

Consumer rights

2008/0196(COD) - 08/10/2008 - Legislative proposal

PURPOSE: to contribute to the better functioning of the business-to-consumer internal market by enhancing consumer confidence in the internal market and reducing business reluctance to trade cross-border.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: this proposal is a result of the review of the Consumer Acquis which covers a number of Directives on consumer protection. The Review was launched in 2004 with the objective to simplify and complete the existing regulatory framework.

The proposal aims at revising four Directives:

- Directive 85/577/EEC on contracts negotiated away from business premises,
- Directive 93/13/EEC on unfair terms in consumer contracts,
- Directive 97/7/EC on distance contracts,
- Directive 1999/44/EC on consumer sales and guarantees.

These four Directives provide for consumer contractual rights. They contain minimum harmonisation clauses meaning that Member States may maintain or adopt stricter consumer protection rules. Member States have made extensive use of this possibility. The outcome is a fragmented regulatory framework across the Community which causes significant compliance costs for businesses wishing to trade cross-border. The internal market effects of the fragmentation are a reluctance by businesses to sell cross-border to consumers which in turn reduces consumer welfare.

That review has shown that it is appropriate to replace those four Directives by this single Directive. This Directive should accordingly lay down standard rules for the common aspects and move away from the minimum harmonisation approach in the former Directives under which Member States could maintain or adopt stricter national rules.

The European Parliament, in its [Resolution](#) of 6 September 2007 recommended that legislative action is taken and expressed its preference for the adoption of an instrument taking the form of a horizontal Directive based on full targeted harmonisation.

CONTENT: the purpose of the proposal is to contribute to the proper functioning of the business-to-consumer internal market and achieve a high common level of consumer protection by **fully harmonising** the key aspects of consumer contract law which are relevant for the internal market.

- Chapter I contains the common definitions such as 'consumer' and 'trader' and lays down the principle of full harmonisation.

- Chapter II contains a core of information to be provided by traders prior to the conclusion of all consumer contracts as well as an information obligation on intermediaries concluding contracts on behalf of consumers.

- Chapter III which only applies to distance and off-premises contracts, provides for specific information requirements and regulates the right of withdrawal (length, exercise and effects) in a consistent manner. It also refers to a standard withdrawal form reproduced in Annex I(B).

- Chapter IV clarifies the provisions of Directive 99/44/EC. It maintains the principle that the trader is liable to the consumer for a period of two years if the goods are not in conformity with the contract. It introduces a new rule whereby the risk of loss or damage of the goods is transferred to the consumer only when he or a third person indicated by him other than the carrier acquires the material possession of the goods.

- Chapter V broadly reflects the provision of Directive 93/13/EEC. It applies to unfair contract terms which have not been individually negotiated, such as standard contract terms. Unfair terms are those creating significant imbalances in the rights and obligations of consumers and of traders and are not binding on consumers. In order to ensure legal certainty, the Directive contains two lists of unfair terms. Annex II contains a list of terms which in all circumstances are considered unfair. Annex III contains a list of terms which are deemed unfair unless the trader proves otherwise. These same lists apply in all Member States and may only be amended by the comitology procedure provided for by the Directive.