Green Paper on the review of the consumer acquis

2007/2010(INI) - 06/09/2007 - Text adopted by Parliament, single reading

The European Parliament adopted by 486 votes in favour to 77 against with 15 abstentions a resolution based on the own-initiative report drafted by **Béatrice PATRIE** (PES, FR) on the Green Paper on the Review of the Consumer Acquis. The report pointed out that half of all Europeans are warier of making cross-border purchases than domestic purchases, and over two-thirds (71%) think it harder to resolve certain problems such as complaints, returns, price reductions and guarantees when shopping cross-border. Parliament recommended that the **scope of the review** concentrate on updating and creating coherence between the eight consumer protection directives named in the Green Paper. It called on the Commission to present a report on the implementation of Directive 2000/31/EC (the 'e-commerce Directive'), identifying questions relating to consumer confidence. It was essential for the Community legislature to take action to eradicate any inconsistencies that exist between the consumer directives under review. It was also 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, especially the relationship between any instrument produced by the review and those dealing with conflict of law rules and those based on the country of origin principle (such as the e-commerce Directive).

With regard to the **general legislative approach**, the report expressed 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. Specific questions which were outside the scope of the horizontal instrument should continue to be considered separately in the sectoral directives. The report was 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.

With reference to the **scope of the horizontal instrument**, thisshould 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. Parliament pointed out that harmonisation must not lead to a decline in the level of consumer protection as achieved under certain national laws, but should lead to a comparable level of consumer protection in all Member States. It suggested that the horizontal instrument with cross-cutting policy areas should start from the principle of full targeted harmonisation. Parliament further suggested that sectoral tools that were being reviewed should be based on the principle of minimum harmonisation, combined with the principle of mutual recognition where the coordinated area was concerned. However, this does not exclude full targeted harmonisation where this proves necessary in the interests of consumers and professionals. Members recommended the inclusion, in the sectoral instruments, of an internal market clause to allow consumers to benefit fully from the internal market.

Parliament noted that the Green Paper contained an extensive list of **contractual issues** relevant to consumer contracts, and that some of those issues have already formed part of the work on the **CFR** (common frame of reference for European contract law). 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 debate and consideration. Parliament insisted that the 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 of achieving a CFR. The review and the work on the CFR need to progress in a complementary way, whilst acknowledging that achieving this coherence should not impede the current review process.

With regard to the **content of the horizontal instrument**, Parliament began by suggesting **definitions** for "consumer" and "professional", noting that these definitions were not consistent either in Community legislation or in national legislation, and that it was essential to clarify these concepts in the horizontal instrument given that they determine the scope of consumer law. It went on to oppose the insertion in the horizontal instrument of a general clause of good faith and fair dealing applicable to consumer contracts. With regard to **unfair terms**, Parliament stated that it was not appropriate to apply the rules on unfair terms to individually negotiated terms so as to restrict the freedom of the contracting parties to conclude contracts. In order to boost consumer confidence in the internal market, arrangements affording more protection should be introduced while retaining a degree of flexibility. The Commission is requested 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. The resolution rejected 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. It also stated that, at this stage, it was very difficult to determine general rules on the contractual effects of failure to provide information which take into account the characteristics of each contract.

With regard to the **right of withdrawal**, the resolution underlined 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. The length of the periods should be harmonised where this was justified. Consumer confidence in the internal market would be enhanced if the horizontal instrument provided for the consumer to be able to withdraw from the contract. The means for withdrawal should be harmonised to improve legal certainty and the horizontal instrument should also affirm that consumers should not bear any costs other than the direct cost of returning the goods. The introduction of a 'standard withdrawal form' in all the Community languages would simplify procedures, reduce costs, and increase transparency and consumer confidence.

The report makes a series of recommendations on **specific rules on consumer sales**, and proposes the inclusion in the horizontal instrument of a common definition of delivery, in which in principle priority should be given to a contractual agreement. The horizontal instrument could also:

- extend the length of the statutory guarantee to include the period when the goods are out of use for repair;
- 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;
- eliminate the existing divergences concerning the notification of lack of conformity, which are currently a source of confusion;

Members felt that it was not appropriate to introduce direct producers' liability for nonconformity.

They stated that the issues relating to commercial guarantees (content, transfer, limitation) were subject not to a legal framework but to the principle of contractual freedom, and these issues should not be part of the horizontal instrument

Parliament emphasised the need to ensure the **effectiveness of consumer law** in order to strengthen consumer confidence in the internal market. It urged the Commission to improve existing consumer protection and information mechanisms, and thoroughly to assess the impact of any measures proposed within the framework of the review.

Lastly, Parliament called on 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. They must 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.