal. Although raising the standards for consumers rights, they feel it does not add significantly new devices to address online and off-premises contracts. Also they criticize the fact that several sensitive business activities are excluded (e.g. accommodation services or car rentals).⁹

In contrast, the policy move has been welcomed by industry representatives¹⁰ as a step in the direction of legal certainty. They also argue that the European Commission's effort to harmonize consumer protection laws would ease free movement of goods in the European Union.

It will be interesting to see how national governments will respond to the proposal at Council of Ministers level. Member States may have differing views on consumer protection regulation and propose amendments. While businesses hope the proposal will not be watered down to a minimal harmonization, consumers organizations hope for more ambitious provisions.

While the Proposal may not be the revolutionary instrument the Commission claims it to be, it gives businesses a reference tool to determine what standards may be expected of them from European law in the years to come.

Useful and comprehensive information on [the Proposal](#) can be found at the European Commission Directorate General for Health and Consumers [webpage on Consumer Acquis](#).

¹ Prepared with the valuable help of Julien de Cruz.

² The proposal for a Directive on Consumer Rights is only available in [English](#), [French](#) and [German](#).

³ Rapid press release: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1474&format=HTML&aged=0&language=EN>

⁴ Mrs. Kuneva's Speech:
<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/507&format=HTML&aged=0&language=EN>

⁵ The Consumer Acquis comprises Four Directives on the [Sale of consumer goods and guarantees \(99/44/EC\)](#), [Unfair contract terms \(93/13/EC\)](#), [Distance selling \(97/7/EC\)](#) and [Doorstep selling \(85/577/EC\)](#).

⁶ The differences were outlined by the European Consumer Law Compendium which published [a comparative analysis of Member States' laws](#) and [a database on differing national regimes](#).

⁷ Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) provides that consumers may not be deprived of the protection stemming from non-derogable rules of their home country.

⁸ Only the proposal's provisions on unfair contract terms would apply to these contracts as the Package Travel Directive 90/314/EEC and the Timeshare Directive 94/47/EC already regulate them and will remain in force.

⁹ See the European consumer's organization BEUC's press release: <http://docshare.beuc.org/Common/GetFile.asp?ID=26377&mfd=off&LogonName=Guesten>

¹⁰ See the industry group Eurocommerce's press release: <http://www.eurocommerce.be/content.aspx?pagelId=41325> and EU Business' press release at: <http://www.eubusiness.com/news-eu/1223484421.34/>

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